

Decoding Terrorism: Analyzing the Dynamics of Definition in Indonesian Legal Instruments

Reza Maulana Hikam¹

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Abstract: In fighting terrorism, countries such as the Republic of Indonesia adopted legal measures and instruments to implement the policy lawfully. In the creations of such measures and instruments, the Indonesian government try to define terrorist and terrorism via legal approach. Anything that was to be considered terrorist or terrorism must fulfill the categories mentioned in the legal instruments, either government regulation or law. In the process, what defined terrorism was not just an act, even the financing of terrorism can be considered into account so that it can be brought to the court. The articles seek to elaborate the change and dynamics of defining terrorist and terrorism in Indonesian legal instruments since the first regulations about counterterrorism in 2002 until 2018. The process of making such legal instruments is met with critique and amendment that will be discussed further on the subtopics of the articles.

Purpose: This article aims to elaborate the evolution, dynamics and change of the definition of terrorism with historical perspectives from 2002 to 2018.

Design/Methodology/Approach: Literature review, reviewing several literatures that have related topics and selecting several parts of the book to be quoted in the articles that served as the foundation and analysis of the articles.

Findings: This study shows that since the differences between Government Regulation Number 1 of 2002, Law Number 15 of 2003, Law Number 6 of 2006, Law Number

¹ Graduate History Student, University of Hawai'i at Manoa | rezamh@hawaii.edu.

9 of 2013 and Law Number 5 of 2018 have almost the exact definition of terrorism, that was focusing on “sowing terror” into Indonesian society, but there are several additional changes each time related to what became the interest of the regime. All the aforementioned regulation for countering terrorism has derivatives sanctions on those who support the acts that can be included as terrorist. These dynamics and changes from 2002 to 2018 points into one direction, that terrorism is a means to an end.

Originality/Value: The article differs from the usual legal studies article because of the historical approach that was used to oversee the pattern of change in the definition of terrorism in Indonesian counterterrorism legal instruments.

Keywords: Indonesian Government; Legal Instruments; Terrorist Definition

Paper Type: Article Text

Introduction

Terrorism can be interpreted as an act of resistance or attack carried out by a weaker party (usually non-state actors) against a stronger system, such as the state and can be carried out, either single-handedly or with a group of people to reach their political interest. An act of terrorism can be carried by mass-shooting or bombings (including suicide bombings) with an objective to instill terrors throughout the people who watched the act. The most well-known terrorists’ act was the World Trade Center Tragedy or the 9/11 incident. The United States reacted by force via *the war on terror* policy (Epstein 2006).

Since the 9/11 tragedy in New York, terrorism has recently become center of problems in several parts of the world (Kusuma and Pratiwi 2020). Acts of terrorism are often interpreted as bombings (Anakotta, Ubrwarin, and Gukguk 2021) carried out by a group of people (usually Muslims) aimed at the West. This is based on the decision of George W. Bush, the 44th president of the United States, by declaring the *war on terror* following the attacks on the WTC and the Pentagon. He pointed out that there was an

organization named Al-Qaeda, led by Osama bin Laden, an ex-Mujahidin of Afghan War in the 1980s behind the terror attack on 11 September 2001 (Goldstein 2005).

Recently, cases of terrorism have become increasingly common in various parts of the world, including Indonesia (Saleky, Tahamata, and Leatemala 2022). Terrorism itself has become a public threat that creates fear in society. Therefore, the issue of terrorism once again reminds the world of the importance of establishing cooperation in any field based on international law that the United States has carried out after the 9/11 tragedy (Ham 2003). International law carried out by diplomacy between countries is needed to reject acts of terrorism committed by a group of people. Terrorism can become international in scale if it is directed at foreign nationals or foreign targets; carried out jointly by the government or factions from more than one country; and directed to influence the policies of foreign governments (Wilkinson 1977).

