# ANTI-TERRORISM EFFORTS IN INDONESIA*

**Hikmahanto Juwana**[1]

**Abstract**

*Terrorism is defined generally under the Anti-Terrorism Law as the intentional use of 'violence or the threat of violence to create a widespread atmosphere of terror or fear in public'. Indonesia is a victim of terrorism, but at the same time, a safe haven for terrorists. The Indonesian government has taken various measures to eradicate terrorism, yet the Anti-Terrorism Law has not been effective in eradicating terrorist acts in Indonesia. Implementation and enforcement of Anti-Terrorism Law has not been an easy task. Terrorism for Indonesia is a complex and multifaceted issue. This article argues that the successful experience of some other countries in eradicating terrorism may not be applicable to Indonesia. Indonesia has peculiar problems which require anti-terrorism efforts to be sufficiently sensitive to the local context.*

*Terorisme pada umumnya didefinisikan berdasarkan Undang-Undang Anti-Terorisme sebagai pengunaan kekerasan atau ancaman secara sengaja untuk menciptakan terror atau ketakutan di muka umum. Indonesia merupakan korban dari tindak kejahatan terorisme, akan tetapi pada saat yang sama merupakan tempat yang aman bagi teroris. Pemerintah Indonesia telah mengambil beberapa langkah untuk mengatasi terorisme, namun hukum Anti –Terorisme dianggap belum efektif dalam mengatasi aksi terorisme di Indonesia. pelaksanaan dan penegakan UU Anti terorisme bukanlah hal yang mudah dilakukan. Terorisme bagi Indonesia adalah masalah yang kompleks dan beragam. Tulisan ini berpendapat bahwa pengalaman sukses dari negara lain dalam pemberantasan terorisme mungkin tidak dapat diterapkan di Indonesia. Indonesia memiliki masalah khusus yang memerlukan upaya anti-terorisme untuk cukup peka terhadap konteks lokal.*

***Keywords***: *Terrorism, the Anti Terrorism Law, Indonesia's Circumstances*

## I. INTRODUCTION

Since the Bali Bombing of 12 October 2002[2] the Indonesian government has taken various measures to eradicate terrorism. The government promulgated the Anti-Terrorism Law in 2002, which categorized a terrorist act as an extraordinary crime. Subsequently, the three persons most responsible – Imam Samudra, Amrozi and Mukhlas – were

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[1] Professor of international Law, University of Indonesia, Jakarta. He received his LL.B from University of Indonesia, LL.M from Keio University and Ph.D from University of Nottingham.

[2] This resulted in the death of 202 Indonesians and foreign nationals.

brought to justice, convicted and sentenced to death. On 9 November 2008, the three were executed by firing squad.

In spite of its earnestness to prevent terrorism, the government has not succeeded in substantially diminishing the incidence of terrorism in Indonesia. Several terrorist attacks in Jakarta and Bali attracted international attention. On 5 August 2003 the J. W. Marriot Hotel was attacked. One year after, on 9 September 2004, the Australian Embassy was targeted. Subsequently, on 1 October 2005, Bali was attacked a second time. The most recent attack occurred on 17 July 2009, when the J. W. Marriot was bombed again, this time simultaneously with the Ritz Carlton Hotel.

Nevertheless the government, from time to time, has succeeded in overcoming some of the most wanted and influential terrorists in Indonesia. Dr. Azahari bin Husin, a Malaysian national, was shot dead on 9 November 2005 in a police raid in Malang, East Java. Noordin M. Top, another Malaysian national who has been suspected of masterminding the bomb attacks in Bali and Jakarta, was shot dead by the police on 17 September 2009 in Solo, Central Java. In the most recent incident, Dulmatin, an influential terrorist, was killed in crossfire with the police on 9 March 2010 in Pamulang, Banten.

This article will attempt to analyze the reasons behind the intricacies of anti terrorism efforts in Indonesia. This article argues that the successful experience of some other countries in eradicating terrorism may not be applicable to Indonesia. Indonesia has peculiar problems which require anti-terrorism efforts to be sufficiently sensitive to the local context.

## II. THE ANTI-TERRORISM LAW

The Indonesian Anti-Terrorism Law begun with the issuance of Government Regulation in Lieu of Law (GRL)[3] 16 No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism on 18 October

[3] GRL is a form of legislation enacted by the President in emergency circumstances. In the hierarchy of Indonesian law, a GRL (or 'Perpu') is one rank below a Law or Act (Undang-undang). Under the Constitution it is required for the Perpu to be brought.

2002 (Anti-Terrorism Law).[4] On the same day the government issued GRL No. 2 of 2002, which made GRL No. 1 retroactively applicable to the Bali bombings.[5] In 2003, the Anti-Terrorism Law and GRL No. 2 became law after being confirmed by the legislature. Since its promulgation in 2002 there has been no amendment or revision to the Anti-Terrorism Law.

The Anti-Terrorism Law provides four reasons for its promulgation. First, terrorism had 'claimed human lives intolerably and raised widespread fear among the community and caused loss of freedom and damage of property'. Second, terrorism had maintained extensive networks, posing a threat to national and international peace and security. Third, national legislation was required to implement international conventions relating to terrorism. Lastly, the Anti-Terrorism Law was a matter of urgency because existing legislation in Indonesia was inadequate and failed to deal comprehensively with combating criminal acts of terrorism.[6]

The Anti-Terrorism Law applies to any person (including a corporation[7]) who commits or intends to commit a criminal act of terrorism in Indonesia and/or another nation that has jurisdiction and expresses an intention to prosecute that person.[8] It also applies to criminal acts of terrorism which are committed: '(a) against the citizens of Indonesia outside the territory of Indonesia; (b) against the state facilities of Indonesia overseas, including the premises of the diplomatic officials and consuls of the Republic of Indonesia; (c) with violence or threats of violence to force the Government of Indonesia to take or not to 1 take an action; (d) to force any international organization in Indonesia to take or not take an action; (e) on board a vessel sailing under the flag of Indonesia or an aircraft registered under the laws of Indonesia at the time when the crime is committed; (f) by any stateless person who resides in Indonesia'.[9]

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[4] For an English translation, see http://www.law.unimelb.edu.au/alc/indonesia/perpu_1.html.

