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IN THE NAME OF COUNTER-TERRORISM: HUMAN RIGHTS ABUSES IN INDONESIA

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Abstract

Terrorism is indeed one of the most critical issues today. Although the act has been going on for years, some prominent cases such as the tragedy of 9/11 and Indonesian Bali bombings have been taken caused more people to take notice. In so doing, mitigating and preventing terrorism become a high-priority agenda in particular countries in the West. In the name of counter-terrorism strategy, these countries implement policy and action dealing with terror. On this, several problems occur. Among others, abuses of human rights are considered an important negative impact of such strategy. In many cases, tortures, intimidation and so are used to not only collect information about terrorism organization but also to punish terrorists. This paper, in relation to that case, will explore on this matter. To argue, this paper assumes that counter-terrorism strategy has neglected the fundamental rights of human beings and at the same time imposes another 'terror' to terrorists suspect. It will use, further, the case of Indonesia to evidence the claim.

Keywords: counter-terrorism, abuse, human rights

Introduction

The appreciation of human rights and human rights issues in the global arena has been greatly challenged by the endurance of political commitments made by countries for national security reasons. Illegal migration, people smuggling and in particular terrorism are part of national security issues that have been faced by countries especially in the West. In the name of national security, governments deploy a series of detentions for people who are suspected for committing such crimes. However, in the process of detaining, human rights abuses have mounted in such forms such as forced interrogation, unlawful killings and arbitrary detention. United Nation agency on Counter-Terrorism Committee (CTC) has taken into account this issue. It is stated on the CTC website that countering terrorism strategies should regard human rights. Thus, this consideration is adopted in the US Security Council resolution 1373, mentioning that:

"state should take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting

refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts."(Rosand 2003)

Since the 9/11 tragedy, the US intensively adopted anti-terrorism strategies not only in domestic sphere but also in a global scale as international agenda. Recorded cases on human rights abuses as consequence of such policy show that there is a trend that the policy undermines the existence of human rights. In line, Indonesia has adopted this 'global discourse' and more importantly manifests it into national law and regulation. In the aftermath of Bali Bombing in 2002, this agenda of domestic counter-terrorism strategy is becoming more relevant. Hundreds of people, in addition, are subject to torture during the investigation. To a large extent, the implementation of these practices by national police forces and counter-terrorism agencies is in opposition to human rights. More vital, it against the very ground foundation of Indonesian political identity officially written in the *Preambule* of UUD 1945.

In relation to this, the paper illustrates on how and on to what extent the global discourse of counter-terrorism has undermined the attribution of human rights in Indonesia and in particular related to the *grundnorm* of Indonesian constitution. There will be several sections in the paper to structure the arguments. The first section is on paper work done by scholars on the issue of human rights and its relation to counter-terrorism strategies. Meanwhile, the adoption of global strategy on terrorism by Indonesian government will be placed in the second section, whereas the third is about the cases study which shows this practice. It is then followed by discussion in the fourth section and closed by conclusion.

Terrorism and Counter-terrorism strategy in Indonesia

In line with the Preamble of the Indonesian Constitution of 1945, the Republic of Indonesia is a unitary state based on law and has the duty and responsibility to maintain a safe, peaceful, and prosperous nation as well as to actively participate in maintaining world peace (Republik Indonesia 1945). In order to achieve these goals, the government must maintain and enforce sovereignty and protect every citizen from any threat or destructive action both from domestic source and from abroad.

According to US Department of Defence, terrorism is '... politically motivated violence perpetrated against noncombatant targets by sub national group or clandestine agent, usually intended to influence an audience'. Another definition is given by the US Federal Bureau Investigation (FBI) which states '...the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives'.

