JOINT STAKEHOLDERS' REPORT

ON ISSUES RELATING TO THE REVISION OF PENAL CODE

AND SITUATION OF TORTURE IN INDONESIA

TO THE UNITED NATIONS HUMAN RIGHTS COUNCIL

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SUBMITTED BY:

Institute for Criminal Justice Reform (ICJR),

Institute for Policy Research and Advocacy (ELSAM), and

National Alliance on Reformation of the Penal Code

Institute for Criminal Justice Reform (ICJR), having established in 2007, commits to take the initiative to support measures in realizing the reformation of law and criminal justice system towards a democratic direction. ICJR is formed with an exclusive mission to support collective actions in honoring the Rule of Law and realizing criminal justice system with strong human rights protection character. Website: http://icjr.or.id/

Institute for Policy Research and Advocacy (ELSAM), established in August 1993 in Jakarta, is a policy advocacy organisation with limited association as its legal entity. To actively participate in the efforts to develop, promote and protect civil and political rights and other human rights, as mandated by the 1945 Constitution and Universal Declaration of Human Rights (UDHR), has become ELSAM's driving objective. Website: http://elsam.or.id/

National Alliance on Reformation of the Penal Code (Aliansi Nasional Reformasi KUHP) focuses on advocacy of reforming the penal code, specifically Draft Bill of Penal Code (RKUHP). In the work of advocacy, the Alliance has two main objectives, which are, (i) to promote the formulation of criminal provision that incorporate human rights perspectives, and (ii) to promote greater public participation in the process of deliberation and formulation of Draft Bill of Penal Code. Website: http://reformasikuhp.org/

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ON ISSUES RELATING TO THE REVISION OF PENAL CODE AND SITUATION OF TORTURE IN INDONESIA

In previous UPR session in 2012, Indonesia received a number of recommendations from other member States, one of which specifically related to the need of an adequate revision of the Penal Code and ensuring that preventive measures and legal ramification are in place to resolve the issue of torture. Therefore, this report subsequently will focus on these two important issues, namely, (i) the revision on Penal Code and (ii) the enjoyment on the right to freedom from torture in Indonesia, as elaborated below.

1. REVISION OF PENAL CODE

On 2nd February 2015, the government has submitted the Draft Bill of Penal Code ("RKUHP") to the House of Representatives and officially included it in the 2016 National Legislation Program ("Prolegnas").[i] Subsequently, Commission III of the House of Representatives had formally handed the list of issues for discussion ("DIM") to the Minister of Law and Human Rights on 26th October 2015. Currently, both the government and the House of Representatives have completed the discussion on Book I of the Draft Bill on the principles and general provisions, while the discussion on Book II is still on going in the House of Representatives.

The Draft Bill contains number of issues that relate to Indonesia's commitment to implement human rights, which are as follow:

1.1 Over-Criminalization

The regulations contained in the Draft Bill have the potential to raise the rate of penalization (over-criminalization). ICJR, ELSAM and National Alliance on Reformation of Penal Code note that most of the formulation of the elements of a criminal act in the Draft Bill are unclear, vague and impose a heavy criminal sanction. This practice of over-criminalization is very prone to the violation of human rights and abuses.

Several provisions in the Draft Bill have important consequences for the implementation of human rights, for instance;[ii] a provision which states that the community living law can be the basis of a criminal act in the Draft Bill. This provision violates the principle of *lex certa* by using the unwritten law as the basis of criminal act. Such practice opens a wide room for interpretation in the Indonesia's law enforcement and allows for law enforcers to subjectively determine which action constitutes a violation of community living law;[iii] secondly, the increased development on the provision criminalizing cohabitation of an unmarried couple ("*kumpul kebo*");[iv] thirdly, provision of criminal act of adultery which includes consensual sex or sexual relationship of consenting adults outside marriage, which can be arrested or imprisoned for up to 5 years;[v] fourthly, a provision concerning street prostitution which targeted prostitutes;[vi] fifthly, the provision concerning a criminal act of contraception such as offering or showing contraception;[vii] and sixthly, the provisions concerning the criminal act of pornography which includes saving, downloading, borrowing, owning and using pornographic products for personal use .[viii]

Recommendation :
Urge the Government of Indonesia to ensure that the formulation of provisions in the Draft Bill of Penal Code and other regulations must not contain elements that could potentially violate human rights or allow arbitrary action by the law enforcers against citizens. Additionally, the Government

should also ensure that all criminal provisions in the Indonesia law must have clear formulation and purpose with proportional criminal sanctions to avoid over-criminalization.

