

INDONESIA LRWD

Legal Reform Weekly Digest

Edition XI/Mar/2013

Human Rights

EXTRA JUDICIAL KILLING BY ANTI-TERRORISM AGENCY

The last case of ambush that kill on a (supposedly) terrorists location in Beji, West Java or a torture on a alleged terrorist in Poso in video that went viral gave pressure to the National Police (and the Government) to asses the urgency of having an anti-terrorisim agency. Often in the name of law enforcement, an unnecessary killing of a terrorist suspect are being done by the anti-terrorists squad.

For that reason, a short-term or long-term evaluation is urgently needed. As a short-term evaluation, the Government should form an independent investigation team to investigate prosecution of terrorism case which already happened in the past and any outgoing one. In the future, forming a prosecution system which is based on

transparency and accountability principles who are going to done a long-term evaluation should be taken. This agency will asses measures taken by anti terrorism unit in every law enforcement body, which is many. To name some, we have in the policy and coordination level authorities held by National Agency on Counter-Terrorism (established under President Regulation No. 46 Year 2010). As for the operational level, every national force have anti-terrorism troops. For example, the army have *Detasemen Sat 81 Gultor*, Navy have *Detasemen Jalamengkara*, air force have *Detasemen Bravo*, and National Police Force have 88 Special Detachment for Anti-Terror (*Densus 88*). *Densus 88* is established under Chief of National Police Decree No. 30/VI/2003 and placed under Criminal Detective Body (*Bareskrim*). After, Presidential Regulation No. 52 Year 2010 enacted, *Densus 88* placed directly under Chief of National Police.

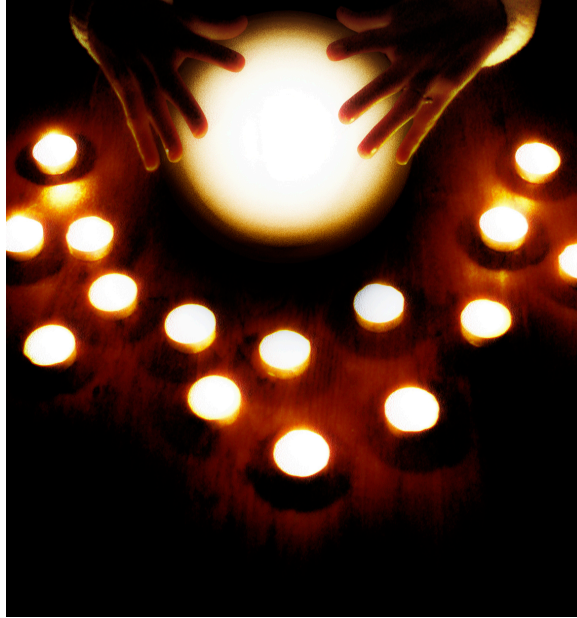
It is worth to noting that, crimes against humanity are mostly done by state actors than civillians. Indonesia has Human Rights Court of Law still to be implemented and our government still has more in store to prove to its citizens that Indonesia is truly a genuine defender of human rights (MGS).



PSHK

Indonesia LRWD is published by Indonesian Centre for Law and Policy Studies (www.pshk.or.id). This weekly newsletter provides info, updates, and analysis on law reform in Indonesia. To subscribe, please contact lrwd@pshk.r.id.





Legal Discourse

MONEY LAUNDERING ACT: ULTIMATE WEAPON IN CORRUPTION ERADICATION LAW ENFORCEMENT

The staggering wealth of Djoko Susilo, ex Head of National Police Traffic Control, has raised awareness of the notion of massive corruption during his tenure as police officer. KPK recent moves confiscated Djoko Susilo wealth was a milestone for pushing law enforcement. The use of Money Laundering act is hopefully can become deterrent effect for corruptors in Indonesia.

The prospect of using Money Laundering act is considerably strong in confiscating and punishing illegal enrichment of state official. However, there are two problems in using Money Laundering Act. First, the issue of whether asset ownership that predicates crimes are need to be proven or not in while using the Money Laundering act. Second, whether Money Laundering is considered as single entity with the predicate crimes, which therefore the burden of proof depends on the successful prosecution to the predicate crimes. According to, Supreme Court Decision Number 1454 K/PID.SUS/2011 on Bahasyim case, it was stated that even though predicate crime and money laundering prosecution is related, however, both are needed to be treated separately. Even in the case of predicate crimes cannot be proven as crime, the Money Laundering allegation especially on the Confiscation of wealth can still be proceed, where the defendant need to prove the legality of his/her wealth. (GAT)

Legislation

SORCERY ARTICLES IN THE CRIMINAL BILL

Since the Criminal Code Bill (RKUHP) will be going to be discussed in the House of Representatives, one of the issues that begin to attract public attention is about sorcery. Coverage in many media mentioned that the offense of sorcery are going to be set in Criminal Code Bill. According to the Criminal Code Bill Article 293 paragraph (1) *any person who declare has a supernatural powers, inform, encourage, offering or providing services to others because of his actions that can cause illness, death, mental or physical suffering person, shall be punished with imprisonment of 5 (five) years, or a maximum fine of Category IV.*

Based on Article 293, basically that article is not specifically regulate any sorcery activity, but if anyone do any of declaring, informing, encouraging, offering or providing services to others with commitment that his/her actions will resulted illness, death, mental or physical suffering to a third party. In that article, the subject is to “declare” and “offering” activity, not the activity itself. Furthermore, Article 293 is a part of Chapter V Crimes against Public Order, Section Two Provocation and Offers Crime, Paragraph Two of the Offers Crime. Consequently, the article prohibit any future display or gesture on any form which suggest someone could inflict harm to others using sorcery. (RMF)

Supreme Court

EXTRA SLOT FOR SUPREME COURT JUSTICE IS NOT COMPULSORY

On March 11, 2013, the Supreme Court officially select eight new Justices, through Presidential Decree No. 16P/2013 after they pass the fit and proper test conducted by the House of Representatives and the Judicial Commission. The hopes are high for the new eight justices to reduce the numbers of cases mounting in the Supreme Court. The astounding unresolved cases in Supreme Court are down from 13.719 cases to 10.991 in 2012. An attempt to fill more position for justice, on the other hand, should not compromise the quality the elected judge. And the consequences for adding more justice is a larger structure which will have a budget impact.

Solutions offered other then adding more judges to the bench should be a significant one like the consistence to implement the chamber system within the Supreme Court or any drastic intervention to cut down cases accepted in the Supreme Court. (FN)