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June 11, 2018

H.E. Joko Widodo
President of the Republic of Indonesia
Istana Merdeka
Jakarta Pusat 10110

Re: Human Rights Concerns Regarding New Counterterrorism Law

Your Excellency,

I am writing on behalf of Human Rights Watch to express our concerns regarding the amended Eradication of Criminal Acts of Terrorism Law (the “CT Law”) that the Indonesian parliament passed on May 25, 2018, which amends the 2003 law. The amended law was enacted following the horrific Surabaya suicide bombings on May 13-14, 2018.

We wish to express our condolences to the victims of those attacks and their family members. We recognize that those incidents underscore that the Indonesian government has a responsibility to keep those under its jurisdiction safe, and that the new statute includes some improvements from the previous law. However, certain aspects of the new CT Law risk undermining key human rights protections and ultimately weaken efforts to counter armed threats from extremists.

Human Rights Watch is particularly concerned about the following elements of the CT Law:

1. Overbroad Definition of Terrorism

The new CT Law relies on an overbroad and ambiguous definition of terrorism. Article 1(2) defines terrorism as any act that uses “violence or threat of violence to create a widespread atmosphere of terror or fear, resulting in mass casualties and/or causing destruction or damage to vital strategic objects, the environment, public facilities, or an international facility.” Article 1(4) defines “the threat of violence” as including any “speech, writing, picture, symbol or physical, with or without the use of electronic or non-electronic form which may incite fear in a person.”



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While there is no internationally agreed definition of terrorism, the definition in the new CT Law goes far beyond the definition endorsed by the United Nations special rapporteur on human rights and counterterrorism, which defines terrorism as “an act committed with the intent to kill, cause serious bodily injury, or take hostages with the aim of intimidating or terrorizing a population or compelling a government or international organization.”

Human Rights Watch’s research has shown that prosecutors in dozens of countries have used similarly broad counterterrorism laws to prosecute acts of political dissent that result in property damage, such as demonstrations. In Indonesia, we are concerned that the broad definition of terrorism could be used to target peaceful political activities of indigenous groups, environmental advocates, and religious or political organizations.

We urge you to do the following to avoid human rights violations linked to overbroad definitions of terrorism under the CT law:

- Ensure that the CT Law’s implementing regulations provide a much narrower and specific definition of terrorism and terrorist activities that mitigate the dangerously ambiguous definition in the law.
- Ensure that police and prosecutors apply the law in a way that does not infringe on protected rights and freedoms by only prosecuting acts that qualify as “genuinely of a terrorist nature,” as set out by the UN special rapporteur on human rights and counterterrorism.

2. Lengthy Pre-Charge and Pre-Trial Detention Periods

Article 28 of the CT Law extends the period that police can detain terrorism suspects without charge from three days in the 2003 law to a maximum of 21 days. That compares to a 24-hour period that police can detain suspects for non-terrorism-related crimes.

Article 25 of the CT Law permits the prosecutor to extend pre-trial detention for terrorism suspects from a maximum of 180 days under the 2003 law to 240 days, or up to 290 days with approval of the chief magistrate of the district court.

Prolonged detention without charge, particularly when coupled with restrictions on detainees’ ability to challenge that detention in court, creates conditions conducive to torture and other ill-treatment that will go unnoticed by the courts and unsanctioned by law. The insertion in article 28(3) that the arrests and detention of the suspect during the pre-charge phase will be done in accordance with the “principles of human rights” is welcome, but will do little in guaranteeing the rights of suspects.

Prolonged pre-charge detention, particularly when not authorized by a judge, may also violate the right to liberty under international law. The International Covenant on Civil and Political Rights (ICCPR), to which Indonesia is party, states that anyone arrested or detained for a criminal offense “shall be brought promptly before a judge or other officer authorized by law to exercise judicial power.” Furthermore, anyone deprived of their liberty by arrest or detention has the right to “take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

The UN Human Rights Committee, an international expert body that monitors state compliance with the ICCPR, has explicitly interpreted this provision to apply to “all persons deprived of their liberty by arrest or detention,” including persons held in pre-charge detention. The committee has increasingly interpreted prompt appearance before a judge to be within 48 hours.

