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THE IMPACT OF DEMOCRATIZATION AND INTERNATIONAL EXPOSURE TO INDONESIAN COUNTER-TERRORISM

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Abstract

This article explains the influence of the United States of America to Indonesian counter-terrorism. Two aspects of counter-terrorism are explained: effectiveness and adherence to human rights values. It argues that America's emphasis on the need to forge security cooperation in responding to terrorism facilitated human rights values to be adopted as justification of counter-terrorism, rather than a balancer to its effectiveness. Indonesia's cooperation with the U.S in counter-terrorism has facilitated the growth of the restitutive or kinetic measures, but neglects a strengthening of political leadership over institutional development of counter-terrorism. The latter can be judged from the absence of policy-evaluation, strategy document, and joint capacity-development of other agencies responsible for counter-terrorism. In the long run, this paper argues, the lack of political leadership nurtures the tradition impunity to the security apparatuses in the conduct of counter-terrorism.

Keyword

Counter-terrorism, Democratization, International Exposure, Indonesia, US-Indonesia Relations

Abstrak

Tulisan ini menjelaskan pengaruh Amerika Serikat terhadap kebijakan kontra-terorisme di Indonesia. Terdapat dua aspek dalam kontra terorisme yang dijelaskan: efektivitas dan kepatuhan terhadap nilai-nilai hak asasi manusia. Tulisan ini berpendapat bahwa demokratisasi di Indonesia menyebabkan kepatuhan terhadap nilai-nilai hak asasi manusia menjadi faktor yang mempengaruhi legitimasi politik kontra-terorisme. Di sisi lain, kebutuhan Amerika Serikat untuk menjalin kerja sama keamanan dalam merespons terorisme memfasilitasi nilai-nilai hak asasi manusia untuk diadopsi sebagai justifikasi kontra-terorisme, tetapi tidak berperan sebagai penyeimbang terhadap efektivitasnya. Kerjasama Indonesia dengan Amerika Serikat dalam kontra-terorisme telah memfasilitasi pertumbuhan tindakan restitutif atau kinetik tetapi tidak mendorong munculnya kepemimpinan politik khususnya dalam hal pembangunan kelembagaan kontra-terorisme. Poin terakhir dapat dinilai dari tidak adanya evaluasi kebijakan, dokumen strategi, dan pengembangan kapasitas bersama dari agen lain yang bertanggung jawab atas kontra-terorisme. Dalam jangka panjang, tulisan ini berpendapat, kurangnya kepemimpinan politik akan meningkatkan impunitas tradisi ke aparat keamanan dalam melakukan kontra-terorisme.

Kata Kunci

Kontra-terorisme, Demokratisasi, Keterpaparan Internasional, Indonesia, Hubungan AS-Indonesia

INTRODUCTION

Terrorism has been elevated to the level of exceptional crime in Indonesia since the first Bali bombings took place in October 2002. Various national laws have been

enacted to criminalize terrorism; some of them were the result of adoption of international conventions; others were enacted to curb the funding of terrorist activities. However, the most important law has been Law 15/2003 on the Eradication of Terrorism Crime which was an adoption of By Law 2/2002, an emergency law enacted by the executive branch to facilitate prosecution of the first Bali bombers. At the time of writing, the Government is undertaking a process of amending Law 15/2003. Law 15/2003 and its amendment bill brought forward various measures that were exceptional in Indonesia's political and legal context. Various international praises have been addressed to Indonesian counter-terrorism – specifically the police counter-terrorist unit Detachment 88 – as both effective and humanitarian policy of response to terrorism in cracking down Islamic militants (Davies & Randonuwu, 2017). Effectiveness in shattering terrorist networks seem to dominate international discourses on Indonesian terrorism, rather than evaluation in human rights adherence. Seems missing from international attention is the fact that Indonesian counter-terrorism practice is also marked by human rights violations.

This article discusses the impact of democratization and international exposure to Indonesian counter-terrorism. It more specifically asks to what extent has the U.S. support for Indonesia's counter-terrorism contributed to the latter's institutional capacity to hold an accountable counter-terrorism policy? Democratization refers to the process of political openness and constitutional reform that began to unfold since 1998; international exposure refers to the attention, assessments and cooperation from other states towards the strengthening of Indonesia's response to terrorism. As democratization unfolded in 1998, the executive power had been losing its socio-political control over its populace. The practice of strong control of the executive power and its apparatuses in the conduct of counter-terrorism - as reflected by the country's history of counter-terrorism during Sukarno's and Suharto's presidencies - could no longer apply in the aftermath of Suharto's downfall in 1998. However, international exposure to the nation's terrorism and Islamic extremism problems following 9/11 has placed less attention to human rights values and more to the effectiveness of response of the state to terrorism. Therefore, human rights values that have been flourishing through non-state organizations' movements after 1998 failed to gain control over the discourses of counter-terrorism policy-making since 2003. The emphasis on effectiveness from international actors is resonant with the aspirations for returning to strong past counter-terrorism and the need to bring back the power of the executive in the reform era.