Terrorism in Indonesia is only a part of political dynamics in the country especially in the post-Soeharto era. In parallel with separatism, insurgency and other political upheavals, terrorism remains the most critical issue where international pressures on the one hand and domestic politics on the other are met. Serious attempts have been conducted to tackle terrorism but it was President Megawati who came into power in 2001 who firstly initiated legal force to highlight a campaign against terrorism. Her two presidential decrees number 4/2002 on establishing Anti-Terrorism Desk and number 5/2002 on coordinating police and army intelligence over terrorism are used as legal basis for anti-terrorism strategy (Waluyo 2007). These two decrees followed the earlier regional agreement signed in November 2001 which was named ASEAN Declaration on Joint Action to Counter Terrorism (Ibid.). The highest legal basis for counter-terrorism strategy is National Law 15/2003 on Eradication of Terrorism.

Moreover, the Anti-Terrorism Law number 15 Year 2003 does not define terrorism per se. Article 1(1) simply states that "the crime of terrorism is any act that fulfills the elements of a crime under this Interim Law." These elements are set out in Articles 6-23 which in article 6 provides a generally-worded description of terrorism: "any person who by intentionally using violence or threats of violence, creates a widespread atmosphere of terror/fear or causes mass casualties, by taking the liberty or lives and property of other people, or causing damage or destruction to strategic vital objects, the environment, public facilities or international facilities, faces the death penalty, or life imprisonment, or between 4 and 20 years' imprisonment." [1]

The discussions of terrorism cover a wide range of areas including subject and motives. Persons, groups of people and even states can be classified into "the doer" of terror. They commit to this action based on various motives which most of them are economic, revenge, sect and war. However, it is urgent to note that terrorism itself is not about religion but it is a strategy or instrument to reach the intended goals.

Some scholars argue that terror is aimed to form a state of fear to force the target in order to push them to follow what terrorists want. Further, terror is created based on the need to change situation radically due to the fulfilment of justice and interest. This interest sometimes is based on the interpretation of religion, ideology and unfairness of socio-political condition (Samekto. 2011). Other statements on the goal of terrorism define that terrorism aims to fear public and therefore attracts attention. In most cases, terror is used if there is no alternative to achive the goals. Also, terrorism psychology is used to persuade public and to spread chaotic situation in society and as consequence people start to ask government's capacity to overcome this situation while at the end people have to obey terrorist's interest (Loqman 1990).

It is generally known that terrorists have closed-personalities. By this, it means that they rarely discuss or tell about what they do and why they commit to terror. Notably, this is also a strategy to cover their network. The organisation of terrorism is effective. Each members is an intelectual actor who has ability to work effectively. Therefore, to uncover the terrorist's network is an uneasy task. It needs a serious effort in specific case, Indonesia.

In order to counter terrorism, the Indonesian government does not have grand strategy. On his statement, Head of the National Police Detachment 88 Brigadier-General Tito Karniavan mentioned "any "soft" and "hard "measures we have successfully conducted thus far were actually personal and ad-hoc initiatives—things that we thought would work best [operationally] under the circumstances." (Hasan et al. 2012). To operationalize this 'unsystematic' strategy, Indonesian government, as already stated somewhere in this paper, employ special task force under Indonesian Police department called Special Detachment 88 (Densus 88).

The Densus 88 is part of broader Indonesian 'architecture' of counter-terrorism strategy. In the post Bali bombings, international assistances, especially by the US, to Indonesia is remarkable. Military assistance is assisted by the Bush administration in Indonesia while at the same time re-opens possibilities of providing financial assistance to Indonesian National Army (Tentara Nasional Indonesia/TNI) (Human Rights Watch 2003). In addition, the US will give about US$ 50 Million to Indonesia for assisting security office and the US Congress has secured another US$ 16 Million to Indonesian police force to establish special anti terrorism unit (Densus 88)

[1] Government In lieu of Law Indonesian Act Number 1/2002 about Counter Terrorism, that has become Law Number 15 year 2003.

(Maraia 2011). Since then, Densus 88 officially acts as a single body of task force to deal with counter-terrorism strategy.

