

# Strategi of Combating Terrorism and its Implications in Indonesia

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## A. Introduction

There are 12 (twelve) universal instruments and 2(two) strategic resolutions of the Security Council (1373, 1368/2001) which are regarded as a strong legal basis for the prevention and combating the act of terrorism. Despite the unending debates of its definition, it has been admitted universally that terrorism is a crime against civilization. Therefore, Member States shall take such necessary measures to prevent and to combat terrorism activities so as not to give impunity to its perpetrators. Their spirits and strong commitment to combat terrorism and its organizations is reflected in many regional cooperation that has been undertaken either bilaterally or multilaterally such as the establishment of the Asean Security Community(ASC) among Asean member countries.

Indonesia has ratified 4 international instruments related to the prevention and combating terrorism, namely, Convention on Offences and Certain Other Acts Committed on Board Aircraft(1963); Convention for the Suppression of Unlawful Seizure of Aircraft(1970);

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971); and Convention on the Prevention and Punishment of Offences against Internationally Protected Person, Including Diplomatic Agents(1973). Besides, Indonesia has also ratified International Convention for the Suppression of the Financing of Terrorism(1999), and has implemented two resolutions of the Security Council(1368/2001; 1373/2001).

The policy of combating terrorism in Indonesian is more specific and unique since the Bali Bombing on October, 12 year of 2002. Following this atrocities, the Security Council's resolution number 1438, 15 October, year of 2002, expressed its condolences and sympathy to the peoples of Indonesia and the victims and their families. These urges Member States to strengthen their cooperation and bring the perpetrators to justice.

The Bali bombing, indeed, had shocked most of the Indonesian peoples which is known as a peaceful and tolerance society, and against violence. It has subsequently, changed the government's policy in combating terrorism through the promulgation of Law number 15 year of 2003, and by the same token, it applied retroactively to the case of Bali bombing by Law number 16 year of 2003. Some legal experts might questioned the implementation of retroactive articles on this case. But it is of our view that such atrocities in Bali is a gross violation of human rights as well as disgrace our civilized nation. Unfortunately, the Constitutional Court decision's of July, 22 year of 2004 annulled the implementation of law number 15 year of 2003 on the Bali case. The decision raised strong reactions and disappointment of the victims and his/her families.

Security Council Resolution 1373(2001) September 2001, declared that "acts, method and practices of terrorism were contrary to the purposes and principles of the United Nations, and that knowingly financing, planning and inciting terrorist acts were also contrary to the purposes and principles of the United Nations(para 5). In the same resolution, the Security Council decided that all Member States should "take the necessary steps to prevent the commission of terrorist acts(para 2(b)). Security Council Resolution 1368(2001) of 12 September 2001, stated that "any act of international terrorism as a threat to international peace and security".

The position of the government of Indonesia to that of international instruments and resolutions is very clear and firm, and it has been frequently stated by the President of the Republic Indonesia in a national as well as in international forum. The position is also explicitly stipulated in the elucidation of Law number 15 year of 2003, which explain that terrorism is gross violation of human rights such as the rights to life, liberty and to pursuit happiness of our society. The position is clearer since it is translated into a comprehensive national policy on combating terrorism, which entails three perspectives: first, to uphold the protection of the rights of the peoples and to bring the perpetrator/s to justice as well as to end impunity; secondly, to put combating terrorism activity as the utmost priorities so as to define it as a crime against humanity. Thirdly, upholding principle of equality before the law regardless of his/her ethnics, religion, and politics; therefore, equal treatment should be maintained for the sake of perpetrators and the victims as well as the witnesses.

Based on Law on Combating Terrorism, number 15/2003, the government of Indonesia has successfully tried almost fifty perpetrators, and some of them are in progress(see appendix). To strengthen and encourage the efforts of combating terrorism, Indonesia has also established a legal cooperation with other ASEAN countries such as under the scheme of the ASEAN Security Community(ASC). The cooperation includes mutual assistance in criminal matters or extradition or joint investigation. A successful investigation of Bali bombing case, which is known as "the Bali process", is the result of joint investigations and mutual assistance between our government and the government of Australia, USA, and our neighboring countries. The whole Bali process is a great success that has ever been made in the world's effort in combating terrorism since September 11, 2001. The spirit of cooperation to combat terrorism within the ASEAN member states is increasing up to now, even though the differences of legal system among member states sometimes becomes crucial so as to impede the effectively and the efficiency of their regional cooperation. For example, the fact that the Thailand Government did not extradited Hambali to Indonesia is evidently reflects that cooperation between countries seems too costly and also it does not easy to carry out between Member States. To encourage and to strengthen the cooperation in combating terrorism within the ASEAN region, a forum of legal expert of this region should be established for the harmonization of their anti terrorism law.

