

ENFORCED DISAPPEARANCES, SUMMARY AND EXTRAJUDICIAL KILLINGS INSIDE INDONESIA'S COUNTER TERRORISM LAWS, POLICIES AND PRACTICES

Prepared by the Commission on Disappearances and Victims of Violence (KONTRAS) for the South East Asia hearing of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights, Jakarta, December 4-5, 2006

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SUMMARY

1. THE PAPER prepared based on ICJ Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights Questions number 14, about the contribution of laws, policies and practices to the occurrence of enforced disappearances and extrajudicial killing or executions, the justifications of those including the justice and accountability processes and its impediments.
2. The structure of paper started with oversight on legal frame work as the base of policies and practices, such as Law Number 15 Year 2003 on Determination of Government Regulation Replaced the Law No 1 Year 2002 on Elimination of Terrorism Crime as a Law as a main act of counter-terrorism passed by of Indonesian government. It could be an in-depth analysis about the defects and weaknesses of this Law Number 15 Year 2003, especially on its relation with the space to conduct enforced disappearances, summary and extrajudicial killing. The second focus of the paper moving forward to the mobilization, intensification and strengthening roles of State Intelligence Body, Police and Army for the operations as the implementations of act. The third and fourth steps of paper are presented the facts find and overview on disappearances and extrajudicial killing or executions on state counter-terrorism activities. The other problem underlined is about closed and un-independent of judiciary processes, that justified widespread authority of the state apparatus to use their forces, including implementing abuses. Last, the paper ends with the conclusions and recommendations.

Introduction

3. ONE of dramatic situation as an effect of September 11 2001 attack is the movement of counter-terrorism discourses worldwide as well as international concern. The trauma, suffer and scare of the death more than 3,000 people in this World Trade Center tragedy being universal, and international society trough their government –lead by US- declared war against terrorism in their countries, even before 911 tragedy, few of action that called later as terrorism such as bombing or political kidnapped or murderer actually happened,

especially in country with internal armed conflict or on political transition process. Some of 'terror' or criminal act with traumatic and scary effect around the world should identify as terrorism, even still debatable the meaning of terrorism itself and what kind of action that called as terrorism.¹ All kind of criminality called terrorism identified as an extra ordinary crime and need more government concern, and than most of countries followed up by amendment or issued new regulations and policies, or establish special task force on counter it.

4. Several policy of counter-terrorism going to 'attack' some principles of democracy such as civil liberties, some freedoms and rights and transparency and accountability of the policy mechanism.² In the other hand, that regulations are ignore certain fundamental laws and principles, that include international human rights standards and humanitarian law in Geneva Convention and fair trial as a part of criminal court procedures. Some of limitation, discrimination, even racism and xenophobia cases reported increase as part of 'soft policy' in countries when they identify terrorism as the action of specific group whose belong different ideology and belief that similar with identity of groups or ethnics whose life in that country. Some of the government announces openly new plan or policy that contradicted with the basic rights of people who's arrested or detained, such as the right to be represented by a lawyer, the rights to *habeas corpus*, the rights of fair trial and equality before the law, and allowed extra-judicial mechanism like torture, kidnap, arbitrary arrest and killing.³

5. In Indonesia, serious reaction of the government coming after 1st Bali Bombing on October 12, 2002 that killed 202 people and injured more than 209 people. Government state immediately if the Bali bombing is kind of terrorism and declare for take action on it soon. In October 18, less than a week after the explosion in Kuta district, Bali, under intense U.S. and 'international pressure', Indonesian government issued Government

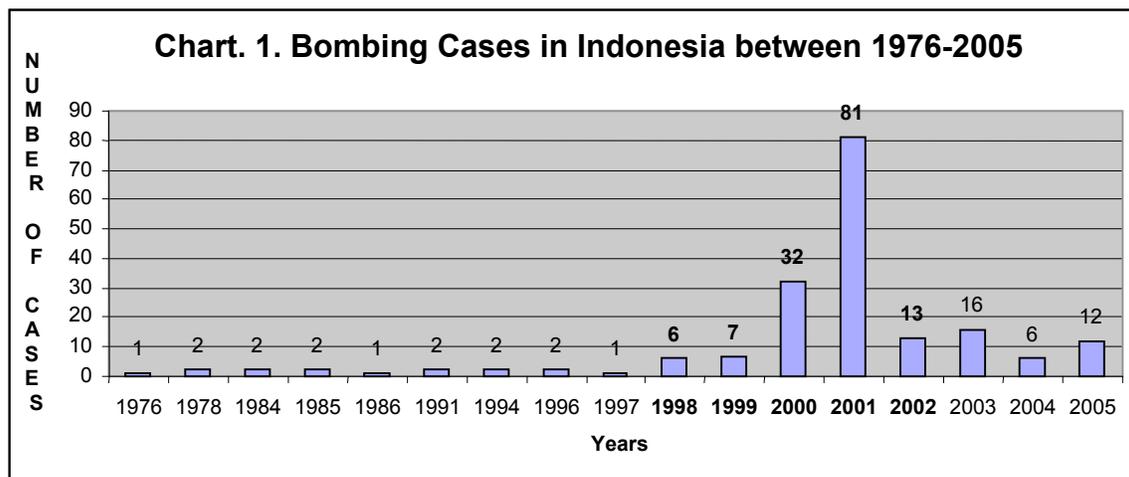
¹ Some countries follow the war against terrorism agendas not as their acceptance to the international concern to counter it, but because they understand it as opportunity to consolidate their power against the opposition inside and outside the state as well as justification to set up political control to public life. See, Victor Silaen, *AS, Indonesia dan Koalisi Global: Memerang Jejaring Teroris Internasional*, "Jurnal Kriminologi Indonesia" (Jakarta: Universitas Indonesia, 2005) Volume 4 No 1, p. 28-29

