Democracy, Societal Pressures, and Indonesia's War on Terror

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Abstract

Terrorism has emerged as one of security threats to Indonesia since 2000. How did the government fight terrorism? In particular, how and to what extent did domestic politics shape the course of the government's counter-terrorism policy? This article investigates the societal pressures and their implications for the government's counter-terrorism policy. It demonstrates that the restoration of democracy in Indonesia since the collapse of Suharto's regime in 1998 created an opportunity for the resurgence of Islam as a political force. On the issue of terrorism, the groups perceive distrustfully that "the war against terrorism" is a sort of "fight to undermine Islam." Besides that, the rise of democracy also provided space for other societal forces—most relevantly, human rights defender groups—who actively monitor human rights abuses committed by the previous regime. They also expressed their serious apprehension that some elements of the government's counterterrorism measures could seriously undermine human rights, civil liberty, and democratic principles in an emerging democratic polity. As a consequence, the apprehension among Islamic groups over the nature of terrorism and counter-terrorism turned out to be a constraint for the government's actions. Additionally, because of being monitored and criticized by human rights groups, the governments also refrained from adopting and implementing policy measures that could undermine human rights and civil liberty.

Keywords: Indonesia, War on terror, Counterterrorism, Democracy, Societal Pressures, Islamic "revivalist" groups.

1. INTRODUCTION

How and to what extent did the societal pressures shape the course of the Indonesian government's counter-terrorism policy? This article will investigate the societal pressures originating from the domestic environment and their implications for the Indonesia's counter-terrorism policy. It shows that

the restoration of constitutional democracy in the world's biggest Muslim majority country created an opportunity for the resurgence of Islam as a political force—indicated by the rise of Islamic political parties and Islamic "revivalist" groups. On the issue of terrorism, the groups perceive distrustfully that "the war against terrorism" is a sort of "fight to undermine Islam." Although they remain a small minority, their sceptical perception was initially supported by other sections of the mainstream Muslim community. Besides that, the rise of democracy also provided space for other societal forces—most relevantly, human rights defender groups—who actively monitor human rights abuses committed by the previous regime. They also expressed their serious apprehension that some elements of the government's counterterrorism measures could seriously undermine human rights, civil liberty, and democratic principles in an emerging democratic polity.

This article also shows that the apprehension among societal forces over the nature of terrorism and counter-terrorism turned out to be a constraint for the government's actions. In order to maintain the political support from the Muslim constituency and to sustain a political coalition with Islamic political parties in the parliament, therefore, the Megawati administration (2001—2004) and the first Yudhoyono administration (2004—2009) tried to carefully reach a compromise with their perceptions. Additionally, because of being monitored and criticized by human rights groups, both consecutive governments also refrained from adopting and implementing policy measures that could undermine human rights and civil liberty.

2. THE RISE OF DEMOCRACY

After experiencing a short-lived parliamentary democracy in 1955, Indonesia was subjected to two consecutive authoritarian regimes under Sukarno's "Guided Democracy" (1959—1965) and Suharto's "New Order" (1966—1998). The military-dominated regime of the New Order that emerged after an abortive communist coup in September 1965 determined to exclude and oppress systematically any political opposition emerging both from Islamic political forces and the leftist groups. For the sake of political stability and economic development, the government controlled the media, labour, student organizations as well as religious organizations. The government's party, *Golongan Karya,* always won a majority of votes in every general election which was neither free nor fair. The New Order was an exclusionary regime in which all government's decision-making was in the hands of the central executive and gave no room for any political voices outside the body. Parliament

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was a powerless institution whose only function was to support the executive and its policy. It was an exclusionary regime in which all of government's decision-making was centralized in the hands of the central executive.

Suddenly, a financial crisis rapidly spread across Southeast Asia. The Indonesian economy was the most badly affected by the unprecedented financial turmoil. However, the crisis became "a blessing-in-disguise" since it seriously damaged the three-decades of Suharto's repressive and authoritarian rule. Massive student-led demonstrations and "people power" finally brought about Suharto's forced resignation in 1998. His downfall brought about grand political changes in the Indonesian political landscape.