In practice, the operation of Densus 88 in Indonesia is widely criticized. There are atleast two concerns with this. The first is about the coordination among special units of anti-terror which is found, in fact, not only in police force but also in TNI, whereas the second is about human rights violations by Densus 88. Coordination becomes serious issue when there are similar units like Densus 88 reside in other institutions. Some of these units are:

> Anti-Terror Detachment (*Detasemen Penanggulangan Terror, Dengultor TNI AD*) in the Indonesia Army with a call sign of Group 5 Anti Terror unit, and also the 81st Detachment (*Detasemen 81*, *Den 81*) inside the Elite Force of Indonesia Army (Kopassus). There is *Jalamangkara* Detachment (*Detasemen Jalamangkara, Denjaka, TNI AL*) of the Indonesia Navy, which has merged into the Marine Corps. There is also Bravo Detachment (*Detasemen Bravo, Denbravo TNI AU*) which has merged into an elite team of the Indonesia Air Force. The State Intelligence Agency (*Badan Intelijen Negara, BIN*) (Muradi 2009).

The critical comments released by Indonesian Ulama Council (MUI) who persuasively argue to replace Densus 88 with similar institutions due to its missions which in most time undermine the promotion of human rights (Adhi 2013). Some of violations, accordingly, are misidentification of terrorist suspects (case of Karanganyar, Central Java 2012) and Noordin Top's case in 2009 (Ibid.).

Moreover, in dealing with radicalism, the de-radicalization program initiated by the Indonesian National Counterterrorism Agency *(BNPT—Badan Nasional Penanggulangan Terorisme)* has been included in Indonesia's counterterrorism strategy, particularly after the Bali Bombing incident of 2002. At least 700 suspects (Hadi. 2011) of JI members have been arrested and some of them are involved within the program. However, the success of a de-radicalization program is unlikely due to several implemental hindrances， such as rejection of such programs by the terrorist prisoners. Moreover, the Muslim communities argue that such programs are targeted to suppress Muslims and eradicate the principles of Shari'a Law (Al Furqan. 2011) Another implemental challenge comes from the contemporarily existing correctional system in Indonesia. As the final institution in the criminal justice system, Indonesian prisons are not ready to improve its Treatment of Offenders Method (better known by the term correction) into a specific treatment and rehabilitation method that aims to reduce the level of extremism of terrorist prisoners (International Crisis Group 2007). That the overcrowding, corruption, the limitation of facilities and limited human resources either in quantity or quality in correctional institution make it more difficult to achieve its goal to deradicalize terrorist prisoners. More disturbing is the fact that certain prisons are deemed as some sort of recruiting venue to recruit novice terrorist members (Ungerer 2011).

Counter-terrorism and Violations against Human Rights in Indonesia

In the fight against terrorism, human rights law requires that the state should take active steps to protect their society from violent attack in regards to "respect and ensure," however in doing the practice should not violate the rights (Bennoune 2008). Article 5 of the 1948 Universal Declaration of Human Rights (UDHR) states that: "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Moreover in article 9 UDHR states that "no one shall be subjected to arbitrary arrest, detention or exile," that is, no individual,

regardless of circumstances, is to be deprived of their liberty or exiled from their country without having first committed an actual criminal offense against a legal statute, and the government cannot deprive an individual of their liberty without proper due process of law.

As well, the International Covenant on Civil and Political Rights (ICCPR) specifies the protection from arbitrary arrest and detention by the Article 9 which states that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

In line with the aim to promote human rights, Indonesia's government ratified the two main covenants on human rights in 2005: the UN Covenant on Civil and Political Rights (ICCPR), and the UN Covenant on Economic, Social, and Cultural Rights in which Indonesia had been one of the last remaining countries to not ratify the agreements.(Democracy Web. 2014). In addition, the government's human rights office adopted the Indonesian National Plan of Action on Human Rights, which "aimed at invigorating the Indonesian effort to promote and protect the human rights of the Indonesian people, in particular the segments of the community that are most vulnerable to human rights violation."(Ibid.)