² In the fight against terrorism, states exercise their monopoly of force. The challenge since 11 September 2001 has been to follow the fundamental democratic principle that "public power shall be exercised under the law." See Per Broström and Diana Amnéus, *A Lawful Fight Against Terrorism?* In Amb. Dr. Theodor H. Winkler, Anja H. Ebnöther, Matts B. Hanson (Ed) "Combating Terrorism and Its Implications for the Security Sector" (Stockholm: Swedish National Defence College and Geneva Centre for the Democratic Control of Armed Forces, Geneva, 2005), p. 227

³ Those practices are implemented in case of US expansion to Afghanistan and Iraq. See UN Joint Report of the Working Group on Arbitrary Detention, Leila Zerrougui; the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; the Special Rapporteur on freedom of religion or belief, Asma Jahangir; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, "Situation of Detainees at Guantanamo Bay" E/CN.4/2006/120, February 27, 2006. Also see Hina Shamsi, Command's Responsibility: Detainee Deaths in U.S. Custody in Iraq and Afghanistan (New York: Human Rights First, February 2006). Other important documentation written by Meiklejohn Civil Liberties Institute, Challenging U.S. Human Rights Violations Since 9/11 (New York: Prometheus Books, 2005).

Regulation Replaced Law/GRRL (Peraturan Pemerintah Pengganti Undang-undang/Perpu) No 1 Year 2002 on Elimination of Terrorism Crime and GRRL No 2 Year 2002 on Implementation of GRRL No 1 Year 2002 in Bali Bomb Explosions on October 12, 2002.⁴ Beside as the impact of pressure, government initiative to issued two executive decrees base on the opinion about inability and the failure of the recent Laws as the solution for same problems that happened before and the tragedy in Bali is the worst terrorism action a long Indonesian history, where the recent regulation is impossible used as the instrument to solve the case.⁵

6. The criticism about this GRRL emerged publicly, in term of widespread authority and power given to the state should be threat for civil liberties and has no corrective effect to weaknesses of law infrastructures and institutions of law enforcement. Government viewed has profuse reaction as the way to avoid political impact in international level only because most of the victims are foreigner. Whereas, the frequency of the bombing cases increase in five years since 1998 and not handled seriously by the government (see the Cart.1).



Source: Kontras Documentations

7. One year after, this GRRL No 1 Year 2002 determined as the Law No 15 Year 2003 on Determination of GRRL No 1 Year 2002 on Elimination of Terrorism Crime as a Law. Indonesian government also releases Law No 16 Year 2003 on Determination GRRL No 2 Year 2002 on Implementation of GRRL No 1 Year 2002 in Bali Bomb Explosions on October 12, 2002.

8. After the establishing Law, unjustifiable and unlawful state operation taking place in all of counter-terrorism agenda. Most of arrest and detention operations that justify by the

⁴ See "Ditandatangani 2 Perpu Antiterorisme" Kompas October 20, 2002

⁵ See Mufti Makaarim A., *Kajian Terhadap Penerapan UU Pemberantasan Tindak Pidana Terorisme*, in Monograph No-6 "Kajian Kritis Penerapan Undang-undang di Bidang Pertahanan dan Keamanan" (Jakarta: Pro Patria, Working Group on Security Sector Reform, 2006), p. 38

Law and conducted by Indonesian security apparatus, caused new problems such as limited respect with human rights, civil liberties, transparency and accountability in political decision process, wide power of state repressive apparatus, and stigmatization for what government called as separatist group in Aceh and Papua before as terrorist group.⁶