The installation of a transitional President, B.J. Habibie, was the beginning for a political opening and the restoration of a constitutional democracy in Indonesia. About a month after Suharto's resignation, an announcement by the home affairs minister on June 8, 1998 that political parties could be freely established was followed by a mushrooming of political parties (Suryadinata, 2002), including Islamic political parties. Genuinely free and fair general elections were successfully held every five years, namely in the years1999, 2004 and 2009 (Ananta, 2005). The once docile and "rubber-stamp" parliament during the New Order era is now very active and powerful. The role of the military in domestic politics—previously the kingmaker—has been significantly reduced. The mass media, including blooming "Islamic revivalist" media, gained their freedom without the government's control and restrictions. Waged under the spirit of "*reformasi*" (reform) the public engaged freely in any political activities with virtually no structural and cultural barrier. No less important was that the rise of democracy also significantly transformed the state—society relations and the making of public policy.

3. SOCIETAL PRESSURES: MUSLIM COMMUNITY
3.1 Democracy and "Islamic Revivalism"
Any explanation of the shape of Indonesia's counter-terrorism policy cannot be detached from the dynamic of Muslim politics after the downfall of the New Order, especially, the rise of Islam as a political force. With about 200 million Muslims—88 percent of a total population of more than 235 million—Indonesia has a larger Muslim population than any other country in the world. For much of the post-independence period, however, the history of political Islam has been dominated by three features: first, Islamic parties have never been able to attract support from more than about half of the Muslim voters; second, most attempts to realize Islamist policy agendas such as Islamization of the constitution and statutes have failed; and third, Islamic politics has been severely oppressed by authoritarian regimes (Bubalo and Fealy, 2005).

The consecutive authoritarian regimes of Sukarno's "Guided Democracy" and Suharto's "New Order" saw Islam as a political threat (Fealy and Bubalo, 2005: 27) and imposed various measures to oppress, marginalize or co-opt Islamic groups. The secular government repressed any Islamic parties or Islamic "revivalist" organizations that aspired to promote Islamic law (*Syariah*) and an Islamic state. With the enactment of *kebijakan asas tunggal* (sole basis), all social and political organizations were forced to adopt only the secular *Pancasila* as their sole ideological basis.

The condition reversed significantly after the downfall of Suharto. Islam as a political force re-emerged spontaneously as indicated by the rapid formation of various Islamic revivalist organizations as well as Islamic political parties. The Islamic "revivalist" organizations that emerged, among others included *Majelis Mujahidin Indonesia*, *Hisbut Tahrir Indonesia*, *Front Pembela Islam*, *Forum Komunikasi Ahlussunah wal Jamaah* and an organization that had been formed before the Suharto's downfall i.e., *Komite Indonesia untuk Solidaritas Dunia Islam* (KISDI) (Zada, 2003). The Islamic political parties which were created, among others, included the Justice Party (PK/S), the Moon and Star Party (PBB), and the "new" United Development Party (PPP). Within the new democratic environment, Islamic revivalist organizations and those Islamic parties freely articulate their political voices concerning various national issues, including the issue of terrorism and counter-terrorism.

3.2. Re-emergence of Islamic Political Parties
The rise of Islamic political parties in the Post New Order period is pertinent to an explanation of the pathway of the government's counter-terrorism policy. After a transitional government under B.J. Habibie passed new electoral laws, various new political parties proliferated, including "Islamic political parties." There is no agreed definition among observers concerning what constitutes an "Islamic political party." For instance, Baswedan uses the term "Islam-friendly-parties" that refers to "parties that do not necessarily adopt Islam as their ideology but welcome, uphold, and are sensitive to the aspirations of Indonesian Muslims." (Baswedan 2004: 672). This article uses a definition of "Islamic Party" formulated by Harris who simply states that "those which explicitly contain 'Islam' in their names, philosophies, or symbols" (Harris, 2004: 62). Using this definition, there were seventeen Islamic parties in the 1999 general election and twenty in the 2004 general election. However, only three Islamic parties that gained significant voters in the 1999 and 2004 general election will be elaborated here.