1.2 Death Penalty

The formulator of Draft Bill of Penal Code asserted that the formulation of the death penalty in the Draft Bill is a "middle-ground" on the pro and cons debates of the death penalty. The Draft Bill currently put the death penalty as alternative sentencing as oppose to core sentencing, as regulated in the previous penal code. Nevertheless, the Draft Bill does not provide a further technical explanation of how this alternative sentencing should be implemented.

The provision in the Draft Bill is also essentially too difficult to meet, for example, Article 91 (1) of the Draft Bill stated that the death sentence can be postponed with ten year probation period if the following requirements are met: a) no high level of public reaction, b) the convicted person shows remorse and hope to make amends; c) the role of the convicted person in the criminal act charged against him/her is not too significant; d) mitigating factors are present. These four requirements are very subjective with no clear indicators, subsequently, judgement to determine whether a person should or should not be sentenced can be made very subjective and political by the state.

In addition to the recommendation received, [ix] Indonesia has the obligations to comply with the international conventions that it ratified. In relation to the death penalty, Indonesia has not fully implemented its international obligations to limit its death penalties to only the most serious crimes. Currently, the Draft Bill contains death penalty in 38 articles. The majority of a criminal act in the Draft Bill does not constitute a criminal act that can be imposed with the death penalty. The Draft Bill still imposes death penalty for the crime of drug-related offences, corruption, aviation offences, extortion, threats and number of other criminal acts. Furthermore, in 2016 Indonesia has also issued regulation that include sexual offences against children is one of offence that can be imposed with death penalty.[x]

Recommendation :
To abolish the death penalty in the Draft Bill or, at a minimum, comply with the international obligations concerning the limitation of the imposition of the death penalty to only apply to "the most serious crime".

1.3 Treason

Indonesia criminal law does not have a proper definition of the word treason (since there is no official definition in the Indonesia penal code). Treason which regulated in the Indonesia penal code should be derived from the word "*aanslag*" or in Dutch language it can be also understood as "*gewelddadige aanval*". In English, the word "*gewelddadige aanval*" can be interpreted as "violent attack". So the criminal act of treason should entail the act of "attack", without the act/ preparation of attack, such act should not be considered as treason. Nevertheless, in practice, the act of treason specifically those stipulated in article 106 and 110 of Draft Bill received an expansion of meaning in court. According to 2016 ICJR study, conducted to 15 treason cases tried in Indonesian court from 2005 to 2013, shows that the majority of treason cases charged by those articles mostly targeted the act of political expression.

Since 2012, there were 3 (three) court decisions that convicted 5 (five) people on their act of peaceful political expression using article 106 and 110 on treason. Those cases are as follow: (1) Sehu Blesman Als. Melki Bleskadit Decision No. 574 K/Pid/2012 (2) Salamin Als. Ahmad Mujahid bin

Ahmad Basar Decision No. 961 K/Pid/2012, (3) Mujono Agus Salim Als. Nurdin Abdullah bin Samto Harjono Decision No. 961 K/Pid/2012, (4) Supandi Als. Mahmud Als. Danu Bin (Alm) Suhud Decision No. 970 K/Pid/2012 (5) Nur Basuki Als. Abdul Aziz Bin Hadi Prayitno Decision No. 970 K/Pid/2012.

Currently, the government and the House of Representative are discussing Book II of the Draft Bill, which formulates the act of treason into article 222-227. According to those provisions, the act of treason can be divided into the following: first, the act of treason against the President and Vice President; second, the act of treason against the Republic of Indonesia; third is the act of treason against the legitimate government. Article 106 of the previous penal code is now become article 223 in the Draft Bill and article 110 into article 227 of the Draft Bill. Essentially the formulation of treason in the Draft Bill is no different to the previous penal code. The Draft Bill does not provide definition to the criminal act of treason. This unclear formulation is to be a multi-purpose act which is prone to be misused by law enforcement authorities for the momentary interest of the ruler.