[5] For an English translation, see http://www.law.unimelb.edu.au/alc/indonesia/perpu_2.html.

[6] GRL No. 1 of 2002, considerations (b)-(e).

[7] *Ibid.*, art 17.

[8] *Ibid.*, art 3(1).

[9] *Ibid.*, art 4.

Terrorism is defined generally under the Anti-Terrorism Law as the intentional use of 'violence or the threat of violence to create a widespread atmosphere of terror or fear in public or to create mass casualties, by forcibly taking the freedom, life or property of others or causes damage or destruction to vital strategic installations or the environment or public facilities or international facilities'.[10] 10 Those who commit this kind of act of terrorism can be sentenced to death, life imprisonment, or a minimum sentence of four years and a maximum of twenty years.[11] Those who have the *intention to commit* an act of terrorism can be sentenced to a maximum of life imprisonment.[12]

Specific acts of terrorism defined under the Anti-Terrorism Law include a range of specific offences relating to various aspects of aviation security,[13] explosives, firearms, and ammunition,[14] and the use of chemical, biological, and other weapons to 'create an atmosphere of terror or fear in the general population, causing danger and destruction to vital strategic installations or the environment or public facilities or international facilities'.[15] Penalties for these offences range from 1 life imprisonment or death to incarceration for a period of between three or four years and twenty years. It should be noted, however, that the Anti-Terrorism Law provides that the various acts of terrorism will not be applicable to 'political criminal acts or criminal acts relating to criminal crimes nor criminal acts with political motives nor criminal acts with the political objective of obstructing an extradition process'[16]

Those who intentionally provide or collect funds[17] or assets[18] with the 'objective that they be used or if there is a reasonable likelihood that the funds will be used partly or wholly' for criminal acts of terrorism will bear criminal responsibility under the Anti-Terrorism Law and can be sentenced to a minimum three years or a maximum of fifteen years

[10] *Ibid.*, art 6.
[11] *Ibid.*
[12] *Ibid.*, art. 7.
[13] *Ibid.*, art. 8.
[14] *Ibid.*, art. 9.
[15] *Ibid.*, art. 10.
[16] *Ibid.*, art. 5.
[17] *Ibid.*, art. 11.
[18] *Ibid.*, art. 12.

imprisonment. [19]

A person also commits an act of terrorism if such person intentionally provides or collects assets with the objective, or if there is a reasonable likelihood, that the assets will be used partly or wholly for: (a) committing any unlawful act of receiving, possessing, using, delivering, modifying or discarding nuclear materials, chemical weapons, biological weapons, radiology, microorganisms, radioactivity or its components that causes death or serious injuries or causes damage to assets; (b) stealing or seizing nuclear materials, chemical weapons, biological weapons, radiology, microorganisms, radioactivity or its components; (c) embezzling or acquiring illegally 1 nuclear materials, chemical weapons, biological weapons, radiology, microorganisms, radioactivity or its components; (d) requesting nuclear materials, chemical weapons, biological weapons, radiology, microorganisms, radioactivity or its components; (e) threatening to: (1) use such nuclear materials, chemical, biological weapons, radiology, microorganisms, radioactivity or its components to cause death or injuries or damage to property; or (2) commit criminal acts as stipulated in (b) with the intention to force another person, an international organization, or another country to take or not to take an action; (f) attempting to commit any criminal act as stipulated in (a), (b) or (c); and (g) participating in committing any criminal act as stipulated in (a) to (f). The sentence for those found guilty is imprisonment with a minimum sentence of three years and a maximum of fifteen years.[20]

Any person found guilty of intentionally providing assistance to any perpetrator by: 'providing or lending money or goods or other assets to any perpetrator of criminal acts of terrorism; harboring any perpetrator of any criminal act of terrorism; or hiding any information on any criminal act of terrorism' is liable to imprisonment for a minimum term of three years and a maximum of fifteen years.[21] Planning or inciting another person to commit any criminal act of terrorism can result in the death sentence or life imprisonment.[22]

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[19] *Ibid.*, arts. 11–12.
[20] *Ibid.*, art. 12.
[21] *Ibid.*, art. 13.
[22] *Ibid.*, art. 14.

The act 1 expands the scope of criminal liability by providing that anyone who 'conducts any plot, attempt, or assistance to commit any criminal act of terrorism' will be sentenced the same as those who are committing such an act of terrorism.[23] One interesting point to note is that the Anti-Terrorism Law can also be applied to those who provide any assistance, facilities, means or information for any criminal acts of terrorism committed extraterritorially. The sentence is the same as for committing the act of terrorism itself.[24] Indonesia is obliged to cooperate with other nations in the areas of 'intelligence, policing and other technical cooperation connected with anti-terrorism measures in accordance with the applicable legislative provisions'.[25]

The Anti-Terrorism Law introduces a novel procedure from that of ordinary criminal procedure, namely that an investigator may use any intelligence report as preliminary evidence.[26] However, the Anti-Terrorism Law provides that the adequacy of the preliminary evidence obtained must be determined through an inquiry process by the Head or Deputy Head of the District Court. The inquiry process is conducted in closed session within a maximum period of three working days.[27]