First, the United Development Party (*Partai Persatuan Pembangunan, PPP*). It is noteworthy here that PPP is not a new political party. It was founded in 1973 during the New Order regime. However, under Hamzah Haz, the party's ideological foundation changed from secular "Pancasila" to "Islam" shortly after the collapse of the New Order. PPP got 10.7% of the vote in 1999 but this decreased to 8.2% in 2004 (Baswedan, 2004: 672-3).

Second, the Justice Party (*Partai Keadilan, PK*). The PK was a completely newly founded as a party that emerged from the University Students (LDK, *Lembaga Dakwah Kampus*). With the suppression of the student movement in 1977—78, Islamic student activists were inspired by the *Ikhwanul Muslimin* movement in Egypt, and the LDK grew rapidly after the early 1980s and its alumni later entered the political arena by establishing the Justice Party. Although PK gained only 1.4% of the vote in 1999, with Partai Keadilan Sejahtera (PKS)—its new name—increasing its share significantly to 7% of the vote in 2004 (Baswedan, 2004: 673).

Third, the Moon and Star Party (*Partai Bulan Bintang,* PBB). The PBB was founded in July 1998 and claimed to be the heir to the largest Islamic party of the 1950s, Masyumi. Sukarno banned Masyumi in 1960 and jailed its leaders. After they were released, they transformed their old party into the Islamic Predication Board of Indonesia (DDII, *Dewan Dakwah Islamiyah*) in order to maintain its members and leadership network. Some former members of *Masyumi*, were the prime movers in the establishment of the PBB. In the 1999 elections PBB got only 1.9% of the vote increasing its share slightly to 2.6% in 2004 (Baswedan, 2004: 673).

Although Islamic parties performed poorly in the general elections, their influence in Parliament in the post 1999 general election and 2004 general election periods cannot be ignored. In the post 1999 election period, for instance, the Islamic parties aligned with other "secular" Muslim parties (PKB and PAN) to form a powerful bloc within Parliament—known as "*poros tengah*." It was this "Muslim" bloc that initiated a parliamentary manoeuvre and successfully prevented "secular' Megawati Sukarnoputri from becoming the president despite her party, PDI-P, having gained the majority of votes in the 1999 general election. After successfully installing Abdurahman Wahid as the President, this "Muslim" bloc also successfully engineered other parliamentary moves to impeach him due to his incompetence in 2001.

Furthermore, Islamic parties also gained greater political influence because of their position in the executive and legislature. For instance, during Megawati's presidency (2001—2004), Hamzah Haz, the chairman of PPP became the Vice President. From 2004 to 2009, Yusril Ihza Mahendra, the leader of PBB, gained a strategic ministerial post since he was appointed as the Minister for Law and Human Rights and the Secretary of State. Hidayat Nur Wahid, the leader of PKS, became the speaker of Parliament during the Yudhoyono administration.

In addition, Islamic parties gained a significant increase from 13% in the 1999 general election to 20.4% in the 2004 general election. No less important was the fact that the government perceived that their position and policy depended on wider support from the Muslim community. Some even argue that the influence of Islamic political parties is much bigger than their actual strength (Abuza, 2007).

3.3. The Rise of Islamic Revivalist Groups

Besides Islamic political parties, the rise of Islamic revivalist groups is relevant to explain the direction of the government's counter-terrorism policy as well. Various Islamic revivalist organizations that emerged shortly after the downfall of the New Order have the following common traits (Turmudi and Sihbudi, 2005). Firstly, they have a strong sense that both Indonesia and the Muslim world are caught in a "multi-dimensional crisis" i.e., an economic, political, cultural, and moral crisis. The main cause is that the "infidel West" has used its economic and military power to subordinate, exploit, and weaken the *Ummah*. Another cause is that the *Ummah* itself has contributed to its subjugation by straying from the essential teachings of God as set out in the *Qur'an* and the *Sunnah* (Fealy, 2004: 104).