In 2000, Indonesia's original 1945 Constitution was amended to include provisions for human rights stated in the Chapter XA of the 2nd Amendment of the Constitution. Prior to 2001, the Constitution only provided that citizens have equal status before the law (Article 27) and the right to live and work in human dignity (Article 27(2)). The Constitution was, and still is, governed broadly by the five guiding state principles of *Pancasila*, which among other ideals, promote social justice and religious freedom, albeit only among six state-sanctioned religions (Ibid.). Moreover, the second amendment of 1945 constitution adheres to the protection of human rights that is related to judicial proceedings. Article 28I states that:

> "(1) The rights to life, to remain free from torture, to freedom of thought and conscience, to adhere to a religion, the right not to be enslaved, to be treated as an individual before the law, and the right not to be prosecuted on the basis of retroactive legislation, are fundamental human rights that shall not be curtailed under any circumstance."

In regards to defendants' rights, Indonesian Criminal Procedure Law Number 8 Year 1981 (KUHAP) provides different rights to defendant in criminal proceedings. During detention, a suspect or an accused has the right to contact his legal counsel, send and receive documents (Articles 57 and article 62 Law of Criminal Procedure); as well as has the right to be visited by a doctor, his family, and relatives. Nevertheless, some key safeguards of the right to a fair trial remain absent from the law, leaving individuals open to human rights violations at different stages of investigation and trial procedures. Amnesty International provides its comment, in which KUHAP (and its draft revision) lacks several fundamental safeguards which ensure that an individual is not unjustly punished, arbitrarily detained or subject to torture or ill-treatment (Amnesty International. 2006).

While there are many regulations on the book, Indonesia's difficulty remains law enforcement. Indonesia has been criticized for the lack of judicial supervision of counter-terrorism strategies conducted by the Detachment 88, resulting in an unlawful killings, arbitrary detention, and torture of terrorist suspects. In 2013, Detachment 88 allegedly abused terrorist suspect during a raid in Poso (Agence France-Presse. 2013, South China Morning Post. 2013)

From the above case, it shows that the Detachment 88 used brutal treatment in dealing with terrorist suspects. Shooting, physical abuse and intimidation are some of the "accepted" procedure that had been done by Detachment 88 during investigation and arrest, resulting in a public outcry to disband the unit (BBC News Asia. 2013). On the other hand, where the conditions in which a person is detained fail to meet minimum standards set by domestic and international law, it may amount to cruel, inhuman or degrading treatment or punishment (CAVR Timor Leste 1998). Suspects and defendant must not be subjected to hardships or constraints other than those resulting from the deprivation of liberty and must be allowed to enjoy all human rights subject to the restrictions that are unavoidable in a closed environment (Ibid.)

Moreover, in 1998 Indonesia ratified The United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT) and it is bound by some obligations to "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction"(United Nations 1985: Article 2(1)) and to "make these offences punishable by appropriate penalties which take into account their grave nature."(United Nations 1985: Article 4(2))

However, the ratification of the convention is not followed by the enactment of regulation that is in line with the convention. Indonesian government does not offer any additional regulations or commentary to see the Convention implemented (Basari. 2013). In fact, based on the Initial Report to the UN Committee against Torture in 2001, the Indonesian government stated that it has fulfilled its obligations under the Convention through existing legislation; including the Indonesian Constitution 1945, the Law Number 39 Year 1999 on Human Rights, and Law Number 26 Year 2000 on Human Rights Court. Moreover, Indonesian government argued that torture is prohibited in articles 351-358 on maltreatment of the Penal Code.

Moreover, in article 354 regulates that if the maltreatment results in death, the offender shall be punished by a maximum imprisonment of ten years. Although torture is already prohibited under the Indonesia's Penal Code, however, there have been cases where the police and military officers who perpetrated torture to the suspects were sentenced to punishment of 9-12 months imprisonment, resulting opinion on public debate that the sentence is too light and unfair due to the absence of an article criminalizing torture (Styannes. 2013). Besides, as pointed out by Chris Ingelse stating that using traditional legal treatment such as maltreatment do not properly address act of torture and it will damage an important qualitative and distinguished aspect of torture (Ingelse in Basari 2013).