Various extraordinary powers are conferred on investigators, public prosecutors or judges. Investigators may detain any person strongly suspected of committing a criminal act of terrorism based on adequate preliminary evidence for a maximum period of seven times twenty-four hours.[28] Investigators, public prosecutors or judges are authorized to order banks and other financial institutions to freeze the assets of any individual whose assets are known or reasonably suspected to be the proceeds of any criminal act connected to terrorism.[29] In addition, for the purpose of investigation, the investigators, public prosecutors or judges are authorized 'to request information from banks and other financial institutions regarding the assets of any person who is known or

[23] *Ibid.*, art. 15.
[24] *Ibid.*, art. 16.
[25] *Ibid.*, art. 43.
[26] *Ibid.*, art. 26(1).
[27] *Ibid.*, art. 26.
[28] *Ibid.*, art. 28.
[29] *Ibid.*, art. 29(1).

strongly suspected of having committed a criminal act of terrorism'.[30]

In addition, investigators are authorized: 'to open, examine and confiscate mail and packages by post or other means of delivery' and 'to intercept any conversation by telephone or other means of communication suspected of being used to prepare, plan and commit a criminal act of terrorism'.[31] However, investigators may only intercept based on an order of the Head of the District Court for a maximum period of one year.[32]

The Anti-Terrorism Law stipulates other criminal offences related to acts of terrorism. For example, any person who uses violence or the threat of violence or who intimidates detectives, investigators, public prosecutors, solicitors and/or judges who are handling any criminal act of terrorism, so as to hamper the judicial process, is guilty of an offence subject to a minimum sentence of three years and a maximum of fifteen years. A person who provides false testimony, submits false material evidence, or unlawfully influences a witness during a court session or attacks a witness, including the officials in the trial of a criminal act of terrorism, is also guilty of an offence subject to a minimum sentence of three years and a maximum of fifteen years. Witnesses, investigators, judges, and their families are entitled to protection by the state before, during, and after the investigation process.[33]

The Anti-Terrorism Law also imposes an obligation on the state to pay compensation and restitution to victims and families of victims of terrorist acts.[34] In addition, any individual shall be entitled to rehabilitation if he or she is discharged of all legal charges of terrorism by the court.[35]

[30] *Ibid.*, art. 30(1).
[31] *Ibid.*, art. 30.
[32] *Ibid.*, arts. 31(1)(a)-(b).
[33] *Ibid.*, art. 33.
[34] *Ibid.*, art. 36.
[35] *Ibid.*, art. 37.

## III. JUDICIAL REVIEW

In November 2003 the application of Anti-Terrorism Law in the Bali bombing was challenged in the Constitutional Court by Masjkur Abdul Kadir, who was sentenced to fifteen years' imprisonment for his involvement in the deadly attack in Bali. The basis for the challenge was that the Anti-Terrorism Law cannot be applied retroactively. It was argued that the retroactive application of the Anti-Terrorism Law contradicted the Constitution, which states that a person has the right not to be tried under a law with retroactive effect.[36]

On 23 July 2004 the Constitutional Court gave its decision that the retroactive principle in the Anti-Terrorism Law violated the Constitution. Five out of nine judges agreed while the other four were against. The Constitutional Court argued that, since acts of terrorism do not constitute international crimes, or 'gross violation of human rights', the retroactive principle may not be applied. The decision raised controversy among Indonesians. Some were concerned that the ruling could lead to the acquittals of those convicted in the Bali bombing. But others felt that the Constitutional Court decided correctly.

The Anti-Terrorism Law has also been challenged in the Constitutional Court for allowing execution by firing squad. This challenge was made by Amrozi, Mukhlas and Imam Samudra, but the Court again upheld the constitutionality of that provision.

## IV. PROPOSED AMENDMENTS TO THE ANTI-TERRORISM LAW

The Ministry of Law and Human Rights is in the process of formulating a draft amendment to the Anti-Terrorism Law.[37] The draft

[36] The Indonesian Constitution, art. 28 (I)(1) provides as follows: 'The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retroactive effect are all human rights that cannot be limited under any circumstances.'

[37] The Bahasa Indonesia text is available on the Ministry's website, available at http://www.djpp.info/kegiatan-bulan-ini/icalrepeat.detail/2010/10/14/205//YmViMDFkN2I0MjcxNjI5OTc4ZWU5YzgzZDc2ODQ5YjQ=/ruu-tentangpemberantasan-tindak-pidana-terorisme.html.

provides for two categories of revisions. The first category concerns the substance of what is meant by an act of terrorism. New offences have been proposed. These include the selling of materials that have the potential of being used to manufacture explosives or other substances which endanger life or damage the environment. The punishment is to be increased if a terrorist 1 attack using such substances does in fact take place. Another new offence is for someone who has information about a terrorist attack but fails to make a report to the authorities. Once again, an increased punishment is to be applied where a terrorist attack does in fact occur. Furthermore, a person who caused another person or persons to engage in a terrorist attack will also be subject to criminal sanction. The provision is directed at those who preach in a way that encourages other people to be involved in terrorist attack. The proposed amendment also extends the Law to legal entities such as corporations.

The second category deals with procedural issues. Under the revision, the police when investigating a suspect of terrorist act may make the arrest of a person for up to thirty days based on initial evidence. Once enough evidence is gathered, the police may detain a suspect up to 120 days for further investigation. If the case is brought to the prosecutor's office, the prosecutor may extend the detention for another sixty days. Lastly, if the case is brought to court, the court may extend the detention to sixty days. The detention by the prosecutor and the court may each be further extended for a cumulative maximum of sixty days.

Another set of amendments liberalize the use of evidence not normally permitted under the Criminal Procedure Code. These include intelligence reports, oral communication which is heard or recorded, and any data which is recorded. The police will also be permitted 1 to open mail or tap telephone conversations with the permission of a judge. A witness may testify remotely through teleconference facilities. These revisions are still under discussion and they have not yet been considered by the Parliament.