It is the main finding of this study that the concern of other states - particularly the United States - had mostly been in the area of effectiveness rather than human rights accountability and it had helped in tilting the balance of counter-terrorism towards kinetic capacity of counter-terrorism, which led to an absence of effectiveness assessment and impunity in counter-terrorism. As the security apparatuses of the state (executive power) - notably the police - gains power expansion, the legislative remains largely uninterested to seriously take ownership of terrorism problem, except during crises when terrorist attacks had just taken place. On the other hand, the executive power remains absent from the responsibility to be neither accountable for the losses of the citizens because of counter-terrorism or the public evaluation of counter-terrorism. In this respect, the result of international attention to effectiveness of counter-terrorism in Indonesia is a strong security apparatuses for counter-terrorism - notably the police - and the political institutions devoid of willingness and/or capability to conduct a responsible counter-terrorism.

This article will proceed as follows. First, it elaborates on the definition of terrorism and counterterrorism. The second part breaks counter-terrorism into two categories of measurement: effectiveness and human rights adherence. Effectiveness of counterterrorism emphasizes on the achievement of accuracy in the capitulation of terrorist network, rather than neutralization of individual terrorists. Human rights dimension determines the legitimacy of counter-terrorism at both international and domestic levels. This part shows that although values of human rights values influence the legitimacy of democratic states' counter-terrorism, the way these states adopt human rights values into their policies can be guided by the purpose of justifying counter-terrorism rather than safeguarding basic rights of the citizens. The third part empirically looks at Indonesian terrorism and counter-terrorism dynamics and the manifestations of international attention to them. This part shows that transnational actors influence Indonesian terrorism –particularly in the reform era – and that counter-terrorism response is under an international pressure to gain more effectiveness rather than human rights adherents. This article concludes that international attention to Indonesia's response to terrorism has so far bolstered the country's capability in kinetic response to terrorism and preventive neutralization of terrorist individuals that is achieved through expanded power of the law enforcers. The international attention and cooperation to Indonesia, however, tends to obscure the fact that institutional capacity of Indonesian government in holding

accountable counter-terrorism in both effectiveness and human rights dimensions are still questionable.

How does human rights and democratic values shape a state's counter-terrorism policy? This section lays out analytical framework that situates human rights values as a shaping factor for democracies' articulation of counter-terrorism policy. Democratizing states are more susceptible to human rights values; in their effort to justify a constitutionally-violating counter-terrorism law, democratic states will shape their articulation of counter-terrorism to comply with human rights values.

In delivering security to their constituents, functioning states are generally expected to be capable of rationalizing problems as threats or potential threats and allocate available means to respond to them. The works of studies on state's response to terrorism rest on an underlying assumption regarding states' capacity to designate a particular actor as the 'terrorist.' Colin Wight argues that terrorism cannot be defined without the concept of 'state'. An accumulation and appropriation of states' material capabilities --including territorial, population, and natural resources -- and political authority mark the history of modern states' control over the populace. Terrorism is considered as a reaction to discontent and dissent toward the states' legitimacy. In this sense, terrorists specifically target non-state actors as indirect targets to deliver a message to the audience of their attacks. As argues by Wight:

“Terrorism is best considered as a form of political communication that uses violence [...] whatever terrorism is, it involves the deliberate attempt to enact harm on non-state actors through the use of illegitimate violence with [...] the aim of communicating a political message. As such, it is a form of violent political communication where the victims of such acts are not the intended recipients of the message. Meanwhile, overt and covert attacks on the institutions and agents of state should be considered as freedom fighting, since the aim is not primarily to spread a message, but to disrupt the functions of state, and the objects of the violence are the subjects one wishes to communicate with, or destroy (Wight, 2009).”

Wight's understanding of terrorism not only articulates states' capacity to designate a terrorist-enemy, but also an enemy of unequal power to it, since their actions are rendered illegitimate (Nedal, 2009). This issue potentially caused a difficulty in determining success or effectiveness in counter-terrorism, because states are expected to engender their own parameters of effectiveness in its counter-terrorism practices.