Recommendation :
The Government of Indonesia must formulate a comprehensive and proportional definition of the word "treason" ("makar") in the Indonesia Penal Code, including in the Draft Bill of Penal Code that will be passed by Indonesia House of Representatives.

1.4 Gross violation of human rights

Indonesia has received at least six recommendations to ratify Rome Statute of the International Criminal Court. Despite the critics and issue of compatibility of Law No. 26 of 2000 on Human Rights Court and Rome Statute, Indonesia has adopted two type of crimes regulated by the Rome Statute in the Law No 26 of 2000 on Human Rights Court, such as, crime against humanity and genocide. The Draft Bill contains 4 (four) types of gross violation of human rights, which are, (i) the crime of genocide, (ii) crimes against humanity, (iii) crimes during war or armed conflict, and (iv) commander/ superior liability.

Problems arise because the Draft Bill does not adopt the provisions of the Rome Statute as a whole consequently many of the definition and elements are unclear and misinterpreted. Additionally, the Draft Bill does not support the special context of the most serious crimes. To the contrary, the Draft Bill violate basic important principles such as the principle of limitation, the principle of retroactivity and other principles which assert the special context of the most serious crime based on Rome Statute.

Recommendation :
Urge the Government of Indonesia to apply the most serious crimes based on Rome Statute under the specific law with its specific principles and provisions, and ratify the Rome Statute.

1.5 Threat to freedom of speech and expression

Indonesia has reintegrated a number of criminal offences into the provisions of the Draft Bill, although those provisions had previously decided to be contrary to the constitution by the Indonesia Constitutional Court. These provisions are *haatzaai artikelen*[xi] or provisions that prohibit a person to express dislike or hate to the ruler or the legitimate government. Additionally, *Lese Majeste* in Indonesia takes form as provisions of defamation against the President or Vice President.[xii] These provisions concerning *haatzaai artikelen* and defamation

against the President and Vice President have been overruled and deleted by the Constitutional Court.[xiii]

Indonesia has also provisions of defamation against individuals which carries criminal sanction of imprisonment.[xiv] The Draft Bill contains sanction that is significantly higher compared to the current penal code, which is imprisonment for of up to 5 years. Consequently, such sanction allows for the procedure of arrest to be executed. It is therefore, an obvious threat and can be used as a tool to repress the freedom of expression and speech.

Additionally, the Draft Bill contains other provisions of criminal offences that repress freedom of expression and speech. Limitation through these provisions do not meet the indicators set out by article 19 of ICCPR that has been ratified by Indonesia; contains an absurd criminal elements and do not follow the principles of *lex stricta* dan *lex certa*, for example: articles on defamation against judges and judicial procedures,[xv] crime against ideology such as spreading communism/ Marxism-Leninism,[xvi] and crime against religious and religious life.[xvii]

Recommendation :
Urge the Government of Indonesia to ensure the revision of penal code does not violate the protection of human rights and civil liberty. Additionally, all criminal provisions must have clear formulation and purpose, and to revoke all provisions that are contrary to protection and respect for human rights.

1.6 Crime of Torture

The Draft Bill has provided a criminal sanction for the practice of torture under article 668 and 669. However using the terminology and coverage are different to the Convention Against Torture ("Convention").

To comply with Indonesia's obligation as a state party to the Convention, the formulation of article 669 of the Draft Bill[xviii] should not eliminate the definition of torture as set out by article 1 (1) of the Convention. It appears that formulation under the Draft Bill has eliminated important elements in relation to torture including the word "threat", "consent" and the last part of article 1 (1) of the Convention: "It does not include pain or suffering arising only from, inherent in or incidental lawful sanctions". The elimination of words and key sentences of the definition sets out under article 1 (1) of the Convention diminishes the significance of the crime of torture itself. It is therefore, can be concluded that although the provisions of the crime of torture in the Draft Bill has adopted the Convention but it has not been in line with the Convention as a whole.