9. In public discourses level, one of the question never answered by the government is about the need of new regulation on counter-terrorism. From the beginning, there is no opportunity opened by government to share together with the civil society for the evaluation of the problems related with the weaknesses of approaches used before to stop the terror, and to arrange the balances between ways and means in anti-terrorism government plan, including answering the question about the necessary of the new regulation. From the government perspectives, the failure of the state is as implication of the limitation of power to act.⁷ Counter-terrorism work is state-centered and tied to notions of national security and interests. Control, influence, and oversight of the police will tend to shift toward the national level, and local control and the legitimacy (and capacity) for local oversight will decline.⁸ In brief, the government look blames lack justification for act beyond the structure, legislations and regulations as the root of the inability to stop terrorism. Even that mean the government want their authoritarian power back and possible used not only for what they decided as terrorism. From the civil society side, the problem is not stuck in regulation, but in inability and unwillingness of the state. Some linkage of terrorist groups with the politician and state apparatus raised the conflict of interest problem and directly answer the question, why terrorism life safely in Indonesia and to be continue, as well as incapability of security officers to work professional.⁹

I. LEGAL PROBLEMS: AGAINTS THE CONSTITUTION

10. THE AMENDMENT of Constitution (Undang-undang Dasar 1945) declared obligation of the state to respect, to protect and to fulfill all kind of rights and freedoms.

⁶ After the Bali attack, senior Indonesian officials began to incorporate the term “terrorist” into their rhetoric when talking about domestic groups perceived to be a threat to the unity of Indonesia. Armed separatist groups, the Free Papua Movement (OPM) in Papua and the Free Aceh Movement (GAM) in Aceh, were singled out. In September 2002, Indonesian Foreign Affairs Minister Hasan Wirajuda publicly labeled OPM a terrorist organization, while Coordinating Minister of Political and Security Affairs, Susilo Bambang Yudhoyono, accused GAM of carrying out acts of terrorism. See Human Rights Watch Briefing Paper for the 59th Session of the United Nations Commission on Human Rights, *In the Name of Counter-terrorism: Human Rights Abuses Worldwide* (New York: Human Rights Watch, March 25, 2003), p. 17

⁷ Minister of Justice and Human Rights during Megawati Administration, Yusril Ihza Mahendra state all of Law such as Criminal Act and Law No 15 Year 1952 on the Weaponry are not suitable for extra ordinary crime like terrorism. See “*Ditandatangani 2 Perpu Antiterorisme*” Kompas October 20, 2002

⁸ See Otwin Marenin, *Policing Terrorism: Rhetoric and Implementation*, In Amb. Dr. Theodor H. Winkler, Anja H. Ebnöther, Matts B. Hanson (Ed), *Ibid.*, p. 176

⁹ See Intenational Crisis Group, Indonesia: *Bagaimana Jaringan Teroris Jemaah Islamiyah Beroperasi*, 11 Desember 2002

Some of the rights and freedoms that guaranteed protected by constitution are: right to life, right to presumed innocent until proved guilty, fair trial and public hearing by an independent and impartial tribunal and equality before the law, right to protection of the law against such interference and attack, right to security and liberty of person, freedom from torture and cruel, inhuman or degrading treatment or punishment, right to an effective judicial remedy, freedom from arbitrary arrest, detention or exile, freedom from arbitrary interference with privacy, family, home or correspondence, freedom of movement and residence, right of asylum, right to a nationality, right to marry and to found a family, right to own property, freedom of thought, conscience and religion, freedom of opinion and expression, right to peaceful assembly and association, and right to take part in the government of one's country and to equal access to public service in one's country, and rights to information access.

11. Besides the Constitution, Government of Indonesia has been ratifying International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, and Convention against Torture, complement Law No 39 Year 1999 on Human Rights. As the consequences, all of the Law should not against the constitution and other laws concerned protection of human rights.¹⁰

12. Related with Law No 15 Year 2003, most of its articles are inconsistent, contained “rubber clauses” that possible to endanger civil liberties, human security and not guarantee protection of human rights. Clearly, most of the clauses are against the Constitution. Some of problems from substance of Law are: weaknesses of state interest to protect people rights, stigmatization of terrorist for subversive crime and separatist movement, threaten the freedom of opinion and expression including freedom of thought, conscience and religion, denied political motive and interest from the action of terror, the time of arrest is too long, used widespread first evidence to accuse, used intelligence report as the fist evidence to accuse, threaten rights and individual freedoms, inconsistent with the judiciary system prevails in Indonesia, wide authority of judges before and during the court, crime by corporation put into terrorism act and possible to erase the meaning of organize crime, implementation of death penalty, no regulation or guarantee for the suspect or the defendant in judiciary processes, implementation retroactive principle, and involving anti-terrorism work as a part of counter-terrorism activities.¹¹

II. INTELLIGENCE, POLICE AND ARMY ROLES IN COUNTER TERRORISM

13. ALL of Intelligence institutions are taking place for the counter-terrorism operation from the beginning. Law No 15 Year 2003 in article 26 and 31 giving places for

