

DO TERRORISTS HAVE NO RELIGION?

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INTRODUCTION

Sudden bombings against three churches in Surabaya, Indonesia, on May 13, 2018, perpetrated by a family of six, terrified other Indonesians as well as international community on the emergence of the Islamic State group. The power of one group, thousands of miles away from Indonesia to influence the minds of Indonesians which then enable them to kill innocent souls have once again brought the issue of ‘terrorism’ to public’s attention. Being the deadliest bombings since 2005, this left a deep scar in the heart of the victims’ families, forcing everyone to introspect the things we failed to do, to look at the things we still need to do in regards to terrorism; the unity breaker of our country. Subsequent terror attacks in different parts across Indonesia then pushed Joko Widodo, President of the Republic of Indonesia to finalize anti-terrorism laws through Indonesia’s House of Representative – being lastly enacted at 2003 – while stating that this revised law will be the foundation of acts against terrorism in Indonesia.

At present, the devastating acts of terrorism within a country does not only snatch the world’s empathy as it also affects them directly; but it is also caused by multinational or international factors which transcends beyond territories and borders. The global characteristic of terrorism also requires integrated multilateral efforts among countries. We already have international and regional conventions and other forms of treaties in response to the ongoing efforts against terrorism. However, those responses against emerging multinational characters of terrorism demand more enhanced and more comprehensive regulations on it.

As aforementioned, various terrorist groups outside of Indonesia’s territory, particularly the Islamic State group, are able to influence the minds of Indonesians to conduct such deadly

bombings in Indonesia. It is noted that the Islamic State group has attracted more than forty thousand foreign fighters through their underground movement.¹

This would trigger various questions: Would these terrorist groups be subject to sanctions from Indonesia? Would these terrorist groups be able to be held accountable for what they have done? How significant are the previous conventions or international legal instruments in dealing with the issues?

This article will point out the existing regulations we have in international stage as well as in regional basis along with its loopholes and points of improvements. Furthermore, this paper also includes previous international actions that have been initiated in response to this form of terrorism. Lastly, this article will analyze the compatibility between Indonesia's anti-terrorism laws and regulations issued by the UN and ASEAN, and how Indonesia should develop its capacity and power in banishing terrorism from this peaceful nation.

EXISTING INTERNATIONAL REGULATIONS ON TERRORISM

United Nations has noted that there have been 19 international legal instruments on the prevention of terrorist acts, established since 1963. These international legal instruments cover different scopes that are related to terrorism, such as civil aviation, protection of international staff, taking of hostages, nuclear material, maritime navigation, explosive materials, terrorist bombings, financing of terrorism, and nuclear terrorism. From these international legal instruments, the 1997 International Convention for the Suppression of Terrorist Bombings established the regime of universal jurisdiction on the act of using explosives and lethal devices unlawfully to injure or kill other people and destroy properties or public places. In 1999, another UN Convention relating to terrorism was established, aiming to prevent and counteract the financing of terrorists and terrorist organization.

All of the disparities among these legal instruments – whether those are related to punishment to the perpetrators, handling of victims, the scope of the conventions, etc – open the possibility

¹ Daniel L. Byman, "What Happens When ISIS Goes Underground?", *Markaz*, January 18, 2018, <https://www.brookings.edu/blog/markaz/2018/01/18/what-happens-when-isis-goes-underground/>. Accessed on May 30, 2018.

for both redundancy and loopholes in eradicating terrorism. When certain conventions are to be enacted in regards to responding a set of terrorism acts, the decision is totally under the auspices of a country, and it creates ambiguity as well as lack of uniformity in the practices of countries to eradicate terrorism. The attempt to unify all of these international legal instruments have been initiated by the Legal Committee, but it shows no further improvement. The most essential part of an international legal instrument is the object that is being regulated, which means that in this context, these various legal instruments focus on ‘terrorism’ as one of its main objects. However, the definition of terrorism still varies among these legal instruments, which continuously becomes a controversial issue to be resolved.

ASEAN ON COUNTER-TERRORISM EFFORTS

ASEAN has established the ASEAN Convention on Counter Terrorism, recalling the ASEAN Declaration on Joint Action to Counter-Terrorism and the Declaration on Terrorism. It acknowledges the existing international legal instruments – as previously mentioned – in defining the term “offences”. What differs this particular convention with the existing international legal instruments is the principle of “sovereign equality and territorial integrity” as well as “non-interference” which is consistent with the ASEAN Way. Compared to the 1997 International Convention for the Suppression of Terrorist Bombings which provides some conditions in which other State Parties can exercise its jurisdiction towards the crime, the ASEAN Convention in Article IV restricts the exercise of such jurisdiction if the domestic laws of a State Party reserve such exercise of jurisdiction. However, in Article VII, the ASEAN Convention adheres to the conditions listed out in the 1997 International Convention for the Suppression of Terrorist Bombings, which allows other State Parties to exercise their jurisdictions if what is happening fulfilled those listed out in the Convention. One thing that is not included in the list of conditions as grounds to exercise universal jurisdiction in the ASEAN Convention is that if the offence is committed on board of an aircraft which is operated by the Government of that State.