## V. INDONESIA'S CIRCUMSTANCES

Indonesia is a victim of terrorism, but at the same time, a safe haven for terrorists. Indonesia is also a country which is relatively new in practicing democracy. Western style democracy was introduced in Indonesia after the fall of Soeharto as President in May 1998. Since then Indonesia has experienced a spectacular transition to democracy. The President and Vice-President are elected through a direct vote. Press freedom is guaranteed and the Press enjoys more freedom than it ever has in the past. No draconian law prevents the establishment of political parties and non-governmental organizations.

Indonesia is often said to be the country with the greatest Muslim population in the world. The Muslim population is not, however, homogeneous in its devotion to the practice of Islam: there are those who are religious zealots as there are those who are Muslim only in name. Nonetheless, in recent times, the Muslim population has been increasingly devoted to the practice of Islam. For example, it has become common for Muslim women to wear a headscarf or *hijab*.

There are also strong Islamic political parties. The *Partai Keadilan Sejahtera* (Prosperous Justice Party) is one of them. In the 2009 General Election it came in fourth. Some successful gubernatorial and mayoral candidates were supported by Partai Keadilan Sejahtera. Some of them have subsequently issued *syariah*-based local regulations. In addition, fundamentalist Islamic groups which are not political parties, which were previously suppressed, have gone public.

The Indonesian government has enjoyed close relations with Western countries, such as the United States (US), Australia and a number of European countries. Due to its close ties with them the Indonesian government has received assistance from these governments, including assistance in its efforts to eradicate terrorism. Nonetheless, the government from time to time has been critical of the actions of Western governments. The Megawati administration questioned the legality of the

US attack against Afghanistan and Iraq.[38] The administration insisted that any attack against an independent state should be under the direction of the United Nations.

Another key development has been the rise of human rights. The human rights movement has gained enough momentum to be respected by the government. After the fall of the Soeharto administration, the government has shown its commitment to human rights by promulgating laws and regulations which advance human rights. In addition, the government has ratified numerous international agreements relating to human rights. That said, there are still problems in enforcing human rights in Indonesia.[39] In recent years, due to the lack of enforcement by the authorities, there have been horizontal conflicts among groups within society. The sources of these conflicts are varied, from ethnic sentiment to clashes between supporters of opposing candidates in Gubernatorial and Mayor elections. This has resulted in violations of human rights by the people themselves.

The last feature is that Indonesia still holds a significant number of poor people. According to the 2009 Central Statistics Agency (*Badan Pusat Statistik*) the proportion of poor people is 14.15 per cent.[40]

## VI. ANTI-TERRORISM AND THE MAJORITY MUSLIM POPULATION

Eradicating terrorism in a majority Muslim population has its peculiar challenges. Although official policy has been consistent in its anti-terrorism stance, there has been debate amongst the public at large as to whether these terrorist acts should be condoned.

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[38] At the 13th APEC Conference in 2001 it was reported that Megawati condemned the act of aggression by the US against Afghanistan: see 'AS Menyerukan Pembentukan Koalisi Antiterorisme (The US asked in forming a Coalition of Antiterrorism), Berita Liputan 6 SCTV, 21 October 2001 available at http://berita.liputan6.com/luarnegeri/200110/22165/AS.Menyerukan.Pembentukan.Koalisi.Antiterorisme.

[39] For further reading, see Hikmahanto Juwana, 'Human Rights in Indonesia', in Randall Peerenboom, Carole Petersen and Hongyi Chen, Human Rights in Asia (New York: Routledge, 2006), pp. 364–383.

[40] See http://www.bps.go.id/tab_sub/view.php?tabel=1&daftar=1&id_ subyek=23&notab=3.

According to those who sympathize with the terrorist cause, victims are but collateral damage for a greater purpose. When the most wanted terrorists – Imam Samudra, Amrozi and Mukhlas – were convicted in court as terrorists, there were those who considered them as heroes. Similarly, when Dulmatin was buried, it was reported that the crowd which athered was saying that the cloud was forming the Arabic word 'Allah'.[41] The crowd of mourners of more than 2,000 chanted 'Allahu Akbar' or 'God is greater' as they bid farewell to their 'hero'.[42] This situation prompted Dulmatin's eldest brother Azam Ba'afut to claim that his deceased brother was a good man.[43] Another relative, Sahid Ahmad Sungkar, said that Dulmatin is not a terrorist but a holy warrior and his death is the will of Allah.[44]

The government has to be very sensitive in its anti-terrorism efforts. Sometimes an apparently good policy may be perceived negatively by the public. The government has sometimes failed in gathering support from the various Islamic organizations in its effort to eradicate terrorism. Also, if anti-terrorism policy is not communicated well to the public, public uproar and anger might be triggered. In turn, this will provoke anti-government action. Some Islamic groups will support the terrorists instead of the government, if they think that the official anti-terrorism policy is anti-Islam.

Terrorists may take advantage of Indonesia's majority Muslim population, especially in the provinces where Islam is practiced with greater fervor. An atmosphere favorable to terrorists is easily created when terrorists use Islam to bolster their legitimacy. The Nanggroe Aceh Darussalam (NAD) province, which practices a strict Islamic *syariah* culture, was recently chosen as a base camp and hide-out by terrorists.[45] In ad-

[41] 'Pelayat Dulmatin Heboh Lihat Lafal Allah di Langit (The Procession of Dulmatin Excited When Looking the Word Allah in the Sky)', detik.com, 12 March 2010, available at http://www.detiknews.com/read/2010/03/12/110408/1316950/10/pelayat-dulmatinheboh-lihat-lafal-allah-di-langit.

[42] 'Ribuan Orang Padati Pemakaman Dulmatin (Thousand Attend Dulmatin's Burial)', Kompas.com, 12 March 2010, available at http://regional.kompas.com/read/2010/03/12/11072596/Ribuan.Orang.Padati.Pemakaman.Dulmatin.