The problem of terrorism was always related to how the government defined an act of terrorism, they can implement the right policies or countermeasures. Government like the US defined it in a broad sense so the implementation on the war on terror can be done in a faraway country such as Afghanistan or even Iraq. Different to the US, the Indonesian government is focusing on their area, so they fight against terrorist from the inside, not an outsider one. This article seeks to unravel the dynamics and change of the meaning of terrorist in Indonesia through legal instruments with some critique and interpretation from various studies on Indonesian counterterrorism.

Methods

Literature review, reviewing several literatures that have related topics and selecting several parts of the book to be quoted in the articles that served as the foundation and analysis of the articles.

Discussion and Findings

Government Regulation Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism

Indonesian government under Megawati Soekarnoputri were preparing to counterterrorism by making Government Regulation in Lieu of the Law of the Republic of Indonesia Number 1 of 2002 on counterterrorism. The government regulation was stipulated at Jakarta on October 18, 2002, around a year since 9/11 tragedy in the US. In the aforementioned regulation, the Indonesian government defined terrorist in Chapter III Article 6 as:

Everyone who deliberately uses violence or threats of violence that creates an atmosphere of terror or widespread fear of people or causes mass casualties, by seizing independence or loss of life and property of other people or causing damage or destruction of vital objects. those that are strategic or environmental or public facilities or international facilities, shall be punished with death penalty or life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years.

The article also mention punishment for terrorist, in which their aims were to instill fear into those who saw the act. Another mentioned article on the use of terror tactics was stipulated in Chapter III Article 7:

Everyone who deliberately uses violence or threats of violence intends to create an atmosphere of terror or fear for people widely or to cause mass casualties by seizing independence or loss of life or other people's property, or to cause damage or destruction to objects strategic vital objects, or the environment, or public facilities, or international facilities, shall be punished with a maximum imprisonment of life.

In the second article about terrorist above, the punishment is more severe (life imprisonment), because of their intention to

create atmosphere of terror or fear, which is different from the Chapter III Article 6, which did not include the intention. The second article was the true meaning of terrorism in Indonesian for the first decade of the 21st Century. The regulation itself came after there are several bombing threats throughout Indonesia after the Reformation (Latifa 2018) and found it moment after the 9/11 tragedy. The regulations themselves came into being after the first Bali Bombing on October 12, 2002. Not long after it, the government declare the retroactive principle of the regulation because Indonesia never had a legal measure to react against such act (Kamasa 2015, 225).

Law Number 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism, Becomes Law

Not long after making the first legal instrument for counterterrorism, the government regulation was stipulated as Law Number 15 of 2003 on the Stipulation of Government Regulation in Lieu of Law Number 1 Year 2002 Concerning Eradication of Criminal Acts of Terrorism, Becomes Law. It was stipulated in Jakarta on March 4, 2003, with no amendment. Most of the articles were the same, such as the elaboration of terrorism in the explanation part of the law:

...Terrorism is a transnational, organized crime, and even an international crime that has an extensive network, which threatens national and international peace and security.

In both regulations, the Indonesian government still reacts to the international perspectives of terrorism, and saw the act as somewhat connected into what happened abroad. Some passages in the first regulation even mentioned terrorism in a flight, which inspired the hijacking of a plane on 11 September 2001. However, the rule of law itself does not set terrorists apart from ordinary criminals, besides giving them their own definition in the law.

Law Number 15 of 2003 was the same as the Government Regulation Number 1 of 2002, there is some problem in defining terrorist, because of the interpretative nature of Chapter III Article 6 and Article 7 regarding what is a terrorist. Both articles did not elaborate quantitatively and how to measure “atmosphere of terror and fear for people”, this can lead to determining whether a case is considered an act of terrorism or not depending on the investigator (Ali 2012, 91; Mardenis 2011, 159–60). Both articles used a different kind of offense, Article 6 was a material offense in which the impact was unintentional, meanwhile Article 7 was a formal offense that included intention to sow terror or fear (Masyhar 2009, 87–88). That is why both articles look the same but legally different. If we examine the material offense, we can find that the Article refers to curative or reactive measure, because the offense must be committed before someone can be accused of terrorist (Wiyono 2014, 72). Most of the definition of terrorist act are derived from the existing laws and regulations on criminality, meanwhile, other articles on this law are only derivatives crime in support of the act itself (Prasetyo 2014, 91).