We urge you to take the following step to address these lengthy pre-charge and pre-trial detention periods:

- Urge parliament to promptly amend the CT Law so that all those taken into custody are brought before a judge within 48 hours to be formally charged and able to contest the basis for their detention.

3. Anonymous Witnesses in Terrorism Prosecutions

Article 34A of the CT Law states that “witnesses, experts, and rapporteurs” in terrorism prosecutions will be provided protection including “confidentiality of identity.” While the authorities may take measures to protect witnesses, international law requires that prosecutors allow suspects to adequately defend themselves, including by calling and examining witnesses.

We urge you to seek amendments to article 34A that would:

- Ensure that any measures taken to protect the security of witnesses do not infringe upon the right of defendants to have a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.
- Ensure that any concealment of witnesses’ identities is limited to cases where the measure is shown to be necessary and justified by serious and objective reasons.

4. Overbroad Surveillance Powers

Article 31 of the CT Law allows Indonesian authorities to “open, examine, and confiscate mail and packages by post or other means of delivery ... and intercept any conversation by telephone or other means of communication suspected of being used to prepare, plan,

and commit a Criminal Act of Terrorism.” These provisions could potentially be used to authorize massive, disproportionate surveillance that violates privacy rights.

To prevent possible massive, disproportionate surveillance, we urge you to:

- Ensure that all surveillance powers are fully set out in clear, publicly accessible laws. Those laws should include safeguards for ensuring the surveillance is strictly necessary and proportionate, and should specify, for example, the nature and scope of the surveillance, the standards and procedures for surveillance requests and approvals, the circumstances under which a government agency may share surveillance data with others, how and for how long the surveillance data will be stored, at what point individuals will be notified that they were monitored, and a system of effective remedies for any abuses. Vaguely worded, potentially broad provisions are not sufficient.
- Ensure that this law cannot serve as a basis for mass surveillance. Surveillance should be limited to what is strictly necessary for achieving a legitimate aim, such as preventing or investigating serious crimes. Any interceptions should be as targeted as possible and should use the least intrusive means available.
- Ensure that the monitoring is proportionate. The government should reconsider the yearlong duration of these orders and impose much more limited periods of surveillance; a year of surveillance may capture very large amounts of data and be extremely revealing of sensitive aspects of personal life.

5. Deployment of Indonesian Armed Forces in Counterterrorism Operations

Article 43 of the CT Law specifies that the Indonesian Armed Forces (Tentara Nasional Indonesia, TNI) may be deployed in “combating acts of terrorism.” The passage of the new law coincides with the establishment of the military Joint Special Operations Command (Koopsusgab), which involves the army special forces, the marine corps, and the air force’s special corps.

The deployment of armed forces in response to domestic security threats may be justified in certain cases. However, extended military deployment in a civilian policing context is undesirable and carries serious risks.

Military personnel are trained and traditionally deployed to neutralize an enemy force through lethal force during times of armed conflict in which the international laws of war apply. Their training typically does not significantly involve law enforcement operations. Policing operations, in contrast, are bound by international human rights law, which restricts use of force to the minimal amount necessary to keep order, and to use lethal force only when there is an imminent threat to human life.

In addition, accountability for abuses by the military in Indonesia remain the sole jurisdiction of Indonesia's military courts. Human Rights Watch has repeatedly expressed concerns that the Indonesian military justice system lacks transparency, independence, and impartiality, and has failed to properly investigate and prosecute alleged serious human rights abuses by military personnel.

The CT Law specifies that the details regarding the involvement of the military in counterterrorism operations will be stipulated in a Presidential Regulation. We urge you to take the following steps to prevent and appropriately respond to abuses by the military during counterterrorism operations:

- Ensure the Presidential Regulation restricts participation of military forces in counterterrorism operations where involvement of the military is strictly necessary and proportionate. It should include specific provisions that limit the scope, levels, and duration of the military deployment.
- Ensure that military troops deployed in counterterrorism operations have appropriate training in law enforcement and abide by the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which apply to all security forces outside of armed conflict situations.
- Coordinate with parliament to establish a body within the Indonesian House of Representatives tasked to monitor the application of the CT Law in line with respect for international human rights standards, and to monitor military actions as well as those of the police in accordance with international human rights law.
- Ensure the House of Representatives monitoring team can investigate any alleged abuses committed by military forces.
- Seek legislation that would allow for the prosecution of military personnel who commit serious human rights violations in the civilian courts.