Criminal sanction under the Draft Bill is also still limited because it only include article 1 of the Convention. The Draft Bill does not include article 16 of the Convention which prohibit other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined under article 1 of the Convention, including when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Recommendation :
To ensure the revision of Draft Bill is in line with the Convention against Torture (CAT).

2. TORTURE

In 2012 UPR recommendation, the issue of torture received the most attention from the members' states to Indonesia. The long effort in relation to the issue of torture has not been fruitful due to the fact that revision of the penal code, criminal procedural law and other regulations on anti-torture have not been available. On the other hand, Indonesia has been drafting the revision of laws and also enacted laws that have great potential of causing the act of torture, arbitrary actions, and inhuman treatment.

2.1 Torture continue to occur without any significant legal enforcement, protection and rehabilitation for the victim

Based on reports from the National Human Rights Institutions (NHRI) and a number of civil society organizations, torture continues to occur in Indonesia. According to the data from the Indonesia National Commission of Human Rights (Komnas HAM) that was studied by ELSAM and ICJR, there were 125 reports of cases of torture received by Komnas HAM between January-November 2015. Previously, there were 76 cases of torture reported to Komnas HAM in 2014. These reports identify police, corporations, armed forced (TNI) and the prison officers/officials as the perpetrators of torture.

According to the data collected by ICJR and ELSAM, there were 38 cases of torture in 2014 and 49 cases in 2015, all of these cases occurred in the context of law enforcement and punishment. In relation to the settlement and follow-up of these reported cases, out of 49 recorded cases in 2015, only 30 cases that were pending for further follow-up, 11 cases continued to investigation and trial stage and 8 cases have not followed by the victim or the institutions of the perpetrators.

Cases of torture are very difficult to proceed through legal process because many of them considered as "violation of ethics" instead of violation of law. One of the reasons is the absence of criminal sanction against the act of torture which specifically criminalized the officials who commit the torture.

Additionally, Indonesia has also a limitation in the context of victims' protection and rehabilitation. Based on Law No. 31 of 2014 which is the revision of Law No. 13 of 2006 on Protection of Witness and Victims, the victims of torture have the right to receive medical and psychological treatment. [xix] However, without the proper and clear formulation of "the act of torture", this provision is very difficult to be optimally implemented.

Indonesia also faces problems with the issue of compensation in the event of when the victim of torture passed away before the decision of the court is made. In Indonesian legal context, only decision of "not guilty" or "termination of the case" is the requisite of compensation. So, if the victims passed away before the decision of not guilty received or the case terminated officially then there will be no legal mechanism for compensation (other than through civil procedures). [xx] In the case on Mr. Siyono, a victim of torture who died on March 2016 during the arrest by Densus 88, an Indonesian special forces of counter-terrorism squad that is part of the Indonesian Police force, still cannot seek compensation for the condition of wrongful arrest that happened to him because he died before being able to prove.

However, the decision of "not guilty" from court also does not guarantee a prompt compensation for the victim of torture.

One of cases of torture was Mr. Erik Alamsyah (deceased) in Bukittinggi on 2012. The process of compensation has received final and binding decision (*inkracht*) from the Supreme Court in 2014 which instruct the state to pay the compensation. However, it has not been paid to date. Similarly, the case of Mr. Andro and Mr. Nurdin, victims of wrongful arrest and torture by Indonesian police. At the time of the writing of this report, the compensation has not been received by the victims although the decision has been final and binding in favor of the victims. The District Court of South Jakarta has granted compensation in the amount of IDR 72 million be made through decision delivered on 9 August 2016. According to Government Regulation No. 92 of 2015 on the Implementation of Criminal Procedural Law, the compensation should already receive by the victims 17 days the latest since the decision is deliberated. Additionally, in the case of Mr. Faisal Akbar (deceased) and Mr. Budri M. Zen (deceased) who were also victims of torture in West Sumatera on 2012. The civil lawsuit submitted in 2016 to seek compensation was considered as "*nebis in idem*" (double jeopardy) by the District Court of Padang because previously District Court of Sinjunjung has denied the application for restitution in the criminal court hearing.

