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P9_TA(2019)0044

The proposed new Criminal Code of Indonesia

European Parliament resolution of 24 October 2019 on the proposed new criminal code of Indonesia (2019/2881(RSP))

(2021/C 202/12)

The European Parliament,

— having regard to its previous resolutions on Indonesia,

— having regard to the EU-Indonesia Partnership and Cooperation Agreement (PCA), which entered into force on 1 May 2014,

— having regard to the 7th Indonesia — EU Human Rights Dialogue of 1 February 2018,

— having regard to the 8th round of negotiations on the EU Indonesia Free Trade Agreement which took place in June 2019,

— having regard to the draft criminal code as presented on 15 September 2019,

— having regard to the Yogyakarta Principles,

— having regard to the Universal Declaration of Human Rights of 10 December 1948,

— having regard to the International Covenant on Civil and Political Rights of 1966 (ICCPR) which Indonesia ratified in 2006,

— having regard to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1987,

— having regard to the EU Guidelines on the Death Penalty,

— having regard to Rule 144(5) and 132(4) of its Rules of Procedure,

A. whereas Indonesia is the world's fourth most populous nation, a stable democracy in the region, the largest Muslim majority country and a diverse society comprising 265 million citizens of different religions, ethnicities, languages and cultures;

B. whereas the Government of Indonesia has proposed a draft criminal code to amend the current Criminal Code; whereas this draft criminal code was finalised on 15 September 2019;

C. whereas the draft criminal code contains articles that will violate the rights of women, religious minorities and LGBTI persons as well as the freedom of speech and association;

D. whereas in September, thousands of people, including students, gathered across Indonesia to protest against the draft criminal code and called for the suspension of its adoption;

E. whereas on 20 September 2019 the President of Indonesia ordered the Indonesian Parliament to delay the adoption of the bill following large-scale protests; whereas the decision on adoption is now in the hands of the Indonesian House of Representatives;

F. whereas Article 2 of the draft criminal code referring to 'living laws' is considered vague, since it does not list punishable crimes, which could be used to legitimise hundreds of existing and discriminatory sharia laws at local level;

G. whereas the draft criminal code punishes extramarital sex with up to one year's imprisonment; whereas this provision in effect criminalises all same-sex conduct; whereas this article will subject all people working in the sex industry to criminal prosecution;

H. whereas the proposed criminal code states that unmarried persons living together could be sentenced to six months in prison;

I. whereas same-sex relations are not officially recognised by the Indonesian authorities, and are therefore explicitly targeted; whereas Indonesia is experiencing unprecedented numbers of violent and discriminatory attacks, as well as numerous acts of harassment against LGBTI people, with vitriolic anti-LGBTI statements on the rise;

J. whereas provisions in the draft criminal code expand on the current Blasphemy Law; whereas more than 150 individuals, most of them belonging to religious minorities, have been convicted under the current Blasphemy Law since its adoption in 1965; whereas the Blasphemy Law puts religious minorities at risk in a context of growing intolerance towards minorities in Indonesia;

K. whereas the draft criminal code restricts the provision of information about contraception and the facilitation of contraception to anyone under 18; whereas restricted access to contraception has a particularly harsh impact on marginalised groups who already shoulder most of the burden of Indonesia's HIV epidemic;

L. whereas the proposed criminal code states that a woman who has undergone an abortion could be sentenced to up to four years in prison; whereas anyone who helps a pregnant woman have an abortion could be sentenced to up to five years in prison;

M. whereas in September, Indonesia passed a controversial law that weakens the national Corruption Eradication Commission, also known as 'KPK', which has successfully prosecuted hundreds of politicians since its establishment in 2002; whereas provisions of the current Criminal Code, the Electronic Information and Transaction Law and anti-terrorist legislation have been used to arbitrarily restrict the work of human rights defenders;

N. whereas human rights defenders have been targeted for their work denouncing human rights violations, especially in relation to the protests in West Papua; whereas since the start of the protests at least 40 people have been killed and at least 8 000 indigenous Papuan and other Indonesians have been displaced from their homes in West Papua; whereas journalists and independent UN bodies have repeatedly been denied access to the region;

O. whereas on 2 May 2019, EU citizen Jakub Fabian Skrzypski from Poland was sentenced by the Wamena district court to five years in prison for his alleged involvement in the Papua separatist movement;