Counter-terrorism is the *restitutive aspect* of state's response to terrorism. As such, it is concerned mainly at neutralizing the capacity of terrorists in undertaking attacks

as well as deterrence of future perpetrators. Another aspect of response to terrorism is called the *restorative aspect*, which is popularly known as anti-terrorism. Restorative aspect refers to the amelioration of factors that are regarded to constitute the structure of behavior for individuals and groups that commit terrorism. Terrorists interpret their environments as posing an injustice towards groups, and act in their name through violence. The restorative aspect includes increasing inclusivity in socio-economic opportunities as well as providing less hospitable environment for violent extremism to grow (Aly et al., 2015).

An acceptable counter-terrorism articulation for public and international audience for democratic states is human rights adherence; the articulation of human rights adherence renders the state's sovereign authority not unlimited. Counter-terrorism is not only judged by its effectiveness, but also the human costs that the policy has incurred to achieve such effectiveness. Due to the exceptional power (to define and respond threats) of the sovereign political authority, it must be put within the logic of appropriateness, or what should and should not be expected of the implementation of the role of the sovereign.

A nation-state in the contemporary era is limited in its execution of sovereign power by 'universally accepted principles and norms'; these mostly comprise of its ability to provide the fulfillment of individual fundamental rights of its citizens. As David Held stipulates: "Sovereignty can no longer be understood in terms of the categories of untrammelled effective power. Rather a legitimate state must increasingly be understood through the language of democracy and human rights. Legitimate authority has become linked, in moral and legal terms, with the maintenance of human rights values and democratic standards" (Held, 2004).

But what exactly drives a sovereign to choose to abide by human rights values and democratic standards? In this respect, Finnemore and Sikkink have defined norm as a "standard of appropriate behavior for actors with a given identity" (Finnemore & Sikkink, 1998). The state's choice of identity and interest, therefore, determines the international norms to which it abides by. States that opt for democracy are by definition opening themselves to the shaping order of other international actors, including international organizations, nation states and international civil society organizations that promote and appeal for democracy and international human rights (Khagram et al., 2002). A state's choice of identity can be more formally reflected by their constitution and the international laws that it has put into effect through ratification process. The latter is an indication of

an incorporation of international norm into the discourses of national political actors. The state's concern that leads it to the incorporation of international norms may vary, but the state ultimately considers that its domestic legitimacy and international reputation depend on its verifiable observation of international norms.

As they seek to avoid isolationism and become part of an international community, states converge their expectations with others in the community regarding the treatment of their citizens. Respect for human rights determines the recognition of international society, which lends support for the legitimacy of actions by the sovereign (Evans, 2005). Indeed, state actors can articulate international human rights norms precisely for justifying a sense of universality, i.e. projecting their choice of actions as part of what is expected of members of global society. This has been particularly the case after the International Commission on Intervention and State Sovereignty endorsed a reconceptualization of sovereignty into a responsibility to protect (ICISS, 2001). This means that internal (responsibility to provide security) and external (recognition) conceptualizations of sovereignty are merged together (Chowdhury, 2011), making the first as conditional for the latter.

By acquiring recognition of membership or belonging to an international community states also hope to gain material benefits. International loans and political or military aid are allocated based on the indicators of human rights records. As Ignatieff points out: "Naming and shaming for human rights abuses now have real consequences" (Ignatieff, 2001). As a result, state actors who associate themselves with democratic norms will struggle to show respect for human rights as part of the legitimacy of their sovereignty. With benefits accruing from adhering to human rights principles, both material and legitimacy, states proactively seek to exhibit a stance that upholds human rights principles to strengthen the legitimacy of their actions.

Articulation or rhetoric of counter-terrorism is one of the most reliable site for searching state's conformity with human rights values. The government has an advantage on the ability to dominate the discourses of terrorism; they can conduct frequent articulation of rhetoric on how to fight terrorism. Therefore, the dominant public opinion and the subsequent policy outcomes are constituted by government's own counter-terrorism rhetoric. On the other hand, the government is dependent on the existing discursive resources within the society. Governments need to be aware of the social context, the audience to be targeted in persuading the urgency for the policy and the messages that will achieve resonance with the audience. This has been argued by

Chowdhury and Krebs: "... discursive fields constitute the range of socially sustainable counterterrorist rhetoric and thus shape policy outcomes as well" (Chowdhury & Krebs, 2010).

