

# JOINT STAKEHOLDERS' REPORT ON THE UPR OF INDONESIA

## The Situation of the Right to Freedom of Expression, and Freedom of Association and Assembly in Indonesia

### 1. INTRODUCTION

- 1.1 This report was prepared by a number of civil society organisations in Indonesia, namely, CIVICUS, Legal Aid Center for the Press (LBH Pers), the Institute for Policy Research and Advocacy (ELSAM), the Institute for Criminal Justice Reform (ICJR), the Peoples Participation Initiative, and Partnerships Strengthening Foundation (YAPPIKA) and the Indonesian Alliance of Independent Journalists (AJI Indonesia).<sup>1</sup>
- 1.2 The drafting process of this report has been coordinated since August 2016 with several Indonesian civil society networks that is concerned with the advancement of the right to freedom of expression, and freedom of association and assembly in Indonesia. Furthermore, this report has been consulted nationally on 14 September 2016 in Jakarta with other relevant stakeholders.

### 2. FOLLOW UP TO THE PREVIOUS UPR

- 2.1 This report is collated based on the recommendations of the UPR session for Indonesia in 2012. Various recommendations were submitted on related topics developed in this report, including to:

**108.30** *Pursue the revision of the Penal Code to provide a more comprehensive and thorough legal basis for the implementation of Indonesia's obligations;*

**108.31** *Adopt promptly the reforms of the Criminal Code;*

**108.55** *Facilitate the visits of the Special Rapporteur on Freedom of Expression;*

**108.103** *Review laws and decrees currently in force restricting the freedoms of opinion, and of expression, in order to prevent any risk of discrimination;*

**108.104** *Revise any national legislation that may be in conflict with international obligations;*

**108.105** *Take legislative action and effectively prosecute the incitement of hatred;*

**108.113** *Intensify its efforts to respect and uphold freedom of expression, including political expression;*

**108.114** *Ensure free access for civil society and national journalists to Papua and West Papua;*

**108.116** *Ensure that provisions of the Indonesian Criminal Code, such as articles 106 and 110 are not misused to restrict the freedom of speech;*

**108.119** *Conduct impartial and independent investigations into acts of violence committed against human rights defenders, to bring those responsible to justice and fully guarantee freedom of expression.*

### 3. LEGISLATIVE FRAMEWORKS

#### EIT Law

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<sup>1</sup> See Annex 1.

3.1 As a response from the public demand towards the Law No. 11 of 2008 on Electronic Information and Transactions (EIT Law) that threatened the freedom of expression, the Government of Indonesia has proposed the revision of that EIT Law to the Indonesian House of Representative (DPR RI) on 21 December 2015.<sup>2</sup> Unfortunately, the attempt to revise the EIT Law is not essentially responding the root problems of that draconian Law that hamper the protection of freedom of expression in digital sphere. Notwithstanding of the vague interpretation of defamation under Article 27(3) of the EIT Law, the revision of that Law remains put that article in place with the reduction on the weight of sentences.<sup>3</sup> The criminalisation of defamation under ITE Law is substantially contradictory to the UN Special Rapporteur's concerned to decriminalise act of defamation and be replaced with civil defamation laws.<sup>4</sup> Furthermore, the setback in revising the existed EIT Law is also marked by the extension of the blasphemy provision under Article 29 as to include cyber bullying as an act that could be criminalised.<sup>5</sup>

### **Penal Code**

3.2 In June 2015, the Government of Indonesia has submitted the Bill of Penal Code (RKUHP) to the DPR RI as an attempt to unify all criminal provisions into a single legislation.<sup>6</sup> Under RKUHP, the crime of defamation has been stipulated in three separate chapters, namely, (i) Chapter II related to the contempt of the President and Vice President, (ii) Chapter V regarding the contempt against the Government, and (iii) Chapter XIX concerning the crime of defamation generally.<sup>7</sup> The revival of the first two chapters as mentioned previously is in contravention with the Indonesian Constitutional Court decision which declared the unconstitutionality of such provisions under the existed Penal Code (KUHP) and prohibited similar provision to be inserted in the future RKUHP.<sup>8</sup> Furthermore, the Bill also provided a stringent penalty for that defamation crime compared those provided in neither KUHP nor the trend from the court's decisions in handling defamation cases.<sup>9</sup>