¹⁰ As the response of human rights problems as the impact of counter-terrorism around the world, UN prepared working group to elaborate detailed principles and guidelines, with relevant commentary, concerning the promotion and protection of human rights when combating terrorism. See General Assembly, *Specific Human Rights Issues: New Priorities in Particular Terrorism and Counter-Terrorism*, A/HRC/Sub.1/58/26, August 25, 2006

¹¹ See Mufti Makaanim A., *Ibid.*, p. 46-57

intelligence report that known as non-judicial report as the sufficient first evidence to bring someone to the court.¹² President Megawati Soekarnoputri issued Presidential Instruction, placed Indonesian State Intelligence Body (Badan Intelijen Negara, BIN) as strategic state intelligence institution get new field to lead on counter terrorism intelligence operation. In 2003, Member of Parliament are agreed intelligence budget around 113 million Rupiahs *per annum* for building network in province, district/city and abroad. (See the Chart 2) Before the Instruction, In Bitung District in North Sulawesi Province for example, Head of BIN in this province was asking all of Head of village to be agent of BIN and given technicality tools for prevention of terrorism. In Riau Province, local parliament decided to recommend additional budget for intelligence up to 3 billion rupiahs to improve affectivity of counter-terrorism.¹³

Chart. 2. State Intelligence Operational Budget for Year 2004

No	Program	Budget (in Rupiah)	Notes
1	Investigation and Network	113,729,038,000	Intelligence operation inside and outside Indonesia, network nationally and Internationally
2	Administration	6,025,388,000	Office, Research and Analysis
3	Security	42,456,477,000	Conditioning, prevention transnational crime
4	Strategic Operation	45,637,500,000	Counter-terrorism
	Total	207,848,403,000	

Source: Kompas, 14 January 2004

14. The effort to empower the intelligence can be identify from the request of them to have an authority to arrest and detent people for 270 days, to have their own detachment, to buy their own weapons, and 'to kidnap' someone without any declaration. This request looks to follow some country that has Internal Security Act (ISA) like Malaysia and Singapore. This idea canceled by the government after strong reaction from the civil society. Other request of BIN is to have structure in province level, like other government department, more over, formalized their authority to village's level, legalized their autonomy in searching budget outside the State Budget, the ownership of weapons, the authority to frisk, to seize and to arrest longer than the police without lawyer. This idea looks very similar with the concept of Security and Order Restoration Command (Komando Pemulihan Keamanan dan Ketertiban, KOPKAMTIB) in New Order Administration that controlled every activity of the people. BIN potentially supports all kind of authoritarianism, using their wide authority in counter terrorism operation.¹⁴

¹² Article 26 says, "To get sufficient first evidence (to arrest), the investigator can use every intelligence report from the Police, Attorney General Office, General Directorate of Immigration, General Directorate of Custom Office, Indonesian Armed Forces, State Intelligence Body, Ministry of Foreign Affair, Ministry of Internal Affair, or other connected institutions". It is the way use unverified or forged document on this operation, not based on police investigation first, before judiciary process."

¹³ See Usman Hamid, *Kontra-terorisme: Menghukum Teroris dan Melindungi HAM*, "Jurnal Kriminologi Indonesia" (Jakarta: Universitas Indonesia, 2005) Volume 4 No 1, p. 58-59, quoted with Chart. 2.

¹⁴ See Usman Hamid, *Ibid*, p. 59. In last 4 years, there are three drafts of Intelligence Law proposed, and even BIN not acknowledges as the actor behind the drafts, most of the contents were exceptionally

15. The existence of territorial command seems to be a non-issue for Indonesian Army (TNI) and is viewed as relevant to be kept since the 1998 reform. In terms of its roles, there is no change at all from the past such as internal operation role, territorial training and territorial intelligence as well as other activities that are supposed to be the police's roles.¹⁵ The Chief of TNI Gen. Endiarto Sutarto openly stated that territorial command's active role is important to be revitalized in order to counter terrorism. This statement was a response to President SBY's speech at TNI's 60th anniversary celebration in which he asked TNI to play an active role to fight terrorism, especially after the second Bali Bombing tragedy that killed 22 people and injured tens of others on October 1, 2005.¹⁶

16. The reason for this view on internal tasks could not be separated from the strategic policy of defense which also asserts all force components in the TNI such as the main, reserve and supportive components in addition for its readiness in preparing itself for traditional security threat such as invasion or military aggression should also be prepared for countering non-traditional threats such as: a) Terrorism; b) Armed separatist group; c) Threat and disturbance by radical group; d) Communal conflict; e) Social unrest; f) Robbery and piracy at the sea; g) Illegal immigration; h) Illegal fishing and contamination of the sea; I) Illegal logging and smuggling; j) Assisting civil government (local government); k) Territorial development for defense; l) Securing important objects;

beneficial to them. The drafts issued on 25 January 2002, 5 September 2003, and 12 March 2006 with clauses to empower BIN.