## Problems and prospect of Law number 15/2003

The drafting of the law number 15/2003 is not easy tasks since the majority of Moslem peoples in Indonesia have a strong reaction, and some of them refused its promulgation. Besides, most of the NGO's in Indonesia critized the first draft of the law on anti terrorism because some articles are contrary to the principle of due process of law, and they critized that its articles are violates the protection of human rights. I acknowledge, their critics are right, because the preparation of the first draft is related to the Freedom of Aceh movement against the government of Indonesia which I believe, they had using marihuana(ganja) to buy sophisticated rifles,bom, and ammunitions (narco terrorism). The second and the third draft were changed substantially, which is added by a sound philosophy, paradigms and approaches. It is also inserted clear methods in preventing and combating terrorism. The process of the second and the third draft has been done successfully in cooperation with experts from Canada and Australia. The Team carefully consider all inputs and critics as well as suggestions from all segment of our society since the statement of the US government on terrorism, has created social tensions and strong reactions from the majority of the Moslem peoples. At first, the Team had not supported by most of the Islamic political parties as well as from high-ranking government officials which represents the Islamic party until the blast of Bali bombing on October, 12 year of 2002. Our position is dilemmatic, whether we should proceed on drafting the law on anti terrorism or rely on the penal code of the year 1818. In such situation, therefore, our duty is not only the drafting per se, but also, to cooling down the angry reactions of the majority of the Moslem peoples. The blast of Bali bombing is a blessing in disguise, because were it not existed, it might be more difficult for us to finalize the law number 15/2003 and, it is impossible to apply retroactively on the Bali case.

To obtain society's acceptance, the team conducted several intensive discussions with the NGO's and Muslim groups such The Islamic Youth Front, and the Muslim organization such as Nahdatull Ulama (NU) in three provinces (Jakarta, West Java, and East Java). In order to get a comprehensive overview to the draft law, the team also conducted several comparative studies on the law and regulations of (related to) terrorism in eleven countries (Australia, Canada, Pakistan, India, Singapore, Malaysia, USA, Germany, French,

Netherlands, and the United Kingdom); and conducted also in-depth study of the three international conventions, twelve international conventions related to terrorism acts, and three Security resolutions. The Republic of Indonesia is a unitary state as well as a State law. Her prime duties and responsibilities are to maintain a secure, peaceful and prosperous life, and proactively participate to maintaining world order and peaceful life. Therefore, the government is obliged to maintain and uphold its sovereignty and to protect each citizen from every threat and destructive activities either comes from inside or outside the country.

Terrorism is a crime against humanity and civilization as well as one of serious threats to the sovereignty of every state because it jeopardizes world peace and security and impairs the people's welfare, therefore, it should be eradicated systematically and sustainably so as to restore and uphold human rights of the society at large. The promulgation of Law number 15 /2003 reflects the government strongest commitment to uphold those ideas as well as to implement international conventions against terrorism and resolution of the Security Council pertaining to prevent and to combat terrorism.

The policy of combating terrorism in Indonesia is different from that of other State policy because it is unique, proactive and anticipatory in nature, and it design for a long-term policy. The policy is based on three considerations; first, Indonesian society consists of a diverse multi-ethnic community and inhabiting thousands of islands scattered throughout its territory where some of them are situated on cross-border with other countries. Second, given such characteristics of Indonesian society, it is their obligations to maintain and increase their vigilance in addressing all forms of act of terrorisms. Third, the conflict of ethnics recently are minimizing the solidarity of one nation. Moreover, it is a step backward in our civilized nation. It might also a breeding-ground for criminal

act of terrorism which eventually hampers the well-being of the Indonesian nation. Accordingly, the drafting of law number 15 year of 2003 recognized three paradigms. These are, the protection of state-sovereignty, and upholding human rights of every citizen includes the victims, and upholding the due process of law principle. Its implementation into the strategy based on "the equal distance concept"; the concept of strategy which stressing on the equality and proportionality. The strategy also proactive, dynamics and punctual and be able to carry out five

functions, namely, preemptive, preventive, repressive as well as rehabilitative and integrated functions.