Problem arises from the Constitutional Court when the Law was going to be implemented against the perpetrator of the first Bali Bombing. The Constitutional Court ruled that a Law cannot be put into practice retroactively, since the decision of death sentence was on August 7, 2003, but the bombing happened on October 12, 2002 (Kamasa 2015, 226). In view of the problem, Law Number 15 of 2003 are focusing on positioning terrorism as extraordinary crime and crime against humanity in order to sow terror into society (Golose 2009, 6).

Law of the Republic of Indonesia Number 6 of 2006

Funding is a crucial part of terrorism, there can be no act of terrorism without sufficient funding or financing. This means that the Indonesian government will regulate the funding of terrorism in Law of the Republic of Indonesia Number 6 of 2006. This

regulation was a stipulation of International Convention for the Suppression of the Financing of Terrorism adopted by the General Assembly of the United Nations on December 15, 1999, that in turn, was to be adopted and implemented in Indonesia. The use of these regulations is to ban any transactions to support terrorism, but the regulation itself was influenced by international situation. The adoption itself take quite some time from 1999 to 2006, and the Indonesian government decided to reinforce their own legal instrument by stipulating another regulation in 2013 about terrorism financing. The regulation itself, as stated in the passage, was an adoption of the international convention. In doing so, the Indonesian government was not only adopting but also adapting the international regulations into a national one.

The international convention is focusing on funding, whereas they interpret “funds” as:

...assets of every kind, whether tangible, intangible, moveable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.

The nature of the regulation is so detailed in the international convention to prevent any crack in the system that can be used to fund terrorism. This in turn, will be used as legal measures to be implemented in any member countries of the United Nations, including Indonesia. The detailing account of the terrorist fundings made Indonesian government readily adapt it as one of its legal instruments beside Law Number 15 of 2003.

Law of the Republic of Indonesia Number 9 of 2013

After regime change from Megawati to Susilo Bambang Yudhoyono in 2004, the government added some regulations on the financing of terrorist act via the stipulation of Law of the

Republic of Indonesia Number 9 of 2013 concerning the Prevention and Eradication of Terrorism Financing Crimes on March 13, 2013. The legal instrument was inspired from the International Convention for the Suppression of the Financing of Terrorism in 1999. In the mentioned regulation, the Indonesian government defined terrorism in Chapter I Article 1:

Terrorism crime is any act that fulfills the elements of a crime in accordance with the provisions of the law that regulates the eradication of criminal acts of terrorism.

The funding of terrorism can be categorized from the source of its fundings such as transfer from bank accounts, direct cash, charity from a nonprofit organization, and robbery (Hendriyan 2019, 26–32). Any form of funding will be considered as an act of supporting terrorism although the funders are not directly involved in the act, that is why the Indonesian government devise another kind of law to prevent and punish those who are involved in the funding of terrorism. Funding of terrorism itself was also a principal factor to terrorist act, in which the money or funds are not the objectives, but rather a means to an end (terrorism) and can be acquired through legal or illegal means (Prihandoko 2019, 19). The mentioned Chapter I Article 1 of Law Number 9 of 2013 about the definition of terrorism refers to Law Number 15 of 2003.

Law Number 9 of 2013 also defined in Chapter I Article 1 section 6(a) that everyone involved in the transaction with the intention of using the fund to support terrorism or any transaction involving suspected or convicted terrorist will be held responsible. Although the law itself were focusing on the funding, but it is about the funding of terrorism, so the elaboration of those who were held accountable for their action are explained more detailed in Chapter III Article 4, 5, and 6. Because of the international nature of Law Number 9 of 2013, Indonesia needs to increase cooperation agreements on the prevention and eradication of criminal acts of terrorism financing with other

countries in order to increase further the effectiveness of prevention and eradication of criminal acts of terrorism financing (Marpaung 2019, 69). In turn, anyone who falls into the category of terrorist funders/finances will be considered as perpetrator of criminal acts, although not directly a perpetrator of terrorist act.

Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism into Law

The latest law concerning terrorism was passed in the legislative on June 21, 2018, just a month after the Surabaya bombing that hits several churches and a police station. In the new law, the definition of terrorism was changed into:

Terrorism is an act that uses violence or threats of violence that creates an atmosphere of terror or widespread fear, which can cause mass casualties, and/or cause damage or destruction to strategic vital objects, the environment, public facilities, or international facilities with ideological, political or security disturbance motives.

The new law was the revised version of Law Number 15 of 2003 that has been prepared for quite some time because there are several debates around the definition. Some of the members of the parliament want to incorporate “politically motivated” into the new law to differentiate terrorism from the usual criminal act. Definition can help the law-enforcement agency to implement the rule of engagement to the suspected terrorist (Kardi 2018). The setting of motives in Article 1 of Law No. 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism raises juridical problems because there are three motives for terrorism: ideological, political or security disturbance motives. The undefined motives raise some problems of definition because there is no authentic interpretation of the boundaries of ideological, political or security disturbance motives. With no

clear boundaries regarding the motives of terrorism, the law enforcement agencies or even the regime can interpret the legal instrument subjectively (Bardi 2023, 106).

There are also several new definitions on whom to be regarded as terrorist in the Law Number 5 of 2018 in Chapter I Article 10A (an addition between Article 10 and 11):

1. Everyone who unlawfully imports into the territory of the Unitary State of the Republic of Indonesia, manufactures, receives, obtains, surrenders, controls, carries, has supplies on him or has in his possession, stores, transports, hides, or takes out from the territory of the Unitary State of the Republic of Indonesia chemical weapons, biological weapons, radiology, micro-organisms, nuclear, radioactivity or its components, with the intent to commit the Crime of Terrorism shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 20 (twenty) years, life imprisonment, or death penalty .
2. Everyone who deliberately trades potential materials as Explosives or trades chemical weapons, biological weapons, radiology, microorganisms, nuclear materials, radioactivity, or its components to commit the Crime of Terrorism as referred to in Article 9 or Article 10 shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 7 (seven) years.
3. Everyone who imports into and/or takes out goods from the territory of the Unitary State of the Republic of Indonesia other than those referred to in paragraph (1) and paragraph (21) which can be used to commit the Crime of Terrorism shall be punished with imprisonment for a minimum of 3 (three) years and 12 (twelve) years.

The new categories bring everyone who is involved either directly or indirectly, not just the perpetrator, into the legal

instruments. This means that the Indonesian government will detain any person who is held accountable for supporting terrorist acts, even though they are not directly doing the act itself. Another point of interest is that the new law was focusing also on a new non-conventional weapon that can be used to support terrorism, such as chemical, biological, radioactive weapons.

Article 16A of Law Number 5 of 2018 also included a more severe punishment for terrorists who were involving children in their act will get an additional punishment (1/3 of their original punishment). This was a reaction to the Surabaya bombing, in which children are involved in the bombing. It was a countermeasure for the terrorist, but not a preventive act to disengage the children from the would-be perpetrators. The new legal instruments are focusing on counting whoever involved in the terrorist act.

Conclusion

Indonesian government have prepared countermeasures in the form of legal instruments since the first Bali Bombing occurred in 2002. This kind of countermeasure was always reactive, meaning that the legal instruments were added and amended after several bombings happened, such as the Surabaya bombings. The meaning of terrorist itself widened, from the perpetrator themselves to everyone who were involved in the act, even if theirs were indirect. In defining what was a terrorist for the Indonesian government were those involved in the terrorist act: the perpetrators, those who funds it, people who support it by providing what the terrorist need, they who sold potential materials to the perpetrators, even the importers of the potential materials can be brought to the court if they are proven to be involved deliberately in the terrorist act. This, in turn, can be a problematic turn of event because it can be used to catch anyone who were "suspected" to support terrorist in any kind of thing.

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