Studies of counter-terrorism rhetoric has shown that effectiveness rather than human rights adherence is increasingly seen to be more effective in convincing the constituents for the need of the policy. For example, PISOIU finds that the government's argumentation strategies in the EU and the United States are commonly constituted by components of legality (that the measures to be conducted are in line with existing legal frames), judicial (the prioritization of criminal justice system as an instrument of counter-terrorism), prevention (of future terrorist attacks), protection (of the nation as well as individuals and groups against terrorism), operational effectiveness (the need to acquire technical skills and capacity to conduct effective counter-terrorism) and exceptionality (the need to undertake extraordinary measure to respond extraordinary situations) (PISOIU, 2013). Operational effectiveness has been found by PISOIU to appear more salient in counter-terrorism rhetoric as it informs the audience about the prospect of the policy to achieve success in stopping terrorism. Nevertheless, each of the components of counter-terrorism rhetoric is derived "from shared values and beliefs that are available in a cultural pool of meanings", rather than independently generated by "securitizing actors".

What can be inferred from the theoretical exercise in this part of the article is that political authority of the sovereign holds importance in setting the goals of counter-terrorism as well as being accountable to the results and consequences of terrorism and responses to terrorism. The government seeks to achieve resonance (approval) with its constituents to justify counter-terrorism through convergence with context and history (Heller et. al., 2012); context and history provide the structural milieu in which effectiveness and human rights values are balanced. The discursive strategy employed by the government reflects what is appropriate or acceptable in the conduct of counter-terrorism, but also where accountability lies when the constituents themselves should bear the costs of counter-terrorism; therefore, they should not neglect the importance of putting themselves at the helm of accountability to those who bear the cost of terrorism and counter-terrorism. The following section will show that International exposure to the dynamics of response to terrorism in Indonesia exposes its government to international attention in the effectiveness of terrorism, which pays less attention to human rights.

DISCUSSION

Historicizing Indonesian Counter-Terrorism

Indonesia's terrorism problem is rooted in its history of war for independence between 1945-1949. An armed Islamic movement originally established to fight alongside the nascent republic against the re-invading Dutch armed forces - called Darul Islam/Tentara Islam Indonesia (Islamic Sovereign/ Indonesian Islamic Brigade, heretoforth DI/TII) was embittered by the republic's decision to completely reject the movement's aspiration to establish an Islamic governance for Indonesians. Due to the nature of DI/TII movement as an insurgency, the government's counter-terrorism was mainly military-led counter-insurgency, which only began to take place in the 1950's. Nevertheless, 'terrorism' label was already applied against the DI/TII militants.

Counter-terrorism in the Suharto's presidency was facing a trans-generational extension of DI/TII, which resulted from the Indonesian military's use of Islamic forces as the arm of the government to prevail politically. Absence of international attention to the practice of counter-terrorism, in addition to absence of checks and balances from its domestic political system, has allowed the executive power and its security apparatuses - notably the military - not only to respond to threats of terrorism without limits of human rights accountability but also to manipulate the facts regarding the threat for the political benefit of the power holders. The way terrorism was handled in Indonesia's authoritarian past assured a trans-generational recycle of the movement to the country's reform years.

Acts of terrorism in the reform era began to take place right before the first election in Indonesia's democratic years in 1999. The timing of the attack has been suggested to correlate with the effort to project Islamic political movement as an embattled groups of people who are continually discredited; indeed, the aftermath of terrorist attacks in Jakarta ever since the 1999 Istiqlal Mosque bombing in Central Jakarta has been indicated by an emergence of frames of terrorist attacks as attempts at discrediting Indonesian Islam. The fact that terrorist attacks tended to increase in the following years up to 2002 has also been correlated with the loss of the Islamic political parties in 1999 and all of the other elections that followed.

The republic was relatively independent from foreign attention in conducting its counter-terrorism in the pre-reform era. However, international attention to bombings in Jakarta began to emerge in 2001 (before 9/11) as they seemed to take place more frequently and no specific policy response seemed to have been produced. International coverage of terrorist attack in Indonesia began to take place in the aftermath of the 2001 Jakarta Stock Exchange Building; the *Financial Times* associated the bombings with political instability and international pressure on President Wahid's government over the

killing of UN workers in West Timor. Similar to the coverage of the bombings in Indonesia, it also gave voice to the concern over military-involvement and associated security problems with political instability:

“The professional nature of the bombing is likely to add to investors' concerns about political stability in Indonesia ... Indonesia has been swept by *political instability* since the autocratic President Suharto stepped down in May 1998 amid riots and popular protests. *Security* problems and *political uncertainty* have hampered Indonesia's progress towards economic recovery, at the same time as its neighbours are emerging from the region's financial crisis” (McCawley, 2000).