6. Expanded Application of the Death Penalty

The 2003 CT Law permitted imposition of the death penalty against “anyone who commits violence or threatens violence that takes ‘massive casualties’ or destroying strategically vital objects, using chemical or biological weapons, transferring illegally any firearms or explosives into Indonesia to be used for ‘terrorism acts’ and for any person who masterminds those actions.” The amended CT Law also allows the death penalty for anyone “who intentionally incites others to commit a criminal act of terrorism.”

International human rights law discourages the use of the death penalty and mandates that it only be applied to the most serious crimes, such as those resulting in death or serious bodily harm. The new CT Law would allow the death penalty to be carried out for crimes that did not reach this level of grievousness.

In 2008, the UN General Assembly adopted a resolution entitled “Moratorium on the use of the death penalty,” which 104 states voted in favor of. Human Rights Watch opposes the death penalty in all circumstances as cruel and inhuman punishment, one that is plagued with arbitrariness, prejudice, and error wherever it is applied.

We urge you to take the following steps to address the human rights implications of the expanded application of the death penalty:

- Impose a general moratorium on the death penalty until such time that capital punishment can be banned in Indonesia.
- Encourage parliament to remove the death penalty from the 2018 CT Law.

7. Problematic Aspects of Measures to Protect Victims of Terrorism

Articles 35 and 36 of the new CT Law provide expanded measures to protect and assist victims of criminal acts of terrorism, including through the provision of medical, psychosocial, and psychological rehabilitation; restitution to the family in the event of death; and compensation. The law also formalizes the involvement of Indonesia’s Witness and Victim Protection Agency (Lembaga Perlindungan Saksi dan Korban, LPSK)—an independent body established in 2006 that has been providing financial compensation and rehabilitation programs to victims of crimes.

Support for victims of terrorism is included as a key component of the 2006 UN Global Counter-Terrorism Strategy. It is evoked in section I, which encourages national systems of assistance, and section IV, which urges governments to promote and protect the rights of victims. The UN Office on Drugs and Crime report on good practices emphasizes that “the enactment of legislation on the rights of victims contributes to empowering victims of terrorism and is in itself an effective message against violent extremism and terrorism,” and creates goodwill among the general population.

8. Ensuring Preventive Measures Do Not Violate Human Rights

The new CT Law stipulates that the government should adopt measures to prevent “criminal acts of terrorism,” and appoints Indonesia’s National Counter-Terrorism Agency as the lead agency in such efforts.

The law also provides for the establishment of a national terrorism alert system, counter-radicalization projects for individuals and groups vulnerable to radicalization, and a deradicalization program for prisoners accused of “criminal acts of terrorism.”

The details of such measures are left for future government regulations.

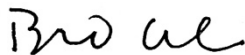
Coordinated national efforts to stem extremist attacks need to comport with international human rights standards. They should not infringe on the rights of individuals to freedom of religion, belief, opinion, or expression that is nonviolent. Participation in so-called deradicalization programs may only be required as part of a sentence upon conviction for a recognizable criminal offense.

We urge you to ensure that international human rights standards are upheld in drafting relevant implementing regulations on preventing criminal acts of terrorism, and that you:

- Consult with nongovernmental organizations who represent members of affected groups to minimize possible discriminatory regulations.
- Seek to ensure that the regulations do not exacerbate existing grievances and thus increase the likelihood of violent extremism.

We would be happy to meet with you as well as officials involved in these issues to discuss these matters further.

Sincerely,



Brad Adams
Asia Director
Human Rights Watch

CC:

Dr. Hatta Ali, Chief Justice of the Supreme Court

Dr. Anwar Usman, Chief Justice of the Constitutional Court

Air Chief Marshal Hadi Tjahjanto, Commander of the National Armed Forces

Gen. Tito Karnavian, Chief of the National Police

Muhammad Prasetyo, Attorney General