Recommendation :
Urge the Government of Indonesia to ensure: (i) criminalization for the act of torture are in place under the penal code or other relevant laws; (ii) the availability of preventive measures and effective law enforcement for the cases of torture; (iii) the availability of prompt, responsive and effective mechanism of protection and rehabilitation of victims of torture; (iv) conduct revision of criminal procedural law (KUHAP) preventive measures to torture are in place; and (v) regulations and payment of compensation to victims are enforced.

2.2 Ratification of OP-CAT

The plan to ratify OP-CAT has begun since 2009. On 2012, Indonesia has received at least 9 recommendations in relation to the ratification of OP-CAT. The political commitment to ratify OP-CAT has being included in the National Action Plan of Human Rights (RAN HAM) with the target for ratification to be conducted in 2013. However, it has not been realized to date. The absence of OP-CAT ratification brought serious impact to Indonesia. To date, Indonesia has no integrated detention monitoring mechanism with other institutions that have the authority on the protection of human rights. Even independent institutions such as Komnas HAM and National Commission on Violence against Women (Komnas Perempuan) do not have this authority. Consequently, based on reports from various government and non-government independent organizations, detention centers still being a place where torture most frequently happened. [xxi] According to the latest information on 2014, the Directorate General of Human Rights (Ditjen HAM) of the Ministry of Law and Human Rights has prepared the draft law of ratification and draft of academic paper of OP-CAT.[xxii] However, the plan has not been realized to date.

Recommendation :
To ratify OP-CAT and increase the comprehensive monitoring authority for the detention centers to relevant state independent institutions.

2.3 Law on Terrorism and Plan of Draft Bill on Terrorism

In practice, Indonesia recognise incommunicado detention. According to the current Law of Terrorism, investigators can arrest someone for 7x27 hours.[xxiii] With this lenient time, the arrest became incommunicado (detention with no access to the outside world). This practice has the potential for torture. The incommunicado detention is an act of cruel, inhuman and degrading treatment.

This condition does not appear to change. In the Draft Bill on the Revision of Law on Terrorism ("Draft Bill") that was submitted by the government, at least there were two articles which have the potential to cause new cases of torture. Firstly, the Draft Bill extends the period of arrest from 7x24 hours to 30x24 hours or 30 days, automatically extending the possibility of incommunicado detention. Secondly, there is an article of incommunicado detention which disguised with the wording on "prevention". This article[xxiv] will likely be used under the pretext "to countermeasure of terrorism", the investigators and prosecutors can conduct "prevention" to "everyone" who is "suspected" will conduct the act of terrorism to be "taken or placed" in the "specific place" within the jurisdiction of investigators or prosecutors for maximum "6 (six) months". This article appears to provide "Guantanamo" version of Indonesia, where the investigators and prosecutors can place a person in a place with unclear legal status for 6 months. [xxv]

Recommendation:
Urge the Government of Indonesia to conduct an evaluation to the countermeasures against the act of terrorism that have caused the practice of torture, arbitrary action and inhuman treatment. The government must conduct revision to the Law of Terrorism by ensuring the elimination of the unreasonable period of arrest and detention that factually has caused the practice of incommunicado detention that leads to the practice of torture, arbitrary actions and inhuman treatment. The government must also revise any regulations or provisions that have the potential to give rise to the practice of torture, arbitrary actions and inhuman treatment.