The threat of transnational terrorism materialized in Jakarta as the bombing in front of the residence of Ambassador Leonidas Caday, Philippines Ambassador for Indonesia; the attack initiated the discourse of international terrorism among Indonesians. The word ‘*terorisme*’ (‘terrorism’) actually began its appearance in the mainstream media as part of the discourse of international terrorism. The use of the word ‘terrorism’ appears more in editorials and newspaper’s analysis rather than the utterances quoted from the security officers or executive officials (Kompas, 2001). In the months before 9/11, Indonesian intelligence began to voice a concern of connections between domestic terrorist cells and Al-Qaeda. The Head of State Intelligence Body (BIN) Hendropriyono stated on 24 August 2001 that some groups in Indonesia had served as a “shelter for international terrorism agents”. Meanwhile, there were actors that had been associated with Indonesian terrorism: Jihadi Group led by Imam Samudra and Hambali, Tommy Suharto, and Aceh Free Movement (Kompas, 2000). However, Indonesian state officials were divided on the confirmation of Al-Qaeda’s presence; while in general they denied that the presence of Al-Qaeda had any evidence, some officials and diplomats articulated that a number of foreign citizens associated with Al-Qaeda were already evicted from Indonesia *several times* (Kompas, 2002a). The ‘Al-Qaeda’s presence’ discourse also created a divisiveness in the society between those who were critical against the international warnings of Al-Qaeda’s and JI’s presence and those who demanded the government to clarify the state of Al-Qaeda’s presence conclusively.

The international attention to Indonesia’s response to terrorism intensified in the aftermath of 9/11 and developments in the region involving Indonesian militants, which pressured Indonesia into committing serious effort to apprehend militants. Singapore’s Senior Minister Lee Kuan Yew stated that Singapore was still vulnerable to terrorist attacks because the leaders of the extremist cell - notably the ‘leader of JI’ Abu Bakar

Ba'ashir - were still roaming free in Indonesia (Kompas, 2002b). This statement was back-grounded by the finding that emerged following Al-Ghozi's confession to the Philippine police that he had planned attacks against American facilities in Singapore, in addition to his involvement in the bombing of Metro Manila train station on 30 December 2000 (Kompas, 2002c). The arrest of Fathur Rahman Al-Ghozi was initially reported in a small column in a newspaper *KOMPAS* at the end of January 2002, as "the main leader of Jemaah Islamiyah" whose interrogation led to the capture of individuals believed to have been a member of Al-Qaeda network in Southern Philippines (Kompas, 2002d). The notion of Al-Qaeda's presence in Southeast Asia was a precursor to the pressure of the United States to demand for more assertive counter-terrorism by Indonesia. Following Ghozy's arrest, US Ambassador for Singapore Frank Lavin announced that 13 suspected terrorists who planned the attack against American targets, including the US Embassy in Singapore had fled to Indonesia. Ambassador Lavin expressed his concern by comparing the performance of Southeast Asian States in counter-terrorism:

"I sense an uncertainty of the nature of the challenge faced by Indonesia; we have seen arrests in Singapore and Malaysia, but we have not seen such response in Indonesia, and this is worrying. President Megawati had voiced her full support on the global coalition of anti-terrorism. Therefore, we expect a follow-up from Indonesia" (Kompas, 2002e).

Responding to such pressure, Indonesian public associated this demand to capture suspected terrorists as a potential scale-back of the progress in democratization that Indonesia had only recently begun. A more heavy-handed approach to terrorism was associated with prioritization of empowering the security sector and repression of democracy; specifically, counter-terrorism was associated with the lifting of arms-embargo by the U.S. (Tempo, 2002a), which was applied in response to Indonesia's human rights violations in the protests taking place in Santa Cruz, East Timor in 1991.

This was to change immediately following the shock and horror of the bombings in Bali on 12 October 2002. This watershed event marked the beginning of formal counter-terrorism policy making in Indonesia. Human rights discourse was utilized by the government as instrument of justification not through the projection of the proposed counter-terrorism as human rights abiding measures but through the projection of the government as "different from the past authoritarian state" and terrorism as "extraordinary crime" and "crime against humanity". Human rights notions helped the government to structure its rhetoric in convincing the public of both the 'harmlessness'

as well as the importance of Anti-Terrorism Law (at the time was By-Laws 1/2002 and 2/2002, later on adopted as Laws 15/2003 and 16/2003). Indonesia's existing Anti-Terrorism Law (ATL, referring to Law 15/2003) is built upon the premise that terrorism is a form of human rights violation, and therefore the government is justified to make infringement of the constitution in practicing counter-terrorism.