¹⁵ In an interview, the Chief of Military Regional Command (Kodam) Jakarta Raya, Major Jenderal Agustadi Sasongo Purnomo stated (in connection with the information from BIN that said there was a plot to abduct high-ranking bureaucrats and threat to stability),

"Certainly the information is a valuable input and has become the focus of our attention to be tackled with anticipative steps especially by preventive measures of the threat. The means are by increasing territorial function and territorial intelligence activity. The territorial training is meant that citizens have defending and countering power against efforts that could become a threat to security in their neighborhoods. Meanwhile, territorial intelligence is meant that regional apparatus with a capability of finding and reporting quickly is able to detect early on about the development of the situation in their area as well as to prevent early on so that the threat can not happen...The main threat is SARA. The capital city is vulnerable to frictions due to its heterogeneous residents. Therefore, the role of Babinsa is important. (Also important) to cooperate with segments of the society that become Babinsa's partners, from public figures to punks. The other threat is the increase of communism in Jakarta. We observe the existence of the movement. However, the details of its power are unknown since it's not detected yet. Therefore, Babinsa's sensitivity must be increased." See "

Jakarta Rawan SARA dan Komunisme" Media Indonesia December 24 2005, "Military officers deployed to villages" The Jakarta Post November 8 2005

¹⁶ The statement received strong reactions from many people. Former president Abdurrahman Wahid stated that revitalizing the active role of territorial command was a wrong medicine for the existing disease and has a potential to revive militarism as well as encouraging an authoritarian government. Meanwhile, the head of People Consultative Assembly (MPR) Hidayat Nurwahid stated that the military could only assist the police and BIN, but not to take over its role. See "Politicians slam plan for TNI" The Jakarta Post October 7, 2005. Also see "Kontraterorisme: Fungsionalisasi Koter dan Revisi UU Antiteror" Kontras Press Release, October 26, 2005. at <http://www.kontras.org>

m) International cooperation in defense.¹⁷ Furthermore, the involvement of territorial command was emphasized by the Chief of Anti-terror Desk of the Coordinator Ministry of Politics and Security, Insp. Gen. Ansyad Mbai who stated that territorial command was not only to give information to the police but also, in certain condition, has the authority to arrest a person or group suspected to be involved with plan for terrorist act.¹⁸

17. In fact the involvement of military in counter-intelligence operation becomes counter-productive because of its duplication with police roles, except with police demand. In some case, TNI use this policy as pass ticket to involve in the policy for development and security in national and local level. Their involvement in the counter-terrorism operation based on claim of their roles in territorial command level is closely related with economic interest such as security business¹⁹ or “to secure their connection” with the fundamentalist group whose involve in terrorism.²⁰

18. The Bush administration has renewed links with Indonesia's military (TNI) as part of its counter-terrorist strategy for Indonesia, arguing that the only way to support democracy and human rights and fight terrorism in Indonesia is to work with the military. The U.S. IMET (International Military Education and Training) program to Indonesia had been cut after the TNI-orchestrated 1999 violence in East Timor. Resumption was conditioned on demonstrable reform of the military and a willingness to tackle impunity, but in its efforts to secure a bulwark against terrorism in Southeast Asia the Bush administration has agreed to resume the program without the necessary reforms. On a visit to Jakarta in 2002, U.S. Secretary of State Colin Powell announced a new \$50 million program to assist the security forces in the campaign against terrorism.²¹

19. After 2002, some of program to empower Indonesian police capacity in counter-terrorism became priority and established by the government, including special task force that called “88 Detachment” (Detasemen 88) as counter-terrorism desk in police headquarter. All kind of assistance from international community (skill, knowledge and finance) coming to Indonesian police. The U.S. Congress approved legislation giving

¹⁷ "Kajian Ulang Strategis Sistem Pertahanan, Strategic Defense Review Tahun 2004 (Review on Defense System, 2004 Strategic Defense Review)" (Jakarta: General Directorate of Strategic Defense the Department of Defense the Republic of Indonesia, 2004), p. 11-19

¹⁸ The Head of Public Relation Affair of Army Headquarter, Brig. General Hotmagraja Panjaitan acknowledge if all of territorial commands have extra-structural organization that similar with anti-terror desk in Coordinator Ministry of Politic and Security. These organizations exist from the level of Resort Military Command (Korem), Regional Military Command (Kodam), District Military Command (Kodim), and Sub-District Military Command (Koramil). See "Penanganan Terorisme : TNI AD Buat Desk Antiteror di Setiap Tingkatan Teritorial" Kompas November 9 2005