Secondly, they believe that this crisis can only be rectified by returning to the pristine Islam practised by the founding generation of Muslim leaders, that is, the Prophet Muhammad and his Companions. Thirdly, the *Syariah* is the heart of their struggle. They believe that comprehensive implementation of the *Syariah* is the key to creating a pious society and, until now, the *Syariah* has only been carried out in a piecemeal way as it has been largely confined to family law and devotional matters. Finally, revivalist groups also believe that democracy is contrary to Islamic teachings because it places popular will above God's law. They argue that the electorate cannot be trusted to elect representatives with sufficient religious knowledge and moral integrity to ensure pious governance and Islamically informed laws (Fealy, 2004: 104).

Islamic revivalist organizations were among others, firstly, *Forum Komunikasi Ahlu Sunnah wal Jamaah* and *Laskar Jihad* (FKAWJ). The FKAWJ was established on 14 February 1998 by Ja'far Umar Thalib. Ideologically, it had a good deal in common with the FPI. Although it stressed the necessity of fully implementing Islamic law, it also argued against turning Indonesia into an Islamic state. The FKAWJ rejects democracy in principle but in practice has supported Islamic parties which campaign for the Jakarta Charter. The *Laskar Jihad*, the paramilitary arm of FKAWJ, was formed on 30 January 2000 in response to what was seen as the persecution of Muslims in Maluku by Christians (Fealy, 2004: 115-6). Because of the pressure on it,

especially after the Bali Bombing 2002, the paramilitary arm of the FKAWJ disbanded itself.

Second, *Islamic Defender Front (Front Pembela Islam*, FPI). It was founded in West Java by Habib Rizieq Shihab and K.H. Misbahul Anam on 17 August 1998. Both men claimed that their growing alarm at the rising immorality and irreligious behaviour in their communities had driven them to form the front. A majority of the members are traditionalists, many of them Betawi and Bantenese with a Nahdlatul Ulama (NU) background. K.H. Misbahul Anam is also from an NU family, but Habib Rizieq is a staunch modernist. Its main activity was campaigning against "places of vice" or iniquity. This included demonstrations as well as violent assaults on bars, gambling dens, brothels, and dance clubs (Fealy, 2004: 114-5).

Third*, Majelis Mujahidin Indonesia* (MMI). The MMI has close genealogical and ideological ties to *Darul Islam*. It portrays itself as an umbrella organization for all pro-*syariah* groups, but more specifically, it sees itself as an inheritor of the *Darul Islam* and has sought to bring together the various rival DI/NII factions. Most DI/NII groupings have joined the MMI and figure prominently in its internal discourses. It was formed on 7 August 2000, the fifty-first anniversary of DI's declaration of an Indonesian Islamic state, at a national conference on *Syariah* in Yogyakarta. Its central objective is the complete implementation of *Syariah* in Indonesia. It seeks to achieve this through public advocacy and involves itself in a range of activities such as seminars, rallies, publishing and public education campaigns in order to strengthen support for *the Syariah*. It is committed to the creation of a *Daulah Islamiyah* and caliphate, both nationally and internationally (Fealy, 2004: 113-4).

Fourth, *Hizbut Tahrir Indonesia* (HTI). HTI stands apart from most of the other revivalist groups in Indonesia. It is avowedly political in the sense that it seeks fundamental change to political structures and behaviour but rejects involvement in party politics. It eschews the use of force or violence and has no militia units of its own, though it does organize rallies and demonstrations on Islamic issues. More than any other grouping, the ideal of restoring the caliphate is central to its blueprint for reshaping Muslim society and the state. The HTI argues that few Muslims currently live as God commanded because they are dominated politically, culturally, and economically by non-believers. Only under a caliphate can Muslims be free of subjugation and live as God prescribed (Fealy, 2004: 116).

3.4. Common views: Scepticism about the Terrorism Issue

Leaders of Islamic revivalist organizations and Islamic parties have articulated their scepticism about the issue of terrorism and have expressed their unease with the government's counter-terrorism policy. It is noteworthy that, quite often, other mainstream Muslim organizations—*Muhammadiyah* and *Nahdhatul Ulama*—shared their sceptical perceptions. Their sceptical perceptions are as follows, first, they feel threatened by the "global war on terror" because they perceive it as a "war against Islam"; Second, they believe in the "conspiracy theory," a perception that the terrorist bombings were designed by foreign agents as a part of a global scenario to undermine Islamic revivalism in Indonesia.