[43] '2,000 at Dulmatin's burial,' Strait Times, 12 March 2010, available at http://www.straitstimes.com/BreakingNews/SEAsia/Story/STIStory_501250.html.

[44] *Ibid.*

[45] 'Ada Upaya Jadikan Aceh seperti Mindanao (There is Effort to Make Aceh as Min-

dition, NAD is considered a perfect choice as 1 there was a concurrent problem of separatism. The terrorists calculate that the government or police will be reluctant to use force and clamp down on them, which could rupture the peace agreement between the Indonesian government and the Gerakan Aceh Merdeka or the Free Aceh Movement. Furthermore, the mix of religion and separatism is fertile ground for terrorist recruitment.

## VII.NEW AWARENESS OF HUMAN RIGHTS

The public's newfound awareness of human rights has placed anti-terrorism efforts under close scrutiny. The public is often furious when police shoot dead terrorist suspects instead of arresting them alive.[46] 10 The police have killed at least thirteen terrorist suspects during police raids from February to June 2010.[47] In its defense, the police said it had to protect itself and also the public. The police argued that the terrorist suspects resisted arrest, and that the police are not willing to take the risk of officers being killed in an attempt to take them alive.

On the other hand, human rights groups and security analysts have questioned this police 'shoot-on-sight' policy. The police have been asked to focus more on judicial accountability so that suspects' rights can be upheld according to law. This is because some of the suspects were unarmed and were not committing any harmful acts at the time of the raids. Rights activists have claimed that disproportionate force, beyond what were necessary for an arrest, and had been used. If so, it would be a violation of the right to life as enshrined in Human Rights Law of 1999 and the International Covenant on Civil and Political Rights, which Indonesia has ratified.

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danao)', Jawa Pos, 8 March 2010, available at http://www.jawapos.co.id/halaman/index.php?act=detail&nid=121239.

[46] 'Anti-Terror "Shoot-on-Sight Policy" Only Fuels Cries for Vengeance, Former Jihadist Claims', The Jakarta Globe, 16 May 2010, available at http://www.thejakartaglobe.com/home/anti-terror-shoot-on-sight-policy-only-fuelscries-for-vengeance-former-jihadist-claims/375314.

[47] 'Indonesian Terrorist Sweeps Raise Concern Over Police Tactics', VOANews.com, 24 June 2010, available at http://www1.voanews.com/english/news/Indonesian-Terrorist-Sweeps-Raise-Concern-About-Police-Tactics-97068794.html.

The National Commission on Human Rights (Komnas HAM) has gone as far as to say that most anti-terrorism raids by the police have violated human rights. A Commissioner of Komnas HAM, Stanley Adi Prasetyo, issued a reminder that terrorists also have the right to live.[48] He also pointed out the Commission's finding that abusive interrogation techniques against suspected terrorists have been practised, and this has been in the face of Indonesia's ratification of the UN Anti-Torture Convention. Komnas HAM chief, Ifdhal Kasim, has said that neither the government nor the police have responded to reports of possible abusive methods in the investigation of terrorist activity. Some activists, such as Noor Huda Ismail, have asked for an open investigation of police practices. The suspicion is that the police may be purposely targeting some terrorist suspects and killing them on the excuse of resisting arrest, rather than to 'risk' relying on a legal system that the police think is too lenient.[49]

The police have also come under criticism for the manner in which they have treated suspects and offenders in detention. For example, the terrorist suspect from NAD who turned himself in to the police, Abu Rimba, did not get enough legal assistance from the lawyers. In addition, his family was not given enough visitation rights. According to his elder brother, Yusri, the family was not given enough time to visit prior to his transfer from NAD to his detention in Greater Jakarta. Yusri has voiced concern that if Abu Rimba were convicted, the family cannot afford to pay for the expenses of visiting Abu Rimba if he is imprisoned outside Aceh.[50] The families of dead terrorist suspects have also criticized the police. They have complained about the red tape involved in claiming the bodies for burial.

Another human rights awareness issue which the government has

[48] 'Teroris pun Punya Hak Hidup (Terrorists also have the Right to Live)', tempointeraktif.com, 24 June 2010, available at http://www.tempointeraktif.com/hg/hukum/2010/06/24/brk,20100624–258156,id.html.

[49] 'Indonesian Terrorist Sweeps Raise Concern Over Police Tactics', VoANews.com, 24 June 2010, available at http://www.voanews.com/english/news/asia/Indonesian-Terrorist-Sweeps-Raise-Concern-About-Police-Tactics-97068794.html.

[50] 'Tersangka Terorisme Minim Bantuang', Kompas.com, 16 May 2010, available at http://regional.kompas.com/read/2010/05/16/17323359/Tersangka.Terorisme.Minim.Bantuan.Hukum.

to cope relates to the issue of burial. There are some complex problems with respect to the burial of terrorist suspects. First, it is not easy for the family to bury their relatives in accordance with Islamic tradition. Second, villagers in the hometowns of some terrorist suspects have forbidden the burial of the suspects. Ahmad Maulana and Urwah, the two terrorist suspects shot dead, experienced this. In the case of Maulana, the village community did not want their village to be known as a terrorist's village, even though Maulana was never convicted or even tried as a terrorist. The burial issue is considered as not respecting human rights according to Shabbirin Syakur, the spokesperson of Majelis Mujahidin (MM). According to MM, the denial of burial issue may prompt horizontal conflict in the society. This situation has prompted Soeparno Zainal Abidin of Sragen Central Java to allocate his land for a cemetery, especially for terrorist suspects who are denied burial in their hometowns. He has given 400 meters of his land since 1999 for this special cemetery.