P. whereas between 2015 and 2018 over 40 people were sentenced to death, and more than 300 inmates remain on death row in Indonesia; whereas the death penalty is a cruel, inhuman and degrading punishment, violating the right to life;

1. Welcomes the fact that relations between the EU and Indonesia are based on shared values of democracy and good governance, respect for human rights, and the promotion of peace, stability and economic progress;

2. Is deeply concerned about the provisions in the draft revised criminal code of Indonesia, which allows for discrimination on the basis of gender, religion and sexual orientation, as well as discrimination against minorities;

3. Welcomes the order of President Widodo to delay its adoption; calls on the Indonesian Parliament to substantially revise the proposed criminal code to make it meet international human rights standards, and to remove all discriminatory provisions;

4. Calls on the Indonesian authorities to repeal all legal provisions restricting fundamental rights and freedoms, and to bring all its laws into line with international human rights standards and Indonesia's international obligations;

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5. Calls on the authorities of Indonesia to protect the rights of LGBTI people by prosecuting any persecution of LGTBI people and decriminalising homosexuality by amending its Criminal Code; calls on Indonesian officials to refrain from making inflammatory statements against LGTBI persons that will only further stigmatise them; encourages the Indonesian authorities to foster political dialogue with key stakeholders in civil society in order to promote and safeguard the universal application of human rights;

6. Calls for the revision of provisions concerning the Blasphemy Law as it puts religious minorities and atheists at risk; supports the UN recommendations to repeal Articles 156 and 156(a) of the Criminal Code, the Prevention of Abuse and Defamation of Religion Act, the Electronic Transactions and Data Act, to modify the anti-terrorist legislation and to drop the charges against and the prosecution of those accused of blasphemy;

7. Notes with concern the restriction on the free dissemination of vital sexual health information in the draft criminal code; encourages access to uncensored information on contraception and family planning for women and girls;

8. Affirms that access to health, including sexual and reproductive health is a human right; stresses that proper and affordable sexual and reproductive healthcare should be guaranteed, including sexual education and information, family planning, contraceptive methods, as well as safe and legal abortions; notes that these services are important for saving women's lives, reducing infant and child mortality, and preventing sexually transmitted diseases, including HIV/AIDS;

9. Reiterates its call on the authorities to re-establish a moratorium on all executions with a view to abolishing the death penalty; notes that this recommendation was accepted by Indonesia in the last cycle of the Universal Periodic Review in 2017; calls for the EU and the French Government to do their utmost to ensure that Olivier Jover will not be sentenced to death;

10. Calls for continued and close monitoring of the human rights situation in Indonesia, particularly through regular reporting by the European Union Delegation to Indonesia and Brunei; calls on the European Union Delegation to Indonesia and Brunei, and the Member States to do all they can to provide emergency protection and support to people at risk;

11. Regrets the adoption of the new anti-corruption legislation, under which the KPK will become a government agency rather than an independent body, and calls for a revision of this legislation;

12. Expresses concern about violence in West Papua; calls on the Indonesian authorities to conduct an independent investigation into recent protests in West Papua; calls for restraint in the deployment of security forces in the region; urges the Indonesian Government to address the situation in West Papua through political dialogue; calls on the authorities to provide UN officials, NGOs and journalists with unimpeded access to West Papua;

13. Expresses its concern at the case of Polish citizen Jakub Fabian Skrzypski, who has become a political prisoner in Indonesia; is worried that, in the light of the recent events in Papua, his continued imprisonment in Wamena would not only pose a risk to his human rights, but would also endanger his life; calls on the European External Action Service to raise Skrzypski's case during the upcoming dialogues with Indonesia and demands that the Indonesian authorities allow for his transfer to Poland;

14. Calls on Indonesia to extend a standing invitation to all Special Procedures of the UN Human Rights Council, which should include unfettered access to the whole country;

15. Calls on the Indonesian Government to fulfil all its obligations and to respect, protect and uphold the rights and freedoms enshrined in the ICCPR;

16. Highlights the importance of including binding and enforceable provisions on respect for human rights in the EU-Indonesia Free Trade Agreement that is currently being negotiated;

17. Welcomes the continued annual EU-Indonesia Human Rights Dialogue and looks forward to the upcoming dialogue in November;

18. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, the governments and parliaments of the Member States, the Government and Parliament of Indonesia, the Secretary-General of the Association of Southeast Asian Nations (ASEAN), the ASEAN Intergovernmental Commission on Human Rights and the UN Human Rights Council.