2.4 Law on Narcotics

The Law of Narcotics also has the potential to cause incommunicado detention based on provision of period of arrest which can reach up to 3x24 hours.[xxvi]

Moreover, there were indications of torture, arbitrary actions and inhuman treatment in context of criminalization of addicts or users of narcotics by placing them in detention rooms and denying them access to medical treatment and rehabilitation. According to the official data from Directorate General of Corrections (*Dirjen PAS)* of the Ministry of Law and Human Rights, there were at least 22.254 inmates and detainees that qualified as users or addicts. [xxvii] The number can be higher considering the Law of Narcotics in Indonesia does not strictly separate the charge for users/addicts with control/possession for personal use that commonly are not categorized as users/addicts. [xxviii]

Recommendation :
Urge the Government of Indonesia to evaluate the countermeasures for the crime of narcotics which give rise to the practice of abuse/torture, arbitrary actions and inhuman treatment. The government can start the effort with the revision of the Law of Narcotics by removing the unreasonable period of arrest which factually caused the practice of incommunicado detention which leads to the practice of abuse/torture, arbitrary actions and inhuman treatment. The government should also take measures to prevent the users and addicts from the adverse impact of imprisonment and criminal justice process.

2.5 Islamic Criminal ByLaws in Aceh (*Qanun Jinayat*)

On 27th September 2014, the local government of Aceh and the local House of Representatives (*DPR Aceh)* enacted the Islamic Criminal ByLaws or known as Qanun through Local Regulation (Perda) No. 6 of 2014 on the Criminal Law (*Jinayat*), which effective on 28th September 2015. The

regulation contains 10 main criminal offences (*jarimah*) which were elaborated in the article 3 of qanun. Additionally, there were also 46 new criminal offense regulations by this regulation that could be sanctioned by criminal whip. One of these offences including the prohibition of homosexual, adultery based on Islamic understanding.[xxix] The inception of *Qanun Jinayat* causing dualism in the criminal law enforcement in Aceh, especially for articles on decency which already regulated in the Indonesian Penal Code.

Based on ICJR monitoring in 2016, at least there were 175 convicts who were executed by the criminal whip in Aceh, based on *Qanun Jinayat* or Perda No. 6 of 2014. The cases were varied including gambling (*maisir*), the close proximity between men and women (*khalwat*), the sale and consumption of alcohol and other illegal substances (*khamar*) and adultery. Commonly, the most whip punishment given to criminal offence of adultery which is up to 100 whips (on Nurasmah and Muhammad Ali case; Dasril bin Abdullah and Maya Sari binto Maddin case).[xxx] ICJR found number of problems in execution: the number of whip punishment given was more than what was instructed by the court (Risman case);[xxxi] the punishment causing physical and mental injury (Sa and Sakdiah cases);[xxxii] the punishment conducted to non-muslim citizens; [xxxiii] the punishment is not in line with criminal procedural law standard.

Recommendation :

1. *Urge the Government of Indonesia to eliminate all forms of corporal punishments in all laws and regulations, in particular the criminal whip punishment; and*
2. *Urge the Government of Indonesia to evaluate Qanun Jinayat which factually have caused the practice of abuse/torture, arbitrary actions and inhuman treatment.*

2.6 Chemical Castration

The President of Indonesia has signed the government regulation in lieu of law (Perpu) for aggravation punishment for sexual offender against children. The Perpu No. 1 of 2016 is the second amendment to Law No. 23 of 2002 on Child Protection. The Perpu contain corporal punishment in form of chemical castration and death penalty. The Perpu asserts that the judge has prerogative right to decide for chemical castration punishment for the perpetrators. Subsequently, the perpetrator does not have options to refuse the anti-chemical injection.

Recommendation :

Urge the Government of Indonesia to eliminate all forms of corporal punishment in laws and regulations, particularly the punishment of chemical castration.

References:

[i] "*Profil RUU Kitab Undang-undang Hukum Pidana*" (Profile of Draft Bill on Penal Code), accessed from the House of Representatives' (DPR RI) website, <http://www.dpr.go.id/prolegnas/index/id/10>.

[ii] ICJR, ELSAM dan National Alliance on Reformation of Penal Code, *Catatan Terhadap beberapa Ketentuan dalam Rancangan KUHP* (Notes to Number of Provisions under the Draft Bill of Penal Code), <http://icjr.or.id/data/wp-content/uploads/2016/01/Catatan-R-KUHP-Final.pdf>.

[iii] Art. 2 (1) Draft Bill of Penal Code (RKUHP).

[iv] Art. 488 Draft Bill of Penal Code (RKUHP).

[v] Art. 484 Draft Bill of Penal Code (RKUHP).