¹⁹ See Al-A'raf and Mufti Makaarim A., A Note on The Monitoring of TNI Reform: One Year After The Lifting of United States Military Restriction (Jakarta: Kontras-INFID-Imparsial), p. 11-12

²⁰ Tempo, Investigasi: Jaringan Intel di Balik Bom Natal, 25 February 2001

²¹ See Human Rights Watch, In the Name of Counter-terrorism: Human Rights Abuses Worldwide, op. cit., p. 17

Indonesia's police force \$16 million, including \$12 million to set up a special anti-terrorism unit.²²

20. But in the reality, even their capacity and knowledge improved, still remaining some weaknesses, abuses and violations according to international human rights standard. Especially, when Police become the main apparatus whose work with (problematic) Law No 15 Year 2003, they should act out of that standard. After 1st Bali Bombing on October 12, 2002, according to Kontras monitoring, about 35 people arrested and detained with 'questionable procedure'.²³ They were subject of charge as the perpetrators of bombing, secure the area before the action, help the perpetrators to escape, rent home to perpetrators and their family, hide the perpetrators,²⁴ owner of car that used for bombing, cut hair of Amrozi after bombing, hide the rest of explosive used for bombing, and financing bombing through robbery. In every accident after that, Police continued that 'questionable procedure', even many protest and critic came from society and human rights organizations.²⁵

21. Like the problem identified in other country, engaging Indonesian police in counter-terrorism undermined and distorted democratic systems and laws as part of transition agenda started from 1998, such as: strengthen the power of the state and its intrusion into and control over the lives of people, lead to police organizational structures that centralize administrative control, bureaucratize role expectations, and enshrine secrecy and stealth as a fundamental operational policy, both within law enforcement and in the police's articulations to other security structures, tilt the balance of order versus rights in favor of order and protection, lead to political manipulation of law enforcement and order maintenance, lessen the capacity of civil society for oversight and insistence on accountability, stop or slow down the movement toward democratic forms of policing in societies undergoing change, enhance the power and autonomy of the police and will tempt them to engage in abuses of their powers and in discrimination against specific

²² Ibid.

²³ For an example, the of Muhammad Syaifuddin Umar (38) alias Abu Fida whose presumed covered Dr. Azahari dan Nurdin M. Top, the mastermind of JW Marriot Hotel, arrested in Surabaya on August 4, 2004. On August 11, he founded in Dr. Sutomo Hospital yard with serious wounded (both of his hand full with knife cut, his face and neck bruised) and shock. Police deny to admit their torture to him and declare has been release him on August 10 in Kediri District. See Imparsial Team, "Praktik Brutalitas Polisi di Masa Transisi Indonesia Sebuah analisis kebijakan di Indonesia" May 2005, p. 14-15

²⁴ That including the arrest of wife's and family of Amrozi Cs that accused hiding the perpetrators and have information on plan of terror, but not going to inform the police soon, or involve in action with the duty to hide their husband after the action.

²⁵ According to Human Rights Watch, that "...Indonesian police have carried out a high profile investigation to identify and arrest the perpetrators of the Bali attack. Up to thirty people have been arrested and are being held under the terrorism decrees. The police have conducted public interrogations of suspects and staged public reenactments of the crime, using detainees as key 'actors' in these reenactments. This will make it difficult to hold fair and credible trials, as the presumption of innocence is lost after such reenactments. There are also concerns with the validity of "confessional" evidence from other detainees in Singapore and Malaysia, which has apparently served as the basis for the arrests of many suspects. It is unclear whether or not persons who are not involved in violent activities have been arrested under the anti-terrorism decrees." Ibid. p. 17

social groupings, and enmesh the goals, rhetoric, and justifications for actions offered by the police and their leadership in the “securitization discourse”.²⁶

III. DISAPPEARANCES; BETWEEN ARBITRARY DETENTION AND INCOMUNICADO DETENTIONS

22. ENFORCED disappearance is considered to be the arrest, detention, abduction or any other deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law. In Indonesia, the disappearance cases reported committed by New Order government start from the end of 1966 to member of Communist Party, continued in conflict areas such as Aceh, East Timor and Papua from the beginning of 1970, and becomes serious in 1997-1998, when some of pro-democratic activist disappear.

23. In Counter-terrorism activities in Indonesia, the case of Umar al-Farouq and Hambali case can be use as an example, how the process of enforced disappearances consisted as the continuity of arbitrary arrest and followed by incommunicado detentions. Hambali alias Riduan Isamuddin identified as the leader of Mantiqi I of Jemaah Islamiyah, arrested in Bangkok, Thailand, on August 11 2003 in his apartment with his wife by the police. He reported transferred by U.S. special air plane to U.S military base in Baghram, Afganistan after picked up by CIA agent, and his wife under Malaysian police detention. Hambali was wanted of the government of U.S., Indonesia, Philippines, Malaysia, Singapore, and Thailand because his terrorism activities in those countries, but unfortunately, the access to him occupied by the government of U.S. only. The existence of Hambali is still questioned, since the Indonesian government not going on serious effort to ensure his prison and what kind of process he faced.²⁷

24. Before Hambali, another “Al-Qaeda leader”, Al-Farouq, an alleged Kuwaiti citizen merried to an Indonesian woman has been arrested in one mosque in Bogor on June 5, 2002, trough intelligence operation involving Indonesia's intelligence service and the CIA and transferred by U.S. plane to secret prison, somewhere.²⁸ In November 2005, U.S.