The whole concept of the strategy of law number 15/2003 has four objectives. First, as a strong legal basis as well as a comprehensive tool to achieve legal certainty of investigation and prosecution; secondly, to create a secure, peace and well-orderly lives among the society; thirdly, to prevent negative impacts of terrorism among the society's life as well as to prevent abuse of power from the State's apparatus in combating terrorism; fourth, to uphold the principle of transparency and accountability in combating terrorism. The objectives, are not only idealistic, but also contains pragmatic approaches which, hopefully, it should be able to undertaken effectively by the government and the society as well. Even though, we realize most Moslem peoples here are becoming cynical to that goals, but we should persistently encourage and actively cooperate with them in combating terrorism in our homeland.

The core issue of success in the prevention and combating terrorism in a developing country such as Indonesia with such a multi-ethnic society is how to build a spirit of togetherness between the government and the society at large, regardless of their ethnics, race and their religions.

The scope of Law number 15 year of 2003 consists of several articles such as article of the acts of terrorism; articles on jurisdiction, territorial jurisdiction as well as extraterritorial jurisdiction; articles on investigation, prosecution, and the trial process such as arrest, search and seizures based on special law of procedure that is different from general criminal procedure law; a longer period of arrest and detention, and harsh sentence with maximum death penalty.

The implementation of Law number 15 year of 2003 on the case of terrorism such as Bali case and Marriot case was success where most of the perpetrators are sentenced to more than 5 years in prison, and some of them are asking an appeal to the High Court or to the Supreme Court. We acknowledge that during the trial press of those cases, there some loopholes in the law number 15, year of 2003, and now, is being revised by the Department of Law and Human Rights as a coordinator of legal drafting in cooperation with other departments. The process of legal drafting as well as the implementation of law number 15/2003 is not without constraints. The major problems are that the process of transition from the authoritarian system into the democratic system brings about a

huge discrepancy between the human rights on the one side, and the human responsibility on the other side. Secondly, it subsequently, creates misperception among most of the Moslem society and the NGO that the responsibility to overcome this atrocities is upon the government. Moreover, the situation become worse since they believe that the issue of "State actor terrorism" more dominantly lies behind the process of drafting as well as in the investigation of terrorist activities. Third, the opponent believes that combating terrorism activity is more political heavy than of law enforcement as such; and even worse they believe that the law of anti terrorism is used by the government to suppress their freedom of expression and assembly. Fourth, the reality of politics in Indonesia show that many political party are Islamic party, and some of them is known as radical one. And at the same time and coincidentally, all perpetrators/defendant of terrorism are Moslems. Therefore, this unfriendly situations creates suspicious and traumatic among most of the Moslem peoples toward each steps that has been undertaken by the government in combating terrorism. Fifth, the weakness of coordination between law enforcement officials on the one side, and the intelligence activities and other agencies (immigration; customs; internal affairs) on the other side, impedes the effectiveness and efficiency of preventing and combating terrorism.

In conclusions, first, the success of the prevention and combating terrorism in Indonesia is solely depends unto the integrity and leadership of the President as the highest commander in chief of the army and the government as well. Secondly, it depends on the coordination and cooperation of all his allies such as the Head of the police, the Head of the Attorney General Offices, the Head of Intelligence services, and the spirit and commitment of the Chief of the Supreme Court and all judges in combating terrorism. Third, it also depends on how much progress the government could works together intensively with our Moslem society so as to create a positive views and perceptions toward the effort of combating terrorism activity. Fourth, it depends also on the society's participation and the whistle blower act where the government could fully protect every witness before, during and after the trial. Fifth, it also depends on the spirit of cooperativeness and strong commitments of our neighboring countries within the regions despite the fact that each country has its different legal systems.