Due to Bali bombings' massive casualties the event helped constitute terrorism as an exceptional issue: "acts of terrorism have been recognized as a *crime against humanity*" (Kompas, 2002f). The exceptionality of the bombings was also constituted by the international perception to the Bali bombings as "the second most catastrophic case (of terrorism) after 9/11" (Republika, 2002).

The invocation of the crime against humanity concept is a selective intertextuality strategy to legitimize the anti-terrorism policy. The discourse of 'crime against humanity' was spoken and written in texts by Minister Mahendra *without translation into Indonesian words*. This indicated a direct inter-textuality with article 7 of the Rome Statute of the International Criminal Court, which defines 'crime against humanity' as actions (in this case 'murders') that are 'committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack' (ICC, 1998). By that definition, crime against humanity itself is not unprecedented before the Bali bombings, and it is not just indicated by the previous public place bombings. In 1998, for example, National Commission on Human Rights had found an indication of crime against humanity in the riots that followed the resignation of Suharto from presidency in May 1998 where repeated cruel gang rapes of ethnic Chinese women and other Indonesian citizens in Jakarta and other towns; an independent fact-finding team confirmed this, and suggested further investigation into former Lt. General Prabowo Subianto (Blackburn, 2004).

As a result of the success of the legislation of ATL, foreign aid for Indonesian police began to pour in and the ban on the Indonesian military was lifted. The establishment of police counter-terrorism special forces Detachment 88 was the most notable moment of foreign assistance to Indonesian counter-terrorism effort. Detachment 88 was initiated as a 400-strong counter-terrorism unit capable of handling bomb investigations, terrorist acts, hostage taking and armed assaults. But its reputation is also constituted by its history of heavy U.S. support for its establishment. It was initially funded, trained, and armed by the U.S. government through the U.S. State Department; members of the diplomatic security service, retired agents from the U.S. Secret Service,

the Federal Bureau of Investigation and the Central Intelligence Agency were employed to train specially screened Indonesian policemen. The U.S. government also provided US\$16 million in funding for the new police unit in order to procure communications equipment, night-vision gear, technical support and weaponry; this was in addition to the U.S. Justice Department's US\$40 million spending on a project to make the Indonesian police more responsive since the separation of the police from the military in 2000 (McBeth, 2003).

Assistance for Indonesian military was formally implemented as a resumption of military education and training through International Military Education and Training (IMET) program, which was halted after Indonesian troops killed unarmed demonstrators in East Timor in 1991. The resumption of military assistance was problematic because it should be based on the fulfillment of the Leahy Conditions. The 'Leahy conditions' - which was enacted into law in late 1999 by the U.S. Congress made the allocation of military training and arms sales to the TNI conditional on the prosecution of military and militia personnel responsible for human rights violations in East Timor groups during the UN-organised plebiscite in 1999, the repatriation of East Timorese refugees, an audit of the TNI's finances, access for human-rights monitors to conflict zones such as Aceh, Papua and Maluku, and the release of political detainees. Most of these conditions had not been fulfilled by the time the Bali bombings took place in October 2002. Nevertheless, since early 2002, Commander-in-Chief Pacific Fleet Admiral Blair requested that restrictions based on the 1999 Leahy Amendment, which prevented resumption of U.S.-Indonesian military-to-military relations, be lifted (Christoffersen, 2002). This took place after President Megawati and President George W. Bush met in Washington in 2001. The Bali bombings boosted the conviction of those US officials - notably Deputy Secretary of Defense Paul Wolfowitz, a former ambassador to Indonesia - who argued that restoring military ties with Indonesia would support US policy in Southeast Asia.

In the beginning of the resumption of military assistance, the U.S. Senate approved US\$400,000 in IMET funding for Indonesia in January 2003, which were aimed mainly at educating civilian officials (Strategic Survey, 2003). However, the United States and Indonesia cooperated on counterterrorism in a number of other areas with assistance going to the police and security officials, prosecutors, legislators, immigration officials, banking regulators and others. Capacity building programs from the U.S. have included funding for the establishment of a national police counterterrorism unit, counterterrorism training for police and security officials, financial intelligence unit

training to strengthen anti-money laundering, train counterterror intelligence analysts, and an analyst exchange program with the Treasury Department. Other programs include training and assistance to establish a border security system as part of the Terrorist Interdiction Program; and regional counterterrorism fellowships to provide training on counterterrorism and related issues to the Indonesian military (Vaughn et al., 2008).