²⁶ See Otwin Marenin, *Policing Terrorism: Rhetoric and Implementation*, *Ibid*, p. 169

²⁷ See Tempo, *Bom-bom Maut Hambali*, 25-31 August 2003, and International Crisis Group, *Terorisme di Indonesia: Jaringan Nurdin Top*, 5 Mei 2006

²⁸ Indonesian authorities have given conflicting statements about al-Faruq's case, including statements by authorities insisting that al-Faruq was an Indonesian citizen wanted by the U.S. government for terrorist acts in the U.S. even prior to the September 11 attacks. Coordinating Minister for Political and Security Affairs Susilo Bambang Yudhoyono was quoted in the press as saying, “The arrest was the result of cooperation between the Indonesian police and intelligence as well as foreign intelligence sources under a cooperation framework in the fight against terrorism.” However, Minister of Foreign Affairs Hassan Wirayuda said that al-Faruq’s extradition to the U.S. was not linked to the government's efforts against terrorism, but was immigration related. See Human Rights Watch, *In the Name of Counter-terrorism: Human Rights Abuses Worldwide*, op. cit., p. 17

Ministry of Defence reported Al-Farouq escaped with three other leaders of Al-Qaeda from the closely guarded prison in Baghram, Afganistan since July 2005. Latest, Al-Farouq reported died in British Army operation in Iraq on September 24, 2006.²⁹

25. All of the process of detention and arrest are closed from public as well as the government. Several similar case conducted by Detachment 88 also reported happened. In Semarang, Central Java, four people who's presumed as close friend of Nurdin M Top has been arrested trough secret operation and interrogated in unknown place on January 13, 2005. Their existence knew on January 21, when police announce them as the actor of 2nd Bali Bombing. In the same case, even the police come with mandate letter to arrest, but they hide the prison and cut off all of information for the relatives. Some of the detainee released few days after their non-procedural arrest without any opportunity to access lawyer or family as the witness to ensure their rights and their clarity from terrorism act. This kind of cases taken places in some provinces such as Jakarta, West Java, Banten, Central Java, East Java, Bali, West Nusa Tenggara, Aceh, North Sumatera, Bengkulu, Lampung, Makassar, Central Sulawesi, South-East Sulawesi, North Sulawesi, and East Kalimantan. Majority of the cases involved Detachment 88, and in limited cases involved Army and BIN.

26. On Kontras record, after 2nd Bali Bombing, October 1, 2005, there are 20 cases of arrest and arbitrary detention, with the process closed to incommunicado detentions around Indonesia. Most of them are released, but some were processed and charge as guilty in other crime, such as using false identity card or passport. The reason of detentions are multiple, such as have identical face with Dr Azahari (2 cases), have identical face with Nurdin M Top (1 case), knew one of Bali Bomber (1 case), accused involve in 2nd Bali Bombing (13 cases) and have Jemaah Islamiyah documents (3 cases). After Dr Azahari death, Kontras found 13 cases, as the subject of charge as the follower of Azahari (1 case), involved in 2nd Bali Bombing (2 cases), identified as terrorist or whose assist the terrorist (4 cases), hides Nurdin M Top (3 cases) and without any clear reason (3 cases). Three of them are released, three under Bali Police Headquarter arrest, and other still in identification about their involvement in terrorism in all bombing cases in Indonesia.

IV. ARBITRARY KILLING; RARE BUT POSSIBLE

27. THE CASES of arbitrary or extrajudicial killing in counter-terrorism operations becomes unreported yet. One of the perpetrators who's killed in police operation is Dr

²⁹ See "*Ditangkap Berkat Intelejen Indonesia*", Suara Merdeka September 21, 2002, at <http://www.suaramerdeka.com/harian/0209/21/nas10.htm>, "*Al Faruk Mengaku Terkait Al Qaeda*", Gatra October 17, 2002, at <http://www.gatra.com/artikel.php?id=21545>, "*Deplu Masih Tunggu Permintaan Datangkan Al Faruq*", Gatra November 7, 2002 at http://www.gatra.com/versi_cetak.php?id=22166, "*Indonesia Minta Penjelasan Soal Kaburnya Al Faruq*", Tempo Interaktif November 4, 2005 at http://www.tempointeractive.com/hg/nasional/2005/11/04/brk_20051104-68863.id.html, "*Misteri Al-Faruq dan Azahari*", Republika November 11, 2005, at http://www.republika.co.id/kolom_detail.asp?id=220578&kat_id=16, and "*Kepala BIN Pastikan Umar Al Faruq Tewas*", Antara September 27, 2006, at <http://www.antara.co.id/seenws/?id=43187>