Other than that, the ASEAN Convention also regulates that the Convention doesn’t exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic law,

in accordance with Article 6 (5) of the 1997 International Convention for the Suppression of Terrorist Bombings. Another provision that differs the 1997 International Convention for the Suppression of Terrorist Bombings with the ASEAN Convention is the designated areas of cooperation between State Parties of this Convention, by also acknowledging the financing of terrorism as stipulated in the 1999 International Convention for the Suppression of the Financing of Terrorism. This means that there's been already strong interconnectedness between these two conventions.

The ASEAN Convention has the strength in acknowledging the emerging values of radicalism and extremism that trigger people to conduct such horrible acts, proven by Article VI (1) point e and f which mainly regulates capacity-building (trainings, technical cooperation, regional meetings) and enhance the participation of public such as through inter-faith and intra-faith dialogue. The important role of intelligence in tracking or monitoring the flow of data through information and communication technology has also been taken into account, making ASEAN Member States who become State Parties of this Convention plead to enhance intelligence exchange and sharing of information.

The ASEAN Convention also recognizes new forms of terrorism such as cyber terrorism and chemical, biological, radiological, nuclear (CBRN) terrorism, thus, it doesn't specifically narrow down the scope to terrorism bombings, unlike the 1997 International Convention. Aside of that, since ASEAN Member States are so interconnected since those countries are neighbors, one of the most important scope of cooperation listed in this Convention is border control and cross-border cooperation.

From the elaboration above, it's seen that ASEAN has already put strategic provisions of counter-terrorism. But the next question would be: *how would this mechanism implemented effectively with uniformity of standards among ASEAN Member States?*

Unlike the United Nations who already has a special body on counter-terrorism, which is the UN Office on Counter-Terrorism, the ASEAN has only established the ASEAN Ministerial Meeting on Trans-National Crime (AMMTC), which is basically a forum of discussion among ASEAN Member States. This Ministerial-Meeting is also doubted to enhance the effective implementation for this Convention, as the countries will discuss based on the agenda that is designated by all of the countries present in the meeting. It is not focused only on terrorism,

thus, the cooperation listed in the ASEAN Convention on Counter-Terrorism will not be monitored thoroughly with an exact body or agency with specific mandate on counter-terrorism. Until Member States of ASEAN decide to establish the specific body with focused mandate on counter-terrorism, the effective implementation of this comprehensive Convention would only occur in our dreams.

INDONESIA ON TERRORISM

If the international community has recognized various forms of terrorism ever since 1960s, Indonesia has no specific regulation in regards to terrorism until 2002, when the President established government regulation in lieu of law (or we call it *Peraturan Pemerintah Pengganti Undang-Undang/Perpu*) which was passed by the House of Representative as Law No. 15 Year 2003 on Eradication of Terrorism. The finalization of this 2002 Anti-Terrorism Law (ATL) was accelerated since Bali bombings took place. Unlike international legal instruments that have yet to decide the universally agreed definition of terrorism is any act that fulfills the elements of a crime under this law, which are further elaborated in Article 6-23 of the law.²

The possibility to hold the perpetrators accountable for what they have done in regards to terrorism acts become the challenge that Indonesia – and other countries – still need to work on. In some cases, such as what has been happening in Surabaya, the perpetrators of these terrorism acts committed suicide bombings, so that they can't be held accountable of what they have done.

The Anti-Terrorism Regulation in lieu of law No. 1 Year 2002 specifically set seven cases with which other countries can exercise its jurisdiction, which are listed as follows:

1. The crime is committed by a national of the country concerned;
2. The crime is committed against the nationals of the country concerned;
3. The crime is committed within the territory of the country concerned;

² Simon Butt, "Anti-Terrorism Law and Criminal Process in Indonesia," *ARC Federation Fellowship 'Islam aand Modernity: Syari'ah, Terrorism, and Governance in South-East Asia, The University of Melbourne*, P. 3, https://law.unimelb.edu.au/__data/assets/pdf_file/0010/1546327/AntiTerrorismLawandProcessInIndonesia2.pdf. Accessed on May 30, 2018.

4. The crime is committed against a state or government facility of the country concerned overseas including the representative of a foreign country or residence of a diplomatic or consular official of the country concerned;
5. A crime perpetrated by violence or the threat of force forcing the country to do something or not to do something;
6. Crimes committed against aircraft operated by the government of the country concerned; or
7. Crime shall be committed on board of that country-flagged vessel or aircraft registered under the law of the country in question at the time the crime is committed.