Further development on the lifting of the ban on military assistance took place in 2002 when Secretary of State issued a certification mandating FBI's investigation into the attack on the American citizens in Papua, which satisfied the congressional conditions for the resumption of full Indonesian participation in the IMET program. In May 2005, the U.S. resumed Foreign Military Sales (FMS) of non-lethal U.S. articles to Indonesia and the George W. Bush administration lobbied hard in Congress for resuming FMS of lethal defense articles. The Administration secured foreign military sales for lethal defense equipment for fiscal year 2006 foreign operations appropriations bill. This appropriation bill added a clause that authorized the Secretary of Defense to produce a waiver for the Leahy conditions that were still applied for foreign military sales appropriation bills on grounds of "the national security interests of the United States." The Secretary of the State issued this waiver in November 2005.

Foreign funding and assistance to Indonesian counter-terrorism, however, had not resulted in the institutional capacity of the government in policy-making. To begin with, Indonesian government avoided from having to designate terrorist entities, but instead adhered to designations of terrorist organization by other international actors, including other states and the UN. Thus, in regard to JI, the Indonesian government did not designate it as a terrorist organization but would respect others' decisions to do so (Kompas, 2002g). As Jemaah Islamiyah was designated as a terrorist organization by the United Nations and a number of states, the Indonesian government submitted its support to the designation and promised to legally handle its citizens involved within the organization (Kompas, 2002h). The government recognized the existence of Jemaah Islamiyah as a terrorist organization through its designation as a terrorist organization by the United Nation Security Council Resolution 1267 (UN, 2014).

The lack of institutional development is marked by a minimum development of a coherent national strategy or policy in counter-terrorism. The institutional building in counter-terrorism took place as President Megawati signed a Presidential Decree for the Ministry of Security and Political Affairs to form a 'non-structural unit' within the ministry's secretariat; it was tasked with the formulation of policies to "eradicate

terrorism-crime” and report to the president about these policy formulations so as to ‘comprehensively reveal every terrorism activity’ (President’s Decree, no.4/2002). The president’s decree resulted in the establishment of a Coordination Desk for Terrorism Eradication (*Desk Koordinasi Pemberantasan Terorisme*) within the Ministry of Political and Security Affairs. The Coordination Desk was to last until 2010, when President Yudhoyono established an independent body called National Terrorism Mitigation Body (*Badan Nasional Penanggulangan Terorisme*/BNPT). A new presidential decree was produced in 2012, indicating a change of focus of work. BNPT is authorized to formulate policies and strategies in and coordinate all measures pertaining to terrorism prevention. Until the time of writing, however, the BNPT has not produced a single document that states explicitly the grand strategy of response to terrorism that the public can access.

The legal framework for ethics and accountability of counter-terrorism progressed slowly. One remarkable characteristic of such progress is the fact that development of code of conduct in counter-terrorism, specifically in matters pertaining to terrorist suspects handling and witness protection are relegated to executive and operational agencies to which access is very limited. These include the government’s regulation on the protection of witnesses, prosecutors, attorneys and judges in the due process of law of terrorism cases (Government Regulation 24/2013) and the Head of Police Forces’ regulation on the procedure on terrorist suspects handling (Head of Police Regulation 23/2011).

Several laws pertaining to terrorism have been promulgated and were mostly ratifications of international conventions, including ASEAN Convention on Counter-Terrorism (Law 5/2012), Convention for the Suppression of Acts of Nuclear Terrorism, and the 1999 Convention for the Suppression of the Financing of Terrorism. Besides ratifications, the only national law on anti-terrorism enacted after Law 15/2003 was Law 9/2013 on the prevention and eradication of terrorism funding. None of these laws and regulations describes explicitly the government’s strategy of counter-terrorism. The fact that such strategies are absent in the public discourse of terrorism and counter-terrorism reflects the lack of presence of the executive leadership in articulating the objectives of policy response towards terrorism.