Another hotly debated issue concerns the right of convicted terrorists to be released for good behavior before their full term of imprisonment has been served. Those who are in favor of early release say that terrorists ought to enjoy the same right of early release as any other as any other prisoner, as this is provided for under the law. In 2006, the government amended the Government Regulation on the Rights of Prisoners (GR). Based on this GR, a terrorist prisoner has the right to serve a shorter term due to good behavior after undergoing a third of the sentence. This is different from ordinary crimes, where inmates may be entitled to early release after serving six months of their sentence.

Those who are against the early release of convicted terrorists argue that convicted terrorists should not be given such rights. This argument is based on the fact that terrorist suspects have committed extraordinary crimes. They claim that terrorists should serve the full term and not be given any reduction in time due to good behavior.

The government's decision to allow a reduction in the sentence for good behavior seemed to have backfired when Urwah, a convicted terrorist, was released earlier than he should have been. After his release in 2007, Urwah was involved in the 2009 J. W. Marriot and Ritz Carlton

Hotel terrorist attacks.[51] Recently, Abdullah Sunata taken into custody again after his early release in April 2009, as he was found to be planning to attack on the Danish Embassy. Sunata was earlier sentenced to prison for hiding suspected terrorist Nurdin M. Top.[52] Because of these events, the Minister of Law and Human Rights, Patrialis Akbar, has made a statement that a convicted terrorist should be given careful consideration before being released early for good behavior.[53]

The other human rights issue surrounds the families of terrorist suspects. These families cannot enjoy privacy as they are constantly disturbed by media coverage. The children are ashamed to go to school because they are worried that their friends will distance them because their parents are terrorist suspects.

Child protection activist Seto Mulyadi has warned of the danger of labeling these children as the children of suspect terrorists. The children were not in fault and they should not be discriminated against. The children are victims of terrorism as well. If these children are not handled delicately, they may become terrorists and take revenge. Like the burial issue, the matter of publicity seems not to implicate either the police or the government. This suggests a lack of awareness of human rights issues in which the children of terrorist suspects are implicated. The government seems not to be taking any measures on this issue.

In sum, rising human rights awareness in Indonesia has changed the perception that security must always take priority over human rights.

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[51] 'Jakarta Hotel Bomb Terror Suspect Believed Dead After Indonesian Police Raid', The Jakarta Globe, 17 September 2009, available at http://thejakartaglobe.com/home/jakarta-hotel-bomb-terror-suspect-believed-deadafter-indonesian-police-raid/330395.

[52] 'Abdullah Sunata, Indonesia's most wanted man arrested', Digital Journal, 24 June 2010, available at http://www.digitaljournal.com/article/293784.

[53] Patrialis Minta Proses Pembebasan Narapidana Teroris Lebih Hati-hati', detik.com, 17 May 2010, available at http://www.detiknews.com/read/2010/05/17/171046/1358669/10/patrialis-mint-aproses-pembebasan-narapida-teroris-lebih-hati-hati.

## VIII. LACK OF A REHABILITATION PROGRAM FOR RELEASED TERRORIST PRISONERS

Another problematic issue in eradicating terrorism is the lack of a rehabilitation program for released prisoners. Currently, there are about 200 convicted terrorists that have been released. The issue concerns the question of whether a prison term is enough to prevent a convicted terrorist from re-immersion in jihad once they have regained their freedom. Do released terrorists regret what they have done, and will their communities accept them again?

Programs to reintegrate released terrorists back into society are lacking. Some rejoined their former terrorist groups. For example, some of the terrorists arrested in NAD were terrorists released from imprisonment for involvement in prior acts of terrorism. According to Noor Huda, the reason is that the government has failed to de-radicalize the convicted terrorist. The public has also been blamed because the majority cannot accept the presence of convicted terrorists when they are released. This has prompted some ex-prisoners, such as Urwah,[54] to return to their terrorist groups.

In order to solve this issue, Noor Huda has established a foundation named 'Prasasti Perdamaian', which concentrates on rehabilitating former convicted terrorists.[55] These former terrorists are given opportunities to engage in social activities in order for them to be reintegrated into society. Former head of the National Intelligence Agency, A. M. Hendropriyono, has suggested that convicted terrorists, once released, could be recruited as security guards in hotels or other important places.[56] This is because their knowledge of terrorism can be used to prevent similar acts of terrorism. Recently, the Ministry of Law and Human Rights in cooperation with the Ministry of Religious Affairs has de-

[54] Menelusuri Jejak dan Peran Bagus Budi Pranoto Alias Urwah', detik.com, 21 August 2010, available at http://www.detiknews.com/read/2009/08/21/143505/1187222/10/menelusuri-jejakdan-peran-bagus-budi-pranoto-alias-urwah.

[55] The website of Prasasti Perdamaian is available at http://www.prasastiperdamaian.com.

[56] Hendropriyono: Mantan Teroris Harus Dipekerjakan', detik.com, 24 July 2009, available at http://www.detiknews.com/read/2009/07/24/215818/1171189/10/hendropriyonomantan-teroris-harus-dipekerjakan.

signed a program for convicted terrorists.[57] The Ministry of Law and Human Rights is in the process of erecting a new specialized prison for terrorists so that their special needs may be catered for.[58] However, the biggest obstacle has been the funds to run these programmes. According to one high ranking police officer, Petrus Golose, not very much has been done to de-radicalize convicted terrorists.[59]

## IX. THE PROBLEM OF 'EUPHORIC' DEMOCRACY

Anti-terrorism measures in Indonesia have also had to contend with the euphoria of a new-found democracy, where even justifiable and necessary restrictions to civil liberties are viewed with apprehension. This has led some to coin the word 'democrazy' to describe this situation. Take, for example, the freedom of the Press. Although the media has been used for countering terrorism by sending messages of the negative consequences of terrorism, it has nonetheless also had a negative impact on anti-terrorism measures.