Another example of inequality is related to sentencing disparity for the terrorist offender. The term of sentencing disparity exists when similar offenders receive different sentence or when different offenders are treated with the same sentence. Cassia Spohn also explains that the term of sentencing disparity also applies when judges impose different sentences on two offenders with identical criminal histories who are convicted of the same crime, and also when judges impose identical sentences on two offenders whose prior records and crimes are very different, or when the sentence depends on the judge who imposes it or the jurisdiction in which it is imposed (Spohn 2009:128)

In the post Bali Bombing 2002, the outcomes on sentencing for convicted terrorists have been more severe and substantially longer than before. Sentencing has resulted in differential 20+ years (Independent Study 4E 2011) to death penalty (Daily Mail Online. 2013) Nevertheless, in

several terrorism cases, some of the convicted terrorists received less punishment ranging from 2-3 years (Kompas. 2012) for the underage terrorist and 8 to 15 years (The Conversation. 2011) for those who only support and sponsor terrorism act. The disparity on sentencing between these sentences is resulted from the prosecutor's decision to charge a defendant based on the relevant acts of the offense and offender (Okezone. 2013).

This sentencing disparity among terrorist conviction is against the ICCPR as well as the 1945 Indonesian Constitution. As already pointed out in earlier paragraph before that provisions in both laws promote the protection if human rights. Article 27(1) states that "all citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions." Besides, article 26 guarantees that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The above description leads to some potential frameworks on how to understand the Indonesian legal practices dealing with extraordinary case, in this instance, terrorism. Following paragraphs, in addition, fall into three frameworks namely 'window dressing' act, treatment to terrorist and domestic context.

Treatment to Terrorist

It is too obvious to neglect that suspected terrorists would be treated differently. Apart from being 'ordinary' criminals, terrorists are a targeted subject by national security guards. As noted, the US president Reagan allowed abduction of terrorists to bring them from abroad to the US in 1986 (Quigley 1988). Still on the initiative by President Reagan in Omnibus Diplomatic Security and Terrorism Act 1986, there was remained uncertainty on the treatment against suspected terrorism whether they are classified into Prisoners of War (PoW) or just ordinary criminal (Sievert 2002).

Indeed, treatment of terrorists should be different from treatment to ordinary criminals. By and large, there are, at least, two models of treatments for terrorists. First is to bring terrorists, with cooperation, into the jurisdiction where they are currently present, whereas the second is to treat them forcefully such as abduction without any cooperation (Borelli 2003). In respect to the first model, it is always difficult to collect evidences for terrorist's action as it requires information from intelligence agency although this model is more preferable (Middleton 2011). In many terrorism cases, the second model, in practice, is more feasible.

In the case of Abu Omar, the second model of treatment to suspected terrorist is obviously seen. A statement made by his family points out the practice of physical treatment to Abu Omar (BBC News. 2006). Further, the family said:

> "The first measure was to leave him in a room where incredibly loud and unbearable noise was made. He has experienced damage to his hearing," he said. "The second torture was to place him in a sauna at tremendous temperatures and straight after to put him in a cold storeroom, occasioning terrible pain to his bones... as if they were cracking. "The third was to hang him upside down and apply live wires to the sensitive parts of the body including his genitals... and producing electric shocks."

What has been done to Abu Omar demonstrates that suspected terrorists are subjects of human rights abuses. In fact, states do not necessarily pay attention to this as far as the used strategy is effective to combat terrorism. Worse, for the human rights supporters, this kind of strategy is then applied as a justification especially in the situation where national interest is threatened (Calica 2004). However, as Calica argues, the practice of abduction of a suspected terrorist leads to awareness of this into international law in which many countries are still debating on the use of this. Such concerns emerge when the 'effectiveness' of forcible abduction as well as other physical treatments to terrorists are questioned. It is not only, in addition, violating the international Torture Convention, but also triggering retaliation (Tucker 2012).