Azahari, because limited access to investigate cause of his died and weakness possibility for further investigation on it. The other cases is murder of Tengku Fauzi Hasbi in Ambon, Maluku on February 2003, former member of Free Aceh Movement (GAM) that recruit by Indonesian Army and BIN as intelligence agent and has strong relation with some fundamentalist groups in Indonesia. Police identify Tengku Fauzi Hasbi alias Abu Jihad as Senior Member of Jemaah Islamiyah. Police has been sentenced 7 person whose accused as the suspect, but not declare what kind of motive behind his murderer and how the law enforcement process for them going on.

28. That not means if the people will be safe from arbitrary or extrajudicial killing when he becomes a target of counter-terrorism. The culture of abuse of power still inherent in all of security apparatus as the inheritance from New Order culture, since the ability to bring them to justice process stopped by impunity policy. According to finding of most Indonesian human rights NGO's, the number of police brutality, inhuman intelligence operation or military abuses still remaining. For an example, all of those apparatus has experiences in terror of "Petrus" or mysterious shooting (penembakan misterius) in 1980-iest to minimize the criminality by 'shoot' or kill the villains or criminals without any judicial process. The policy started when the numbers of criminality are increased, and police 'tray to prevent'. Commander of Kopkamtib, Admiral Sudomo state, "If you want to secure Jakarta, the entire criminals should be 'secured'" ('secured' can be interpreted arrested, killed or disappeared). The result of Kontras investigation denote 367 peoples from 532 people killed during the operation in 11 provinces has been shoot. This operation involved by police, army and intelligence together.³⁰

29. When we are looking to the Law and policy in the field, the possibility also remained, because lack of access for public trough the parliament for all of information the operation before, during and after. All of document and plan become secret, as well as the information about the effect or consequences of the operation, such as law of enforcement for state apparatus miss conducted or abuses. The rule of engagement also questioned, since the complaint about the non-procedural approach reported, including the control mechanism of its accountability and transparency.

V. CONCLUSIONS AND REMARKS

30. A JAKARTA Post editorial published on International Human Rights Day, December 10, 2002, noted, "*In launching its campaign against terror after the Bali tragedy, the government of President Megawati Sukarnoputri has not only relegated human rights from the national agenda, but it may even have forsaken human rights principles. All the evidence throughout the year suggests that as a national political agenda, human rights have not only been put on the back burner, but we seem to have even abandoned all*

³⁰ See Usman Hamid and Edwin Partogi, *Mereformasi Negara Intel Orde Baru: Kasus Penembakan Misterius Era 1980-an*, in Andi Widjajanto (Ed) "Negara, Intel dan Ketakutan" (Jakarta: Pacivis UI, 2006), p. 175-193

earlier effort at setting our human rights record straight.”³¹ Even the Minister of Defense saying his statement in same point, “...*You cannot expect legal accountability in a war situation It is a very difficult situation. The precise rules of humanitarian law just go out of the window once the shooting starts. No Geneva Conventions can apply, as we see also in Iraq at the moment.*”³² The government learns much from U.S. operation in Iraq, but for wrong lesson.

31. Those conditions mentioned mean, the state oversight going to offside, against the international standard of human rights as well as the Constitution. The ban on the use of force in counter-terrorism activities, the demand to settle anti-terrorism disputes by peaceful means, the effort to be consistent with democratic principles and protection of civil liberties not become consideration of this war.

32. Even the remedies mechanisms still not become real, as well as transparent law enforcement mechanism for the perpetrators, including *habeas corpus* mechanism for the people victimized by the state operation, and state investigation on it. No remedies coming true, such as compensation, rehabilitation and reparation just named and shamed as terrorist or accused as terrorist left behind the operation.

33. What going on during counter-terrorism operation proved the evidence if the Law still fails to stop the terrorism, as long as the root problem caused terror unsolved, such as political and economical justice and poverty. Serving new Draconian Law and building Leviathan state can be fertilizer for ‘state terrorism’ completed the terror by the terrorist impending before. Principally, war against terrorism not only struggle against the terror, or how to implement the Law, but it should be business of human rights and civil liberties protection.

Jakarta, December 4, 2006.

³¹ See, Neil Hicks & Michael McClintock, “*Reformasi & Resistance: Human Rights Defenders and Counterterrorism in Indonesia*” (New York: Human Rights First, 2005), p. 3

³² *Ibid.*, p. 6