From these cases listed above, Indonesia has acknowledged not only one international legal instruments, but almost all of the international legal instruments related to terrorism, including civil aviation security. Aside of this, Indonesia has also acknowledged the act of financing terrorism acts are also included as ‘crimes’ constituted under the law, which is also in line with the 1999 International Convention for the Suppression of the Financing of Terrorism. The universal jurisdiction is also in accordance with Article 6 of the 1997 International Convention for the Suppression of Terrorist Bombings, which point out the exact same conditions on when concerned countries are able to exercise its universal jurisdiction.

As mentioned previously, the ‘crimes’ are further specified in Article 6 – 23 of this Regulation, meaning that concerned countries can exercise its jurisdiction if the crimes committed fulfil one of the seven criteria that are listed in the regulation. In Article 14 of this Anti-Terrorism Regulation, it is clearly stipulated that, “Any person who plans and / or moves others to commit terrorist acts as referred to in Article 6, Article 7, Article 8, Article 9, Article 10, Article 11 and Article 12 shall be subject to capital punishment or life imprisonment.”

The influence of Islamic State groups towards Indonesians have triggered the establishment of Jamaah Ansharut Daulah (JAD), a terrorist group whose members have pledge allegiance to ISIS Leader Abu Bakr al-Baghdadi. Another terrorist group that is responsible to a series of terrorist bombings in Indonesia is Jamaah Islamiyah, which orchestrated the Bali bombings in

2002.³ The connection between Indonesia's radicalistic groups and ISIS – which is originated outside of the territory of Indonesia – showed that the concerned countries are able exercise their jurisdiction on the crimes. JAD claimed its responsibility to the Surabaya and Sidoarjo bombings, thus, based on the Anti-Terrorism Regulation, the related countries are able to prosecute such perpetrator who plans and/or moves others to commit terrorist acts. However, this becomes another problem that needs to be solved since the planning process or even communications between Indonesia's terrorist groups and foreign terrorist groups are undetected, thus, the level of responsibility among these perpetrators are so difficult to be determined.

Indonesia has been putting so much efforts in trying to stop the movement of these terrorist groups, through our regulations and institutions. The 2002 Anti-Terrorism Regulation focuses more on repressive legal action towards the perpetrators of terrorism acts, starting from investigation, prosecution, and examination in trial proceedings. As aforementioned, this was triggered by Bali bombings, which at that time, any regulation or law related to terrorism had not existed, so that in response to the bombings that have already occurred, the perspective of government would be to punish the perpetrators who still survived and those affiliated with the acts, to stabilize the panic and chaos caused by the fear of terrorism.

Indonesia has established the elite special force unit to eradicate terrorism acts, which is Detachment 88. It has successfully reduced the number of attacks by these terrorist groups, however, the number of prosecutions towards the members of terrorist groups and the ever-growing threat of radicalism and extremism which encourages more people to be involved in terrorism acts become another challenge that have yet to be resolved. Due to the loopholes and limitations regulated under this regulation, the revision of that regulation has been under negotiation and discussion by the House of Representative. The process of discussion on the revision has been stagnant since 2016, but after the Surabaya bombings, the President has been pushing the House of Representative to adopt the anti-terror bills into law.

If in the 2002 Anti-Terrorism Law, it's stated that the actors who are involved in response to the terrorism acts consist of polices (as investigators) and also intelligent, the new law legalized

³ Bard Wilkinson, "Terror Group JAD Linked to Indonesia Family Suicide Attacks," *CNN*, May 14m 2018. <https://edition.cnn.com/2018/05/14/asia/jad-indonesia-terror-intl/index.html>. Accessed on May 30, 2018.

in 2018 regulate the involvement of military in counter-terrorism operations. More elaboration on the role of military in counter-terrorism operation will be further regulated by the Presidential Regulation. Other things that make the new law different than the previous one is a broader possibility to prosecute ‘suspects’ of terrorism acts, even radical clerics who inspire attacks or Indonesians who travelled abroad to join Islamic State groups.⁴ The law also authorizes the police to detain those who are suspected as terrorists for 21 days without charge, and if they need to gather more evidence, the suspects can be detained for another 200 days.⁵ Human rights activists are calling this new law controversial as it puts tight restrictions for the suspected terrorists to exercise the basic rights that are entitled to them. Nevertheless, the security of a country is at stake on the moment, so that arguing over human rights will end at never-ending cycle of debates. The ‘homework’ that needs to be finished by the government will be in regards to how the 200-days of detention shall be the last resort of detention and it shall be informed to the suspects in the beginning of their detention. Further coordination scheme between related authorities shall also be cleared, preventing any redundancy in the counter-terrorism actions being taken.