Although the legal-institutional aspect of counter-terrorism is limited, the kinetic aspect grows in power. The security apparatus (i.e. the police) is granted by powers of terrorist-designation by the ATL. The law enforcers are facilitated with terrorism-designation powers through two legal instruments: the criminalization of ancillary crimes and the use of intelligence to designate terrorist offenders. The missing designation of the

terrorists by the government is “compensated” by the ATL’s criminalization of *ancillary offences* such as providing aid, assistance or refuge to a terrorist-criminal (Article 13, ATL) as offences in their own right, which result in significant penalties up to 15 years imprisonment (Butt, 2008). Ancillary crime regulation is one of the aspects that exceptionalize the ATL, because the existing penal code (KUHP) penalizes ancillary crimes with lighter sentences and with more strict limitations of the crime’s definition (Penal Code, 1915).

The powers of the police grow even larger in the planned amendment of the ATL. The anti-terrorism law amendment began in February 2016 in the aftermath of a terrorist attack that took place in central Jakarta in January. The content of the AT revision bill has never been formally publicised. Minister of Law and Human Rights once gave a press conference on the content of the revision that the government proposed (Kompas, 2016). First, the revision amended the detention period that is legally allowed in the process of investigating. In the new bill, the police are granted with a power to detain a person for the purpose of interrogation for the maximum period of 15 months, while the police prosecutors are allowed to arrest ‘anyone who is strongly suspected to commit a crime of terrorism’ for 30 days. Detainment period refers to a process where police already have preliminary evidence and need confessions and witnesses to prepare charges, while arrest can happen to any suspected individuals without evidence.

Second, the AT revision bill allows the police to prosecute and investigate individuals and organisations associated with terrorist activities. Under the new AT law individuals who are associated with corporations that are stipulated as terrorist organisation, including founders, leaders, managers, or people who direct the activities are criminalized. Third, terrorism (practical) definition is widened to include preparation for, conspiracy in, attempts and assistances to commit acts of terrorism. Prevention measures can be applied to particular individuals who are suspected to intend to commit an act of terrorism by bringing and holding them in specific places within the jurisdiction of the prosecutors for the maximum period of six months. The police are also given a mandate to observe the statements, attitudes, writings and outlooks that potentially animate others towards anarchism or pose an intimidation towards others or particular groups. Fourth, the government also seeks to introduce the revoking of passports for Indonesians who are involved in para-military training in other countries. Lastly, Minister Laoly stipulated that the government seeks to implement an oversight on former convicted terrorists for a maximum period of a year after serving their terms and assure

the participation of former convicts in deradicalization programs to avoid recidivism. In actuality, however, the revision bill also contains a regulation on the involvement of the military strictly to assist the police in counter-terrorism.

CONCLUSION

As a result of democratization, Indonesian counter-terrorism practice is exposed to values of human rights and heightened international attention. However, international attention to Indonesia's terrorism and counter-terrorism has so far tended to highlight the escalating threat of terrorism to the stability of the nation and the security of its surrounding region. As a result, such international attention empowered the country of its kinetic power in counter-terrorism, but allowed the government's civilian political leaders to take a back seat from conducting measured response to terrorism. An indication of the latter is the absence of any document on the strategy of counter-terrorism in Indonesia.

As a result, the executive power - as the utmost manifestation of civilian political leadership in a presidential system such as Indonesia - has had no real substance of authority being placed on its office as a producer and responder of accountability in counter-terrorism. In both Law 15/2003 and its revision bill, the powers to arrest without charges, designation of individuals and organizations associated with terrorism, determining actions as terrorist activity almost entirely rest with the police and the court. The situation reflects the unwillingness of the legislature in learning how to govern the security sector and conduct an objective oversight on the policy-makers and executors of security. Rather than trusting the executive leadership with a counter-terrorist power and continually check them for how it is committed, the legislature grants the power entirely to the security apparatuses.

The discourse of human rights has so far been utilized in a limited purpose of justifying a counter-terrorism legal instrument. Human rights principles are not integrated into the body of counter-terrorism policy and often used as either an instrument of power-check by the legislative or power-justification by the executive. There have been no attempts at learning from the best practices of other countries in conducting counter-terrorism where indulging the apparatuses with impunity in human rights violation actually limits their capacity in scientific/objective criminal investigation and allows extremism to progress to the next generation of recruits. The continued use of human rights discourse to either criticize proposed counter-terrorism power or justify counter-terrorism powers reflects the fact that neither the executive nor the legislative have an effective control over counter-terrorism policies; rather, they are fully owned by the

security apparatuses. In short, the international attention to Indonesia's counter-terrorism allows for a tremendous growth in the kinetic power of the security apparatus to criminalize individuals and apply counter-terrorism measures but has actually impeded the civilian political leaders to take better ownership of counter-terrorism policy.

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