[vi] Art. 489 Draft Bill of Penal Code (RKUHP).

[vii] Art. 534 Draft Bill of Penal Code (RKUHP).

[viii] Art. 470 – 480 Draft Bill of Penal Code (RKUHP).

[ix] Recommendation 108.30 (Turkey)

[x] President has signed Perpu which provides aggravation punishment for sexual offenders against children through Government Regulation in lieu of Law (Perpu) No. 1/2016 on the second amendment of Law No. 23 Tahun 2002 on Child

Protection, which includes corporal punishments in form of chemical castration and death penalty. See Article 81 (5) lieu of Law No. 1/2016.

Article 81

1) Any person who violates the provision as referred to in Article 76D[x] shall be punished with imprisonment for a minimum 5 (five) years and a maximum of 15 (fifteen) years and fine sentence for maximum iDR 5.000.000.000,00 (five billion rupiahs).
2) The criminal provision referred to in paragraph (1) shall also apply to any person who deliberately applies deception, series of lies or induces a child to commit intercourse with him/her or with someone else.
3) In the event where the crime referred to in paragraph (1) is conducted by parents, guardians, or people with family ties with the children, nannies, teachers, teaching staff, child protection officers, or conducted with more than one person together, the punishment will be added by 1/3 (one-third) of the criminal sanction as referred in paragraph (1).
4) In addition to the perpetrator as referred to in paragraph (3), additional punishment of 1/3 (one-third) of criminal sanction will also be applied to the perpetrator who previously have been convicted of criminal offence as referred to in Article 76D.
5) In the event where criminal offence referred to in Article 76D causing casualties more that one person, resulting major injuries, mental disorders, infectious diseases, or loss of impairment of reproductive function, and/or the death of the victim, the perpetrator shall be sentenced to death, life or at minimum 10 years of imprisonment and maximum 20 years of imprisonment.
6) In addition to criminal sanction referred to in paragraph (1), (3), (4), and (5), the perpetrator can also be subject to addition punishment in form of public announcement of the perpetrator identity.
7) To the perpetrator referred to in paragraph (4) dan ayat (5) can also be subject to punishment of chemical castration and installment of an electronic detection device.
8) The punishment referred to in paragraph (7) decided together with the core criminal sanction with information on the period of the punishment.
9) The additional punishment and measures are excluded for perpetrators who are still a child.

[xi] Art. 284 and 285 Draft Bill of Penal Code (RKUHP).
[xii] Art. 262, 263 and 264 Draft Bill of Penal Code (RKUHP).
[xiii] The Constitutional Court (MK) decided that Articles 134, 136 bis, and 137 of Penal Code (KUHP) on defamation against President do not have legally binding force through Constitutional Court Decision No. 013-022/PUU-IV/2006. Subsequently, through the Constitutional Court No. 6/PUU-V/2007, the Court declared that Articles 154 and 155 of the Penal Code on spreading of hatred to the government (*haatzai artikelen*) is contrary to the Constitution and does not have legal lybinding force.
[xiv] Chapter XIX R Draft Bill of Penal Code (RKUHP) on defamation.
[xv] Art. 329 Draft Bill of Penal Code (RKUHP).
[xvi] Art. 219-221 Draft Bill of Penal Code (RKUHP).
[xvii] Art. 348-353 Draft Bill of Penal Code (RKUHP).
[xviii] Shall be punished with imprisonment of minimum 3 (three) years and maximum of 15 (fifteen) years, any officials or person who act in official capacity or any person who act based or with the knowledge of public officials, who conducted any act which caused suffering or severe pain whether physical or mental with the intention of obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed with the purpose of intimidating and coercing him for any reason based on discrimination of any kind.
[xix] Art. 6 (1) of Law No. 31 of 2014.
[xx] The Criminal Procedural Law (KUHAP) and its implementing regulation only provide compensation in the context of wrongful arrest/ wrongful conviction after court decision or termination of case. It does not include compensation for abuse/torture. See Article 95 KUHAP and Government Regulatuon (PP) No. 92 of 2015.
[xxi] ICJR, *Catatan Akhir Tahun 2014 dan Rekomendasi 2015* (End Year Notes 2014 and Recommendation for 2015), Jakarta, 2015.
[xxii] Report WGAT, *Indonesia Pro Penyiksaan: 16 Tahun Pasca Ratifikasi Konvensi Anti Penyiksaan di Indonesia* (Indonesia Pro-Torture: 16 years of post ratification of convention of torture in Indonesia), 2014
[xxiii] Art. 28 Law on Terrorism.
[xxiv] Art. 43 Law on Terrorism.
[xxv] ICJR, catatan kritis atas Revisi UU Pemberantasan Terorisme Tahun 2016 (critical notes on revision of law of terrorism countermeasures 2016), <http://icjr.or.id/data/wp-content/uploads/2016/08/0001-final-paper-position-ruu-terorisme-6-agustus-2016-.pdf>.
[xxvi] Pasal 76 ayat (1) dan (2) UU Narkotik
[xxvii] Sistem Database Pemasyarakatan, Kementerian Hukum dan HAM RI (Database System of Correctional Facilities, Ministry of Law and Human Rights), <http://smslap.ditjenpas.go.id/public/krl/current/monthly/year/2016/month/8>.
[xxviii] Indonesia still has a problem in identifying users and addicts because there no specific provision in the Law of Narcotics on users and addicts. Due to the obscure definition, users and addicts usually identified as "dealer" because the provision include the act of possessing, saving, controlling and buring narcotics, which often also the acts