### **CBOs Law**

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- 2 Kementerian Komunikasi dan Informatika RI, "Presiden Resmi Mengajukan Revisi UU ITE ke DPR", Press Release No. 99/PIH/KOMINFO/12/2015, <[https://kominfo.go.id/content/detail/6538/siaran-pers-no-99pih-kominfo-122015-tentang-presiden-resmi-mengajukan-revisi-uu-ite-ke-dpr/0/siaran\\_pers](https://kominfo.go.id/content/detail/6538/siaran-pers-no-99pih-kominfo-122015-tentang-presiden-resmi-mengajukan-revisi-uu-ite-ke-dpr/0/siaran_pers)>.
  - 3 ICJR, "ICJR Nilai Hasil Akhir Pembahasan RUU Perubahan UU ITE Masih Berpotensi Besar Mengancam Kebebasan Ekspresi", 31 August 2016, <<http://icjr.or.id/icjr-nilai-hasil-akhir-pembahasan-ruu-perubahan-uu-ite-masih-berpotensi-besar-mengancam-kebebasan-ekspresi/>>.
  - 4 UN Doc. E/CN.4/2000/63, (2000) para.52.
  - 5 Kementerian Komunikasi dan Informatika RI, "Revisi UU ITE, Atur Soal Cyber Bullying", 1 September 2016, <[https://kominfo.go.id/content/detail/7966/revisi-uu-ite-atur-soal-cyber-bullying/0/berita\\_satker](https://kominfo.go.id/content/detail/7966/revisi-uu-ite-atur-soal-cyber-bullying/0/berita_satker)>; The Jakarta Post, "Ignoring criticism, House to pass draconian ITE bill into law", 1 September 2016, <<http://www.thejakartapost.com/news/2016/09/03/ignoring-criticism-house-pass-draconian-ite-bill-law.html>>.
  - 6 The 2015 Bill of Penal Code can be accessed at <<http://reformasikuhp.org/r-kuhp/>> (available in Bahasa Indonesia).
  - 7 ICJR, *Tindak Pidana Penghinaan dalam Rancangan KUHP*, Parliamentary Brief Series #1, (2016) <<http://icjr.or.id/data/wp-content/uploads/2016/07/1.-Naskah-Parlemen-Brief-defamasi-KUHP-14-juni-2016-ok.pdf>> (available in Bahasa Indonesia); (RKUHP has stipulated the crime of defamation in Articles 262, 263, 264, 281, 282, 283, 284, 285, 286, 287, 288, 289, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549 and 550).
  - 8 See Constitutional Court of Indonesia, Judgement No. 013-022/PUU-IV/2006 and No. 06/PUU-V/2007.
  - 9 Supriyadi Widodo Eddyono, et al., *Envisioning Indonesian Criminal Code Reform: Challenges in Reforming Criminal System and Protecting Civil Liberties*, (2015) p.9.

3.3 The promulgation of the Law No. 17 of 2013 on Civic Organisations (CBOs Law) has become a threat to the enjoyment of the freedom of association and organisation in Indonesia. The CBOs Law stipulates that the Government may dissolve the organisation as a form of an administrative sanction, cutting off aid and/or grants, temporary cessation of activities, and/or revocation of the registration status or legal entity, if the organisation violates the prohibitions set of multiple interpretations. Under Article 59, civic organisations are prohibited, among others, the acts of hostility against racial, religious defamation, separatist activities, violence/disturbing public order, conduct the duties and authority of law enforcement, as well as develop and disseminate the teachings/ideologies that is contrary to Pancasila, such as atheism, communism, or Marxism-Leninism. For non-legal entity organisation, the Government of Indonesia may unilaterally dissolve such organisation without the necessity to receive authorisation from the Court. Under the supervision of the Ministry of Interior through the Director General of National Unity and Politics, the existence of the CBOs Law that always hide under the blanket of political and security reasoning has indeed threatening the enjoyment for every individuals to assemble themselves into a particular community group.