First, Global War on terror: "War on Islam." The terror attacks on 11 September 2001 and the following US "global war on terror" have created serious concerns among Muslim revivalist groups. They feel threatened because the "global war on terror" is perceived as an "anti-Muslim crusade." They also perceive that the United States and its allies have been unfair to Muslims or Islam as a whole and used the 11 September tragedy as a pretext to express their hostility towards Muslims and Islam (Azra, 2003: 47). However, leaders of "moderate" Muslim organizations often share such concerns. The chairman of Nahdlatul Ulama, Hasyim Muzadi, also expressed similar apprehension that Muslims have been unjustly blamed for the terrorist attacks of 9/11 (Muzadi, 2003: 90).

Serious concern among the Muslim community reached fever pitch in the run-up to the US plan to topple the Taliban regime in Afghanistan in 2002. Din Syamsuddin, Secretary-General of the Indonesian Council of *Ulama*, perceived the U.S invasion of Afghanistan as an act of "hostility and hatred against Islam and Muslims" and further described it as a case of "injustice, terrorism and a form of imperialism" (Sukma, 2003: 133). They expressed their anger when the US military launched another military intervention to topple Saddam Hussein of Iraq in 2003. The United States foreign policy and its "global war on terror" were severely condemned by Muslims in Indonesia. The US global "war on terror" creates serious concern among many Muslims since they feel that they are becoming the target of the "global war on terror." Anti-US sentiment was running high among the Muslim community in Indonesia.

Second, Terrorism: Foreign Conspiracies. Concerning the nature of terrorism, many Muslim revivalists— as is often shared by other Moderate Muslim leaders—are reluctant to admit the fact that there is a problem of Muslim "radicalism" that should be internally addressed. On the contrary, the "conspiracy theory" is quite popular among Indonesian Muslims even after the Bali Bombing 2002. This preoccupation with conspiracy theories is not unique to Indonesia. There is substantial scholarly literature recording the phenomenon at many points in history and in many parts of the world. Conspiracism is especially common in deprived, traumatized or repressed communities where reliable information is scarce, intra-communal mistrust is high and the state is

given to arbitrary abuse of its citizens (Fealy, 2003).

Despite the government's perception that *Al-Jamaah Al-Islamiyah* (AJAI) is the terrorist group responsible for the terrorist bombing 2002 in Indonesia, Muslim revivalist leaders disbelieve it. The *Amir* of *Majelis Mujahidin Indonesia* (MMI), Abu Bakar Ba'asyir, perceives that AJAI is a fictive organization. It is merely a "foreign conspiracy" to discredit the Muslims whose religious consciousness has awakened in Indonesia to challenge the interests of the U.S. and its allies. During his trial in the court, Ba'asyir maintained that he had never known this secret organization; for that reason, he denies categorically the prosecutor's allegation of being "the spiritual leader" of AJAI (Awwas, 2004).

The Indonesian *Ulama* Council (MUI) also shares Abu Bakar Ba'asyir's perception that AJAI has not ever existed in Indonesia since this organization is not registered in the list of Muslim organizations (Akaha, 2002: 53). A former chief of the Indonesian Intelligence Agency—Z.A. Maulani—writes on the Bali Bombing 2002, also stating that it "could have been designed and perpetrated by foreign intelligence agents, such as, the CIA, M16, or Mossad." (Maulani, 2002). His perception is most often quoted and widely shared by many Muslims in Indonesia. His argument is based on his conviction that only a highly professional actor could carry out such a destructive bombing; and he believes that no Indonesians or "the AJAI" have such capacity.