One of the trial that receives the biggest spotlight is the trial of Aman Abdurrahman, the leader of JAD, being responsible for the 2016 bombings. Aman Abdurrahman was held in Depok, West Java, and a deadly riot occurred, causing five polices and one inmate dead.⁶ This shows that the security of countries surrounding the trial proceedings of the leader of terrorist groups or the perpetrators themselves still need to be put into consideration, as well as to make sure that all the law enforcement authorities, especially Judge will be able to give accurate verdict.

⁴ The Associated Press, “Indonesia Passes New Terror Law After Attacks Using Children,” *The New York Times*, May 25, 2018. <https://www.nytimes.com/aponline/2018/05/25/world/asia/ap-as-indonesia-terrorism-law.html>. Accessed on May 30, 2018.

⁵ “Indonesia Passes Controversial Anti-Terror Laws to Fight ISIL,” *Al Jazeera*, May 26, 2018. <https://www.aljazeera.com/news/2018/05/indonesia-passes-controversial-anti-terror-laws-fight-isil-180525055635674.html>. Accessed on May 30, 2018.

⁶ Wilkinson, “Terror Group JAD Linked to Indonesia Family Suicide Attacks”

CONCLUSION AND RECOMMENDATION

International legal instruments on terrorism have yet to be unified, making it confusing and complicated for countries to adopt the standard into forming national counter-terrorism strategy. Despite the lack of integration and harmonization among the similar international provisions on terrorism, ASEAN as a region most vulnerable to terrorism, has already put into place several provisions as their commitments to conduct counter-terrorism actions. These commitments are already in line with the principles and international provisions on existing international conventions, however, its implementation depend mostly on the decision of each Member State. A degree of compliance – such as which Convention is prioritized and which Convention is not; is regional convention more prioritized rather than international convention -- towards various counter-terrorism regulations need to be established, particularly to those countries who become States Parties in both international and regional conventions.

As for Indonesia, giving more power to police in detaining individuals as well as more authority for the prosecutors to prosecute radical individuals wouldn't stop the development of new radicals and extremists. The values of radicalism and extremism spread like fire among Indonesians, washing their brains and indoctrinate hateful values based on wrong understanding on religion. Aside of targeting those who are affiliated or involved in terrorist groups, polices, especially in a country with a big majority of Muslim like Indonesia to open their eyes and ears to the undetected and unmonitored dissemination of religious teachings that are misinterpreted, through what have been outlined in the ASEAN Convention on Counter-Terrorism.

Trainings and capacity-buildings should not only be given to the actors directly mentioned within the Anti-Terrorism Laws, such as polices – particularly special force unit on terrorism – but also to intelligent & the experts in information & technology, bearing in mind the rapid distribution of information through internet and other forms of modern technology. The patterns of information dissemination will be easier to detect if there are integrated unit per region, coordinated by the UN that is specifically tasked to track whether there are tendency of people in receiving and being indoctrinated by such radical values. The information will then be given to related authorities that are provided by the law, such as intelligent and polices, to do further investigation and examination on this particular matter.

The United Nations can also pace up the process of unifying those different legal instruments, especially on the term of universal jurisdictions and in what conditions countries are able to exercise those. The assistance to terrorist-prone countries have to be prioritized by the United Nations, especially the Sixth Committee and the International Law Commission in order to form effective and tangible laws or regulations on terrorism.

In order for the police to effectively take further action towards the dissemination of such radical values, society also needs to take action. It is stated in the Anti-Terrorism Law that those who report the suspected terrors to police will be protected. However, most of societies do not know what kind of protection that they will receive and to what degrees are religious teachings are considered 'radical' or not. Thus, the role of religious leaders and other influential people are important to give the society true understanding on this matter.

Another thing that needs to be highlighted is regarding the trial proceedings for those who have been declared as the accused (defendants). This should also be based on mutual-understanding with the concerned or affected countries, so that the result of the proceedings would satisfy all concerned or affected countries.

People might say that terrorists have no religion. Indeed, its impacts towards human beings are all the same, whether we are Christian, Moslem, even atheists. Terrorist attacks won't see what religion you are believing in. But if we see from clearer perspectives, the perpetrators of those terrorism acts have deep belief in their religious teachings, which are interpreted and implemented wrongly. It is time for countries and international community to be more aware on how the dissemination of these radicalism and extremism values could affect wide range of people and if we don't stop it, it will be planted in everyone's mind and drive them to do this terrible act to mankind. More strategic cooperation between countries, as well as international and regional organizations are needed, making sure that everyone works hand in hand to preserve humanity and maintain kindness and kinship with one another.