#### **Ministerial Decree No. 19/2014**

3.4 In ministerial level, the Minister of Information and Communication has promulgated the Decree No. 19 of 2014 on Combating Internet Negative Content on 17 July 2014.<sup>10</sup> Pursuant to Article 11 of the Decree, the Government has the supreme authority to block any sites that are listed in the Government database called “*TRUST+Positif*” for being deemed containing negative contents. The Government’s absolution is indeed has disregarded the role of the Court or other independent body that authorised to take similar measure. The CSOs’ movement has raised their concern to repeal the Decree, which could endanger the freedom of expression, by brought that matter to the Indonesian Supreme Court.<sup>11</sup> Regrettably, in 2015 the Supreme Court overruled the request and put the Decree remains enforceable up to this day.<sup>12</sup>

#### **Maklumat Kapolda Papua 2016**

3.5 On 1 July 2016, Chief of Papua Region Police Department (*Kapolda*), General Inspector Paul Waterpauw, issued official notice on Freedom of Expression in Public which forbade some community organisation such as West Papua National Committee (KNPB), Regional People Parliament (PRD), Federal Republic of West Papua (NRFPB), the National Parliament of West Papua (PNWP), the Free Papua Organisation (OPM), the National Liberation Army (TPN) and the United Liberation Movement for West Papua (ULMWP) to pass the conveyance of opinion in public. They will also be recorded and entered into the police criminal record that will affect the administrative requirements in order to continue education, apply for a job, are

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<sup>10</sup> The Decree can be accessed at <[https://jdih.kominfo.go.id/produk\\_hukum/view/id/215/t/peraturan+menteri+komunikasi+dan+informatika+nomor+19+tahun+2014+tanggal+17+juli+2014](https://jdih.kominfo.go.id/produk_hukum/view/id/215/t/peraturan+menteri+komunikasi+dan+informatika+nomor+19+tahun+2014+tanggal+17+juli+2014)> (available in Bahasa Indonesia).

<sup>11</sup> ICJR, “Menolak Rencana PerMen Sensor Sapujagat 2013-2014”, 4 June 2014, <<http://icjr.or.id/menolak-rencana-permen-sensor-sapujagat-2013-2014/>>.

<sup>12</sup> Supreme Court of Indonesia, Judgement No. 77/P/HUM/2014.

not accepted as a candidate member of the police and prosecuted through the courts.<sup>13</sup>

### **Qanun Jinayat Aceh No. 6/2014**

- 3.6 On 27 September 2014, the Government of Aceh and parliaments ratify the Qanun (Regional Regulation) Aceh No. 6 of 2014 on the Law of *Jinayat* and set into effect on September 28, 2015. There are at least 10 major criminal offenses (*jarimah*) set out in this Qanun (Article 3), and it also encompasses 46 types of crime that may be threatened with caning. The Qanun is also prohibits the homosexual behavior and extended the meaning of adultery under KUHP to be in line with Islamic values.<sup>14</sup>

#### **Recommendation:**

- a. *The Government of Indonesia shall revoke all criminal provisions for act of defamation under EIT Law, KUHP, and the proposed Bill of Penal Code (RKUHP); and*
- b. *The Government of Indonesia shall repeal the CBOs Law, Ministerial Decree No. 19/2014, Maklumat Kapolda Papua 2016 and Qanun Jinayat Aceh No. 6/2014 that curtailing the enjoyment of freedom of expression, association and assembly in the country.*

## **4. FREEDOM OF POLITICAL EXPRESSION**

- 4.1 Although Article 28J (2) of the 1945 Constitution stipulating the restriction of human rights is only justifiable if it is prescribed by Law/Act. Practically, the Indonesian Police Department placed the restriction on the right to express opinions in public through a legal instrument with the lower degree than Law/Act.<sup>15</sup> As a result of such improper restriction, LBH Pers reported that – throughout 2015 until August 2016 – there were approximately 74 violation cases of related to the infringement of the freedom of expression and association in Indonesia committed mostly by law enforcement officers. The group that most often the victims of violations of the right to assemble is the LGBTIQ group, the group that brought the settlement of the case 1965 and Papua. Actions taken by the perpetrators either by the police or by other mass organisations such as the prohibition of the event, intimidation, enforced dissolution, illegal searches, destruction tools, banning and arbitrary arrests.<sup>16</sup>

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<sup>13</sup> Nabire.Net, “Inilah Isi Maklumat Kapolda Papua Tentang Penyampaian Pendapat Di Muka Umum Yang Resmi Berlaku 1 Juli 2016”, 4 July 2016, <<http://www.nabire.net/inilah-isi-maklumat-kapolda-papua-tentang-penyampaian-pendapat-di-muka-umum-yang-resmi-berlaku-1-juli-2016/>>.