commonly conducted by users and addicts. See ICJR, EJA dan Rumah Cemara, Meninjau Rehabilitasi Pengguna Narkotika dalam Praktik Peradilan (Reviewing Users of Narcotics in Justice System), <http://icjr.or.id/data/wp-content/uploads/2016/08/Studi-SEMA-dan-SEJA-Rehabilitasi-dalam-Praktek-Peradilan.pdf>.

[xxix] see <http://icjr.or.id/permohonan-keberatan-terhadap-qanun-aceh-no-6-tahun-2014-tentang-hukum-jinayat/>.

[xxx] They were whipped in Tugu kota Blangkejeren, Kabupaten Gayo Lues on 2nd of September 2016, each were whipped 100 time of *khalwat uqubat.* Additionally, in the case of Dasril bin Abdullah (35 years old) from Kampung Burlah dan Maya Sari Binti Maddin (22 years old), from Kampung Kemili, Bebesen district, they were whipped 100 times in the yard of Gedung Olah Seni (GOS), Kota Takengon pada 26th May 2016. This sanction to be the most highest in the punishment of whip in Banda Aceh.

[xxxi] Risman is one of the 38 people who were executed/ whipped in Masjid Agung Baitul Makmur, Meulaboh, West Aceh on 12th February 2012. Risman convicted to receive five whipped, but the executor whipped him for six times. In the case of Nanda Irwansyah Bin Bachtiar Effendi (22 years old) where the punishment conducted in Masjid Al-A'la, Gampong Cot Mesjid, Lueng Bata, Banda Aceh on 19th September 2016. The first whip hit the head not the back of the convicted person. Although there was a mistake in this first whip, and the convicted person visual in pain, the punishment continues to be conducted.

[xxxii] Sa is one of the convicted person because of criminal offence *ikhtilat* or free mixing between men and women especially in public life. Based on Qanun (Perda) No. 6 of 2014 on Criminal Law (*Jinayat*), this action is punishable by whip. Sa instructed to be whipped for 20 times. The punishment was conducted on 1 August 2016 in Masjid Al Furqan, Gampong Beurawe, Kecamatan Kuta Alam, Banda Aceh. Sa was appeared to be hurt and in pain. The execution must be held for awhile due to this. However, the execution is still continued.

[xxxiii] The case of Remita Sinaga a.k.a Mak Ucok (60 years old) punished due to selling alcohol and convicted for 30 times of whip on 12th April 2016 in Gedung Olah Seni (GOS) City of Takengon, District of Aceh Tengah. She is the first non-muslim who received punishment of whip due to selling alcohol.