The first problem is the unrestrained and indiscriminate coverage of operations to apprehend suspected terrorists while they are still in progress.[60] TV and web-based media run on-site and live broadcasts, minute by minute.[61] There are even reporters who are 'embedded' in the police force. The public can watch the work of the police live on television, including the removal of the dead body of the suspected terrorist. This completely unrestrained reporting has sometimes caused the perpetra-

[57] Jadi Sumber Terorisme, Kemiskinan Terus Coba Diturunkan', detik.com, 14 March 2010, available at http://www.detiknews.com/read/2010/03/14/115113/1317862/10/jadi-sumberterorisme-kemiskinan-terus-coba-diturunkan.

[58] Menteri Hukum Usulkan Program Khusus Napi Terorisme', VHR Media.com, 19 May 2010, available at http://www.vhrmedia.com/Menteri-Hukum-Usulkan-Program-Khusus-Napi-Terorisme-berita4235.html.

[59] Petrus Golose: Program Deradikalisasi Teroris Baru Secuil Dilakukan (Petrus Golose: The De-redacaliztion of Terrorist Only Very Small Being Carried Out)', detik.com, 20 August 2009, available at http://www.detiknews.com/read/2009/08/20/131457/1186299/10/petrus-goloseprogram-deradikalisasi-teroris-baru-secuil-dilakukan.

[60] This occurred on 8 August 2009 when police were involved in shoot out with Ibrahim, a terrorist suspect of the J. W. Marriot and Ritz Carlton Hotel attacks.

[61] The national television, TV One and Metro TV run live broadcasts the whole day as 'Breaking News', with commentators giving their assessment.

tion of falsehoods.[62]

The second problem is that terrorists may monitor the strategies of the police by watching them in operation through live broadcasts. This enables terrorist suspects to take anticipatory action to prevent arrest. It may also warn other terrorist suspects and their networks, and they may retaliate or try to do something to help the suspected terrorist under siege.

The third problem is that the media may be unknowingly helping to promote terrorist ideology, or to cast terrorists in a sympathetic light. The terrorists, suspected and convicted, are often interviewed for their opinions. Live coverage of terrorist suspects under siege can be perceived by viewers to be underdogs who should be supported. In addition, coverage of the 1 funeral of terrorists might give the impression that the persons being buried are heroes.

The fourth problem on live television coverage is that it is considered to be too vulgar for the young viewers. The Head of Children Protection, Seto Mulyadi, claimed that this might influence a child's psychology. This may create the sense of fear from children, as if Indonesia is not a safe place.

Fifth, the media's efforts to develop a story might lead them to locate and question the family of suspects, and this in turn might interfere with police investigations.

The other issue concerns the regulation of associations and organizations. Should the government ban religious organizations that are suspected of non-violently supporting terrorist causes? The government has been reluctant to do so, fearing that it will be accused of violating the freedom of association and therefore democracy.

[62] It was initially reported that the alleged terrorist was Noordin M. Top, but later the police announced it was Ibrahim: see 'Noordin M. Top believed killed in police raid In Temanggung', Antara News, 8 August 2009, available at http://www.antaranews.com/en/news/1249705820/noordin-m-top-believed-killedin-police-raid-in-temanggung.

## X. ALIGNMENT WITH THE WESTERN WORLD

The war on terror has relieved external pressure on the Indonesian government to respect human rights. Foreign countries are ready to overlook Indonesia's human rights abuses so long as the government is cooperative in the war against terror. The US, which had in the past expressed concerns about the condition of human rights in Indonesia, has not been exerting such pressure because the US needs Indonesia's support in its war on terror.

The public in Indonesia has resented the silence of international NGOs about human rights abuses of Indonesian nationals abroad who are suspected of terrorism. There is a perception of unfair double standards when NGOs fiercely criticize Indonesia for human rights abuse but are silent about the abuse of the human rights of Indonesians by other countries. The negative impact of the War on Terror on human rights has caused the public in Indonesia to question whether human rights are only an instrument to weaken Indonesia as a country, including its government and military.

The War on Terror has led Western countries traditionally seen as 'defenders of human rights' to encourage and expect abuses of human rights to recur in Indonesia. Human rights protection and promotion in Indonesia can be undermined if powerful states condone or encourage such a state of affairs. This leads to the conclusion that foreign governments do not have a sincere intention of upholding human rights in Indonesia. They rather have used human rights issues as a political instrument against Indonesia. Since the launch of the war against terror, Indonesia's human rights cause has become one of its casualties through the revival of legislation legitimizing human rights abuses from what was thought to be a bygone era.

The public perception in Indonesia is that anti-terrorism measures have been unduly influenced by the Western world. These measures are seen to be an extension of the policies of the West.[63] The public

[63] Azyumardi Azra said that terrorism has grown due to influence of foreign policy: see 'Penyebab Terorisme Kompleks Tak Hanya Kemiskinan (The Source of Terrorism is Complex not Only Poverty)', beritabaru.com, 4 September 2009, available at http://www.beritabaru.com/index.php?option=com_content&view=article&id=2908:penyebab-terorisme-kompleks-tak-hanyakemiskinan&catid=62:nasional&Item

perceives the fight against terrorism not as a fight against terrorists, but as a fight against Islamic groups. Anti-terrorism policies are seen to be anti-Islam.

The government has been criticized because the Indonesian counter-terrorism squad, called the Special Detachment 88 (Detasemen Khusus 88, or 'Densus 88'), is believed to be funded and equipped by Western countries, such as the United States. Many believe that the unit is being trained by the CIA, FBI, US Secret Service and ex-US Special Forces personnel. In addition, Densus 88 has received assistance in the form of forensic expertise, such as DNA analysis and communications monitoring from foreign agencies, including the Australian Federal Police.

The public has also been very suspicious of government and police action against alleged terrorists ahead of visits by western dignitaries. The recent operation against suspected terrorists in NAD was believed to have been due to President Barrack Obama's visit to Indonesia.