<sup>14</sup> ICJR, “Permohonan Keberatan terhadap Qanun Aceh No. 6 Tahun 2014 tentang Hukum Jinayat”, 16 May 2016, <<http://icjr.or.id/permohonan-keberatan-terhadap-qanun-aceh-no-6-tahun-2014-tentang-hukum-jinayat/>>.

<sup>15</sup> See e.g. Police Regulation No. 9 of 2008 on Procedures for the Implementation of Services, Security and Case Management in Public Opinion Submission, art.6(2) (The article dictates that “*delivery in public opinion can only be implemented, at times as follows: (a.) In the open between 06.00 till 18.00, local time; (b.) In an enclosed place between 06.00 till 22.00, local time; Papua Police Chief and appeal on the Prohibition of the expression activities in public*”).

<sup>16</sup> See Annex 2.

- 4.2 On 2 May 2016, the Indonesian police captured 1,700 activists participating in peaceful demonstrations in several provinces of Papua, West Papua Province, Central Java and South Sulawesi. The demonstrators supporting the United Liberation Movement for West Papua (ULMWP) to have full membership in the Melanesian Spearhead Group (MSG). On 15 July 2016, the People's Union for the Liberation of West Papua (PRPPB), that was planning to hold a long march with route Asrama Mahasiswa Papua Kamasan I (Jl. Kusumanegara) Yogyakarta, have been receiving threats and coercion to dissolve their action from the Police officers and other community groups. In fact, the Police officers was surrounded Papua's student dormitory in Yogyakarta in an effort to prevent long march, and followed with tearing gas, seizing several motorbikes, performing arbitrary arrests and beating.
- 4.3 In 2014, it was recorded 15 demonstrations took place in Papua. This amount is only half of the total number being recorded in 2013. Around 90% of the protests in 2014 resulted to the arbitrary arrests to the demonstrators on the basis of political ground. The rationale behind this situation is because the security forces carried out repressive measures. Upon the detention period, the indigenous people are often subjected to torture and ill treatment. In fact, such cruel practice has also victimised local Papuan journalists. These local journalists was attacked, intimidated and prevented from doing their work. The number of cases recorded between 2013 and 2014 nearly doubled compared with the previous year.<sup>17</sup>
- 4.4 On 26 November 2013, three Papuan journalists [Emil Wayar (Jubi Tabloid), Michelle Gobay (Suluh Papua), and Arnold Belau (Suara Papua)] were intimidated by the Jayapura Police officers, whilst covering peaceful demonstrations in front of the Museum Cultural Expo. The Chief of Jayapura Police Department later apologised for the incident. However, no disciplinary action given to the actual intimidator.<sup>18</sup>
- 4.5 In Jakarta, about 20,000 workers that were demonstrating on 30 October 2015 were forcibly disbanded by the use of violence either to goods and people. In addition to that, Police have arrested 23 workers and two lawyers on the activities of the delivery of this opinion. Two lawyers were acting as legal representation labourers or in other words were not part of the participants in the delivery of opinions. But police still carried them with other workers and subject to Article of disobedience against officers. Currently the criminal case is still on-going.
- 4.6 Another aggravating factor to the enjoyment of freedom of political expression in Indonesia is supported by the Decree of the Indonesian People's Consultative Assembly No. XXV/MPRS/966 on the Disbandment Communism has hitherto contributed to restrict all forms of leftist expressions in Indonesia. In May 2016, the Intelligent Unit of the 1501 Ternate Military Command in North Moluccas has arbitrarily arrested Adlun Fikri and Supriyadi, and confiscated their books and t-shirts that are deemed to be associated with the communism.<sup>19</sup>In addition, since its

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<sup>17</sup> ICP and Franciscans International, *Human Rights in West Papua 2015: The fourth report of the International Coalition for Papua (ICP) covering events from April 2013 until December 2014*, (2015).