If the Bali Bombing could have been designed by foreign agents, what were their motives? A Muslim scholar, Riza Sihbudi, argues that the motives behind the Bali bombing could be, first, to confirm and justify the negative international perception that Indonesia has a "terrorist nest." Second, to pressure the Indonesian government to crack down hard on Muslim radical groups who are critical of the US-Israeli conspiracy. Third, to destabilize and weaken Indonesia so the United State can control it easily. Finally, in the context of the American plan to invade Iraq, the Bali Bombing could become a sort of pressure on the Indonesian government to support American policy (Sihbudi, 2005: 59). Even after the Second Bali Bombing (2005), Din Syamsudin comments similarly that "it could be a grand scenario to destroy Islam and Indonesia that is rich in natural resources" (Abimanyu, 2006: 22).

It is noteworthy that, although Islamic revivalist groups and Islamic parties remained relatively small, their sceptical perceptions of   terrorism issues are often widely supported by other "moderate" Muslim communities in general. Although it has changed over time, Muslim politicians, Muslim organizations such as, *Muhammadiyah* and *Majelis Ulama Indonesia,* Islamic institutions such as *pesantrens* and even the mainstream media also share their scepticism about the terrorism problem. Moreover, Islamic revivalist groups also actively articulate their political aspirations by publishing books, magazines, leaflets and organizing mass rallies to gain wider audience. For instance, in responding to the war on Afghanistan in 2002 and the subsequent invasion of Iraq in 2003, Islamic revivalist groups—supported by Muslim students organizations and other "moderate" Muslim communities in general—organized waves of mass demonstrations against the US foreign policy and its "war on terrorism" in front of the US embassy (Perwita, 2007: 160). In fact, the outrage expressed by the radical Muslim groups against the United States is widely shared by the moderate Muslim majority as well as by secular groups.

4. SOCIETAL PRESSURES: HUMAN RIGHTS GROUPS
4.1 Democracy and Human Rights Groups
Any explanation of the direction of the government's counter-terrorism policy also cannot be isolated from the position and articulation of human rights defender groups that also emerged after the downfall of the New Order. The rise of the global terrorism problem after 9/11 and, subsequently, the Bali Bombing 2002 created serious apprehension for human rights defender groups. Although they positively agree that the government has to battle against terrorism, they have expressed serious uneasiness that the counter-terrorism measures could undermine civil liberty, human rights and democracy.

The apprehension of human rights groups about counter-terrorism measures is based on the history that, during three decades of the New Order regime, the military-dominated government systematically oppressed civil liberty and human rights. Using a draconian law—the anti-subversion law (1963)—the government oppressed any opposition and political opponents emerging both from the leftist group and the Islamic "extremist" groups. The central government also oppressed militarily the separatist movements in East Timor, Aceh, and West Papua. Extra-judicial killing of political opponents was rampant during that period. Even weeks before the downfall of the regime, numerous political activists and students were kidnapped and some have still not been traced to the present time (TAPOL Reports).

The rise of democracy provides the space for human rights defender groups to reveal the past human rights abuses and to monitor the current government policy. They play a critical role in preventing the government from adopting any policy measures that could undermine human rights, civil liberty, and democracy. Human rights defender groups here refer to anyone who works non-violently to protect and promote human rights. Since the downfall of Suharto, among the prominent ones are *Komisi untuk Orang Hilang dan Korban Kekerasan* (The Commission for Disappearances and Victims of Violence, KONTRAS), *Imparsial* (the

Indonesian Human Rights Monitor) and *Tim Pengacara Muslim* (Muslim Lawyer Team, TPM).

First, *Komisi untuk Orang Hilang dan Korban Kekerasan* (The Commission for Disappearances and Victims of Violence, KONTRAS). KONTRAS was formed in March 1998 by the coalition of 12 pro-democracy NGO's (Non-Government Organizations), such as KIPP (Independent Committee for Election Watch), AJI (the Alliance of Independent Journalists), YLBHI (Indonesia Legal Aid Foundation), and one student organization PMII (Indonesian Islamic Student Movement) and activists in response to the Indonesian government's silence regarding disappearances (http://www. desaparecidos.org/kontras/about/>). KONTRAS' main objectives are, first, to improve the Indonesian people's awareness of the importance of human rights, especially regarding freedom from violence and the plight of disappeared people; Second, to struggle for human rights, especially people's rights to be free from all types of violence and the rights of the disappeared. The objectives will be accomplished by means of advocacy and the ongoing encouragement for accountability. Third, to support consistent change in law and politics that will bring about increased protection of the people from disappearances and violence (http://www. desaparecidos.org/kontras/about/>).