## XI. THE DEBATE ON MILITARY INVOLVEMENT

The only organization which has been at the forefront of anti-terrorism operations has been the police. While the military has the capacity to play a much larger role, it has been idle in the context of terrorism. There was a time when the government was willing to invite the military to take part in eradicating terrorism. Members of Parliament concurred with the government on military involvement. Under the TNI (Tentara National Indonesia, or Indonesian National Army) Law, military involvement in anti-terrorism was sanctioned in principle.[64]

The potential involvement of the military prompted a public debate.[65] Those who were in favor argued that the military has the capacity

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id=54.

[64] Pelibatan TNI Tangani Terorisme Punya Payung Hukum (The Involvement of TNI to Handle Terrorism has its Legal Umbrella', Antara News, 31 August 2009, available at http://www.antaranews.com/berita/1251697931/pelibatan-tni-tanganiterorisme-punya-payung-hukum.

[65] Pelibatan TNI Tidak Boleh secara Lisan (The Involvement of TNI Should not be Oral)', Kompas.com, 24 August 2009, available at http://nasional.kompas.com/read/2009/08/24/20163397/Pelibatan.TNI.Tidak.Boleh.secara.Lisan.

to combat terrorism and terrorism is a threat to national interest. Under the Bush administration the Indonesian military was seen as important factor in cracking down on South-East Asian terrorist networks. For this reason the Bush administration wanted to see the resumption of full military-to-military relations. This would have allowed the Indonesian military to be trained by the US military.

Those who do not agree are afraid that this would become a new entry point for the military to reenter the civilian sphere.[66] This fear is understandable in the context of Indonesia's recent history of the military interfering undesirably in civilian government. Human rights activists warned that the involvement of the military is unjustified, as terrorism is a civilian, and not a military, act. Thus, the appropriate agency to deal with it is the police. The Indonesian government, to its credit, sees terrorism as a law enforcement problem to be handled by the police, and not an insurgency to be addressed by the military.

## XII.POVERTY AS FUEL FOR TERRORISM

Poverty has made it easier for terrorists to recruit followers from amongst the unemployed and the young. For example, the suicide bomber of the J. W. Marriott Hotel, Dani Dwi Permana, was an eighteen-year-old graduate of a private senior high school in Bogor who was not employed. For this reason, President Susilo Bambang Yudhoyono has instructed the Governors that eradicating poverty would lead to the eradication of terrorism.

The former Head of Muhammadiyah (the second largest Islamic organization in Indonesia), Ahmad Syafii Maarif, similarly believes that the eradication of poverty should be prioritized, and justice upheld before terrorism can be effectively dealt with.[67] Nevertheless, this view has not gone unchallenged. They argue that convicted terrorists and terror-

[66] Pengaktifan Koter TNI Bukan Jalan Keluar Cegah Teror (Reviving the Territorial Command of TNI is Not a Solution to Prevent Terrorism)', Suara Merdeka, 7 October 2005, available at http://www.suaramerdeka.com/harian/0510/07/nas13.htm.

[67] Syafii: Kemiskinan Penyebab Munculnya Terorisme (Syafii: Poverty is the Source for the Emergence of Terrorism)', detik.com, 5 July 2010, available at http://www.detiknews.com/read/2006/10/05/143311/689775/10/syafii-kemiskinanpenyebab-munculnya-terorisme.

ist suspects do not typically come from poor families. Some are highly educated and some have degrees in engineering. The former Head of Densus 88, Surya Dharma, dismissed poverty as the source of terrorism.67 17 He believes that the spread of terrorist ideology, especially to young people, has been the main cause of terrorism. Azyumardi Azra, an Islamic scholar from the Islamic Public University Hidayatullah, has the same view. He maintains that poverty and unemployment have nothing to do with the roots of terrorism.[68]

## XIII. CONCLUSION

The enactment of the Anti-Terrorism Law has not prevented Indonesia from being a target of national and international terrorist attacks. Implementation and enforcement of Anti-Terrorism Law has not been an easy task. The fact that combating terrorism is led by Western countries has caused the Indonesian public to be suspicious. Debate has shifted from fighting terrorist acts to concerns that Western countries are undermining Indonesia's sovereignty.

The Anti-Terrorism Law gives legitimacy to law enforcement agencies that use legal measures different from those available for other criminal offences. Moreover, it imposes severe sanctions on those who commit acts of terrorism. Yet the Anti-Terrorism Law has not been effective in eradicating terrorist acts in Indonesia. The threat of severe sanctions including the death penalty will not deter those who believe they are fighting a jihad that will reward them a place in heaven. Those with such beliefs will go anywhere in Indonesia or elsewhere for the opportunity to die in a holy war.

The problem of terrorism in Indonesia runs deeper than promulgating a law to combat terrorism. Terrorism for Indonesia is a complex and multifaceted issue. The government has taken firm actions supported by the majority of the people. Nevertheless, these actions have yet to

[68] Kemiskinan Tak Picu Terorisme (Poverty Does Not Trigger Terrorism)', Inilah.com, 16 August 2009, available at http://www.inilah.com/berita_print.php?id=142627.

satisfy countries whose nationals are threatened, such as the US and Australia. Facing the Indonesian condition and context it would be relatively difficult for any government in Indonesia to combat terrorism. It should be understood that Indonesia's challenge in combating terrorism is different from that faced by the US or Australia.

Efforts to eradicate terrorism in Indonesia continue to face many challenges. Even though there have been some successes stories, acts of terrorism keep on occurring. As discussed in this chapter, there are various causes that may hinder efforts to eradicate terrorism. Put simply, eradicating terrorism in Indonesia is not as straightforward as it is in many other jurisdictions. Anti-terrorism policies must recognize the peculiar Indonesian context and background.

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kum/2010/06/24/brk,20100624–258156,id.html.

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