<sup>18</sup> *Ibid.*

<sup>19</sup> ELSAM, "Penangkapan, Penahanan dan Penyitaan Penetapan Tersangka Terhadap Adlun Fikri dan Supriyadi Tidak Sah dan Melawan Hukum", Press Release of Gema Demokrasi, 14 May 2016,

inception in 2015 until 2016 there were about 17 screenings and 29 discussion was forcibly disbanded because the theme marxism or associated with the 65 event. In addition to the scientific dissolved, Sigit Subiyakto and Abi were arrested by police and military for making shirts that are considered as a communism symbol.<sup>20</sup>

### **Recommendation:**

*The Indonesian government immediately stopped all enjoyment restriction efforts on peaceful political freedom of expression. The Indonesian government shall prosecute other parties which terminate the rights of freedom of expression in peaceful political.*

## **5. HATE SPEECH**

5.1 The legislative framework related to hate speech in Indonesia has extended not only covering the offline media but also to the act committed through Internet platform. Presently, KUHP, ITE Law, and Law No. 40 of 2008 on Elimination of Racial and Ethnical Discrimination (Law 40/2008) are the vanguard for guaranteeing the protection of human rights from any form of incitement of hatred.<sup>21</sup> Despite the legislative action taken, the implementation of these laws remains ineffective. In cases where the Prosecution indicting the accused based on Article 28(2) of the ITE Law, ELSAM's found multiple interpretations made by the judges in translating the elements of crime under that Article.<sup>22</sup>

5.2 In Indonesia, some cases related to acts of hate speech based on racial and ethnic discrimination, but the cases handled are not completed at the court. In case of racial insults by Farhat Abbas, Police preceded the case but with a peaceful solution between the complainants Anton Medan with Farhat Abbas is accompanied with an apology. In the case of the People Torches (LP no. 619 / VI / 2014 / Criminal Investigation dated June 16, 2014 on behalf of the complainant DR. H. Teguh Samudera, SH, MH). Investigated the case has been completed and has received P 21 (complete file) of the Attorney General. The case is now pending phase II (surrender of suspects and evidence). In the case of the Chairman of Kadin Batam (Ahmad Ma ' ruf) slandering the Tiong Hoa community also resolved by way of peace. In the case of Arif Kusnandar on 22 August 2015 by posting on Facebook a provocative and suggestive racial hatred against Chinese citizens who urge people to hunt down the Chinese people to the slaughter (cutting the throats). This case is not clear handling. In Case spreaders of hate exams in social media related action chaos in Tanjung Balai, North Sumatra on the date July 30, 2016. The perpetrator was captured by the Task Force on Cyber Crime Unit but it's progress was not identified until now.<sup>23</sup>

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<<http://elsam.or.id/2016/05/penangkapan-penahanan-dan-penyitaan-penetapan-tersangka-terhadap-adlun-fikri-dan-supriyadi-tidak-sah-dan-melawan-hukum/>>.

<sup>20</sup> KBR, "Operasi Palu Arit, Penangkapan 2 Pemuda Balikpapan Langgar Prosedur", 14 May 2016, <<http://kbr.id/05-2016/operasi-palu-arit-penangkapan-2-pemuda-balikpapan-langgar-prosedur/81270.html>>.

<sup>21</sup> Criminalisation of hate speech has been stipulated in Articles 156, 156a and 157 of the KUHP, Articles 28(2) and 45(2) of the ITE Law, and Articles 4 and 16 of the Law 40 of 2008.

<sup>22</sup> ELSAM, *Kebebasan Berekspresi di Indonesia: Hukum, Dinamika, Masalah, dan Tantangannya*, (2016) pp.401-403.

<sup>23</sup> ICJR, "ICJR: Membiarkan Kasus Penyebaran Kebencian Dapat Membahayakan Demokrasi", 1 September 2015, <<http://icjr.or.id/icjr-membiarkan-kasus-penyebaran-kebencian-dapat-membahayakan-demokrasi/>>.

- 5.3 On 8 October 2015, the Chief of National Police of Indonesia issued a Circular Letter No. SE/6/X/2015 on the Handling of Hate Speech in order to prevent the recurrence of incidents in Tolikara, Papua and Singkil, Aceh.<sup>24</sup> We are concerned that such Circular could impair the enjoyment of freedom of speech generally since it applies a very narrow interpretation of hate speech by including defamation, which by its nature is not the same with incitement of hatred.