Domestic context

The two previous analyses emphasize on policy and on treatment toward terrorism, this section meanwhile will explore on how such policy and treatment has related to social context where the case presents. No doubt, in particular Indonesia, UU 15/2003 has triggered social massive reactions by which the reactions mostly come from religious groups. On the one hand, terrorism in Indonesia is used as a mechanism to re-gain economic and political power by police and military under the subject of law enforcement (Harsawaskita and Laksmana 2007). On the other hand, causes of terrorism vary. The argument of 'root causes' of terrorism declares that "the basic concept of the root causes of terrorism is that certain conditions provide a social environment and widespread grievances that, when combined with certain precipitant factors, result in the emergence of terrorist organizations and terrorist acts." (Newman 2006).
What the relevant cause in relation to cases of terrorism in Indonesia is that the fact of incapable state on managing the country. This is shown by Robert Pape (Pape 2005) on his book *Dying to win: The strategic logic of suicide terrorism*. In line with this argument, Indonesia as one of the 'fragile democratic' countries demonstrates that its incapability is demonstrated not only by the continuous practices of corruption but also on how the state apparatus overcome the problem of terrorism. KontraS presents the data that in 2012, there are more than 700 cases on human rights abuses and violations done by Indonesian police and military. These abuses of human rights and violations show that the country is lagging behind in the process of democratization by which it is believed as another causes of emerging terrorism (Kivimäki 2007).

With respect to domestic social context, terrorism is also related with the pervasive issue of poverty and inequality. These remaining issues of poverty and inequality and along with the dehumanization of development imbued with repressive actions by police and military to large extent contribute to the cause of terrorism (Tujan et al. 2004). In relation to this, social context in which people face on their daily life lead them to think that terrorist attacks to national as well as international space are acceptable (Jo 2012). This is an instance that indicates such retaliation toward both the international pressures to countries where terrorism present and as responses of domestic context where the state is incapable to function.

Conclusion

Human rights in the current context are threatened by many pervasive factors. One of them is the global agenda of War on Terror (Wot) which is aggressively endorsed by the US in the post 9/11 tragedy. With the use of bilateral aid as well as international agenda on WoT, the US has 'forced' many developing countries, in particular, countries where the majority of people are Moslem to adopt the strategy. In the case of Indonesia, as it is shown previously, the establishment of special task force such as *Densus 88* is evidence that the country is in line with

the ‘global’ agenda of WoT. This is equipped with a well training supported by the US and other developed countries who are afraid that Indonesia remains the nest of terrorists.

However, when it comes to implementation, the special task force neglects the notion of human rights by which every citizen of Indonesia has. The national constitution guarantees that human rights in the country will be appreciated. Reactions emerge as response toward this task force. Taken into a broader context, the undermining of human rights as well as other physical violations as forms of WoT has triggered continuous debate on how to balance between law enforcement on terrorism and the acknowledgement of human rights. Abduction, torture and violation are indeed against human rights though these are considered an ‘effective’ model dealing with terrorists.

This paper argues then the effort of combating terrorism in Indonesia will only deepen the undermining of human rights. To support this, the analysis in this paper is centered into three inter-related frameworks. It is started firstly by looking at the domestic context in the country where some critical issues are obviously seen. Poverty, ‘fragile democracy’ and state’s incapability to provide basic needs are the fundamental weaknesses that cause terrorism. In addition, human rights abuses are difficult to eliminate as the treatment to terrorist applies physical punishment. This is the second framework that this paper uses. With all these situations, it is hardly believed that Indonesia compliments with the international convention of human rights. The UU 15/ 2003 is only a ‘window dressing’ act to show that the country participates in the global agenda of WoT on the one hand but in reality it dampens the human rights aside from critical considerations.

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