**Recommendation:**

*The Indonesian government must consistently perform its obligations to prosecute cases of hate speech in accordance with the applicable legislation and to stop impunity in these cases.*

**6. THE CRIMINALISATION OF FREEDOM OF EXPRESSION WITH THE OFFENCE OF TREASON UNDER ARTICLE 106 AND 110 OF THE PENAL CODE**

- 6.1 Until now, the use of Article 106<sup>25</sup> and 110<sup>26</sup>Penal Code is still being used in cases related to freedom of expression. Recently the use of Article treason in freedom of expression used in 2013 in the court. But in the case of the latest in 2016, several cases related to religious organisations also reported with this article.
- 6.2 Indonesian criminal law does not have a sufficient understanding of the word treason (until now there is no official translation of the Indonesian Penal Code). Makar set out in the Criminal Code should have been translated from the word that in Dutch *aanslag* understood as *gewelddadige aanval*. The Making of *gewelddadige aanval* by a free translation in English means violent attack. So the crime of treason, should be associated with the action that is to attack / attack. So that in the absence of action / preparation strike / attack, then such actions cannot be regarded as a criminal act of treason.
- 6.3 In practice the use of the crime of treason especially in articles 106 and 110 of the Criminal Code was expanded in court. In 2016 ICJR Studies against 15 cases of treason were attempted in a court in Indonesia from 2005 to 2013 showed that

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<sup>24</sup> The Jakarta Post, "Circular on hate speech to protect all citizens: Police chief", 3 November 2015, <<http://www.thejakartapost.com/news/2015/11/03/circular-hate-speech-protect-all-citizens-police-chief.html>>.

<sup>25</sup> Article 106 dictates that the attempt undertaken with intent to bring all or part of the territory of the state, is punishable by imprisonment for life or imprisonment while the maximum of twenty years.

<sup>26</sup> Article 110(1) stipulates that deliberative evil to commit an offense under section 104, 106, 107, and 108 were threatened by the criminal threat in those chapters. (2) The same penalties apply to those who with intent pursuant to section 104, 106, and 108, to prepare or facilitate crime: 1. trying to mobilise others to do, ask to be conducted or participated undertake in order to provide assistance in time did or provide opportunity, means or information to commit a crime; 2. trying to get the opportunity, means or information to do harm to themselves Atua others; 3. have a supply of goods that knows useful to commit a crime; 4. prepare or have plans to carry out the crime that aims to tell the other person; 5. trying to prevent, hinder or thwart the actions organised by the government to prevent or repress the commission of crimes. (3). The goods referred to in point 3 of the previous paragraph, can be seized. (4) There shall be punished whoever turns mean just prepare or facilitate constitutional changes in a general sense. (5) If in any of the circumstances referred to in paragraphs 1 and 2 of this article, the crime really takes place, the punishment may be doubled.

almost a majority of the use of clauses treason precisely targeted to freedom of expression, particularly political expression.<sup>27</sup>

- 6.4 Since the year 2012, there are three court decisions that criminalise peaceful political expression deed with articles 106 and 110 related to treason.<sup>28</sup>Cases of peaceful political expression which shall be subject to provisions of the plot is (1) Sehu Blesman Als. Melki Bleskadit In Decision No. 574 K/Pid/2012, (2) Salamin Als. Mujahid Bin Ahmad Ahmad Basar Decision No. 961 K/Pid/2012, (3) Mujono Agus Salim Abdullah Als. Nurdin Bin Samto Harjono Decision No. 961 K/Pid/2012, (4) Supandi Als. Mahmud Als. Danu Bin (Alm) Suhud Decision No. 970 K/Pid/2012, and (5) Nur Basuki Als. Bin Aziz Abdul Hadi Prayitno Decision No. 970 K/Pid/2012.<sup>29</sup>
- 6.5 Currently House of Representatives and the Indonesian government was discussing the book II RKUHP. In the draft Criminal Code, the crime of treason defined in Article 222 to Article 227. Of these provisions can be seen that the crime of treason are grouped as follows: first treason against the President and Vice President, second, treason of the Unitary Republic of Indonesia, third, treason against Government Legitimate.
- 6.6 Article 106 of the Penal Code was revised into the Article 223 RKUHP, while Article 110 Criminal Code was revised into Article 227 RKUHP. However, the formulation of the draft Penal Code on treason does not differ with the Criminal Code. RKUHP does not provide understanding/definition of the offenses of treason. The formulation of the crime of treason is not clear this will be multi-purpose act, as well as prone to be misused by law enforcement authorities for the sake of momentary interests.

**Recommendation:**

*The Indonesian government must give proportional definition on the phrase “treason” listed in the Indonesian Criminal Code, including in the Criminal Code draft that will now be passed in Parliament.*

## **7. FREEDOM OF ASSOCIATION AND ASSEMBLY**

- 7.1 In the implementation of Act No. 17 Year 2013 concerning civic organizations (CBOs Act) the first year (2013-2014), found a variety of verbal threats from the government as license revocation, dissolution, stamp illegal / illegal, closing access empowerment funds, are not recognized, or not served, for organizations not has registered letter (SKT) on Kesbangpol.
- 7.2 The local government in many places also states that signed up for the organization was compulsory, and if it does not sign will not get services. In the third year (2015-2016), the Government has given his stamp on the organization as anti Pancasila and perverse, and said it would dissolve them.

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<sup>27</sup> Supriyadi Widodo Eddyono, *Makar was Aanslag*, Policy Brief, (2016).

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

- 7.3 Practice raids in LGBT places become daily occasion in Aceh after the enactment of qanuns jinayat, on 6 August 2015 Municipal Police and the Wilayahul Hisbah Banda Aceh were sealing salon commonly used as a gathering place for homosexuals located at Jalan Pocut Baren, Banda Aceh. <sup>30</sup>On March 15, 2016 joint team Wilyatul Hisbah (WH) - municipal police, clergy, military, and police - in the district of Aceh Barat conduct raids on lesbian, gay, bisexual, and transgender (LGBT) in a salon in the center of the city of Meulaboh for contrary to the canons of Islamic law.<sup>31</sup>
- 7.4 On September 25, 2013, the leader of the Papuan community groups and former political prisoners, Edison Kendi, was taken from his home by police officers and Special Forces. The arrest was based on Edison's involvement in a peaceful demonstration that was planned to be performed on the next day. The peace rally in question is the reception procession of holy water and ash from traditional elders in Australia. The police argued that the arrests were made based on the Law on Mass Organizations, which states that permit the rally will not be given to groups that are not registered with the Directorate of National Unity and Politics (Kesbangpol) Ministry of Interior.
- 7.5 In a case in North Sumatra, the Office of Information and Electronic Data Processing Karo rejected the request for information FITRA North Sumatra with a reason not listed in Karo, whereas the right of access to information is guaranteed by Law No. 14 of 2008 on Public Information. FITRA North Sumatra have also been incorporated. In the second year (2014-2015), found 11 policies issued by the central government, provincial, and district are continuing threats and restrictions of the Act CSOs, particularly related to the obligation of registration in the Ministry of Interior in this case the Director General of National Unity and Politics.<sup>32</sup>
- 7.6 In the case in the region of Sulawesi. Gorontalo regency create a policy would not serve any request for assistance in any form, provide information or not to attend the invitation of activities of organizations that are not registered.<sup>33</sup> This policy uses the paradigm that considers an illegal organization if it is not registered in the National and Political Unity, thus limiting the variety of these organizations access to facilities and interactions with government.
- 7.7 In the case in West Sumatra, the Institute of Research and Community Empowerment (LP2M) in collaboration with the Australian Aid prohibited from running activities in Tanah Datar citing a letter registered LP2M is over and Australia Aid is regarded as foreign NGOs not have permission principles and operational working in Indonesia.<sup>34</sup>This ban is a form of restriction on the activities of the organization under a law CBOs. While such an arrangement has been canceled by the Constitutional Court.

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<sup>30</sup> Suara.com, “Salon Tempat Ngumpul Homo di Banda Aceh Disegel Polisi Syariah”, 6 August 2016, <<http://www.suara.com/news/2015/08/06/185940/salon-tempat-ngumpul-homo-di-banda-aceh-disegel-polisi-sharia>>.

<sup>31</sup> Klikkabar.com, “LGBT di Meulaboh Ditangkap WH, Terancam 30 Kali Cambuk”, 15 March 2016, <<http://klikkabar.com/2016/03/15/lgbt-di-meulaboh-ditangkap-wh-terancam-30-kali-cambuk/>>.

<sup>32</sup> See Annex3.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

**Recommendation:**

*The Indonesian government must repeal Act no. 17 Year 2013 concerning civic organizations (CBOs Act).*

**8. VISIT OF UN SPECIAL RAPPORTEUR**

- 8.1 Notwithstanding of Indonesia's acceptance to the previous UPR recommendation on visit of UN Special Rapporteurs. However, there is the government issued no official invitation letter to the UN Special Rapporteur on Freedom of Expression.

**Recommendation:**

*The Indonesian government should officially invites the UN Special Rapporteur on Freedom of Expression to visit Indonesia and observe the enjoyment of freedom of expression in the country.*

**9. ACCESS OF JOURNALISTS TO PAPUA**

- 9.1 In May 2015, President Joko Widodo has said it will open access to foreign journalists to cover in Papua.<sup>35</sup> But in fact the foreign journalists still difficult to gain access, such as In January 2016, the Indonesian authorities refused to give a visa to journalist Cyril Payen of France 24 Television. The visa was refused shortly after the broadcast of Cyril's documentary on "the forgotten war in Papua."<sup>36</sup> The documentary which was broadcast on 18 October 2016 highlights human rights violations carried out by the government over 25 years and the heavy toll of these abuses on civilians in Papuan Eastern Provinces. On 8 October 2015, officials from the Indonesian Ministry of Foreign Affairs had stated that Cyril Payen's reporting was biased. Cyril Payen is the correspondent for France 24 based in Bangkok and his reports focus on South East Asia. Similarly, on 6 August 2014 the authorities arrested French journalists Thomas Dandois and Valentine Bourrat and detained them for more than two months.<sup>37</sup> The journalists were producing a documentary for Franco-German Arte TV. They were sentenced on 24 October 2014 to two months in jail for violating Indonesia's immigration laws.
- 9.2 On 29 May 2015, British Journalists Becky Prosser and Neil Bonner were arrested together with nine Indonesians as they filed a documentary for National Geographic. They were all arrested by the Indonesian Navy in the Malacca Straits off Batam and handed over to local police in Batam. They were accused of making a documentary

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<sup>35</sup> Antara News, "Jokowi administration opens foreign media access to Papua", 12 May 2015, <<http://www.antaranews.com/en/news/98896/jokowi-administration-opens-foreign-media-access-to-papua>>.

<sup>36</sup> Asian Correspondent, "French Journalist banned from Indonesia for documentary on human rights abuses", 13 January 2016, <<https://asiancorrespondent.com/2016/01/french-journalist-banned-from-indonesia-for-documentary-on-human-rights-abuses/>>.

<sup>37</sup> France 24, "Two French journalists arrested in Indonesia's Papua", 12 August 2016, <<http://www.france24.com/en/20140812-indonesia-detains-two-french-journalists-reporting-papua-dandois-bourrat>>.

without a license and charged with violating the Immigration Law.<sup>38</sup> 2 days after the arrests the nine Indonesians were released and asked to sign a letter in which they agreed to cooperate with the authorities whenever they were summoned. The two journalists were convicted in November 2015 after they were detained for five months and fined 50 million Rupiah (approximately US \$ 3800). They were also sentenced to jail for two and a half months but were released almost immediately haven already spent time in jail.

- 9.3 On August 6, 2014, Jayawijaya Police arrested two journalists from France, Charles Dandois and Marie Bourrat, after seeing Areki Wanimbo. Both foreign journalists accused of violating the Immigration Act for providing coverage without permission and later sentenced to 2.5 months in prison.

**Recommendation:**

*The Indonesian government should ensure free and safe access to the local journalists or foreign journalists in covering the issue of Papua and West Papua.*

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<sup>38</sup> The Jakarta Post, “Witnesses testify in British journalists’ case”, 2 October 2015, <<http://www.thejakartapost.com/news/2015/10/02/witnesses-testify-british-journalists-case.html>>.