Second, *Imparsial* (the Indonesian Human Rights Monitor). The name "Imparsial" was taken from the word "impartial" to denote the organization's commitment to upholding the fundamental equality of the rights possessed by all human beings, with special concern given to promoting the rights of the less fortunate. The organization's impartiality also denotes its commitment to helping victims of human rights abuse regardless of their social origins, gender, ethnicity, and political or religious beliefs in Indonesia. *Imparsial* was established in June 2002 by Indonesia's most prominent human rights advocates who shared the same concern: the power of the state showed an increasing tendency to assert itself to the detriment of civil society. (http://www. desaparecidos.org/kontras/about/>.

Third, *Tim Pengacara Muslim* (Muslim Lawyer Team, TPM). According to Achmad Michdan, TPM is a group of Indonesian Muslim lawyers who are eager to defend the legal rights of Muslim activists implicated by the Indonesian criminal code when they defend the oppressed people and struggle for the implementation of Syariah laws. The TPM believes that the propaganda of "War against Terrorism" initiated by the USA and its allies has stigmatized some Muslims, who are determined to fight for truth and justice based on Islam, as nothing but "terrorists" TPM feels obliged to defend the legal rights of those accused of terrorism when it is requested to provide legal aid by the family of the defendant or by the defendant himself (Michdan, 2009). All of human rights groups have played   critical role in monitoring the government counter-terrorism policy and its implementations on the ground.

4.2. Common views: Apprehension about the Anti-Terrorism Law

As has been mentioned above, the rise of the terrorism problem and the government's response have created concern for human rights defender groups. They are apprehensive that the government would use the security problem as a pretext to bring back a repressive state by adopting repressive anti-terrorism laws which undermine human rights and civil liberty. The central concern for them is how the government can provide security for its all citizens without undermining human rights, civil liberty and democracy.

After the Bush Administration declared "a global war on terror" in the post 9/11 tragedy, the Megawati administration drafted an anti-terrorism law and proposed it to the parliament for approval. However, just one week after the Bali bombing 2002, the president quickly issued a Government Regulation in Lieu of Law (GRL) No 1 of 2002 concerning the Eradication of Criminal Acts of terrorism on 18 October 2002. The GRL, together with a second one making it retroactive to cover the Bali bombing (GRL No 2 of 2002), was approved in its entirety by Parliament in March 2003, as Law No. 15/2003 on the Anti-Terrorism Law (*Undang-Undang Tindak Pidana Terorisme*). (Juwana, 2006: 295). The government used the law as the legal framework to catch the culprits of the Bali Bombing 2002 as well as to fight the terrorism problem in Indonesia.

Human rights defender groups expressed openly their concern about the GRL—subsequently, endorsed by Parliament as the anti-terrorism laws—arguing that the laws were born out of panic and were ripe for misuse, inserting security institutions into the judicial process where they do not belong (marpaung and Araf, 2003). The concerns about anti-terrorism laws include, first, an overly broad definition of "terrorism": the law defines terrorism in a way that could include ordinary crimes or even legitimate political expression (Amirudin, et. al, 2002).

Activists in Aceh and Papua are especially fearful that the decree will be used against both insurgents and nonviolent critics of the government alike. Indeed, their concerns came true. In the truly glaring abuse of the law, five negotiators from the Free Aceh Movement, GAM, were arrested and charged with terrorism in May 2003 after peace talks with the government had collapsed. None had ever engaged in violence, but the police argued that they were accused under the law because they were senior officials of GAM and thus shared responsibility for the terrorist acts that GAM had committed. They were subsequently sentenced to prison terms of between 12 and 15 years (*Pikiran Rakyat*, 11 May 2003).

Second, detention: the law allowed suspects to be detained without charge for a week, rather than the

48 hours permitted under the criminal code. Suspects can then be detained for six months while the investigation is pending. The denial of access to lawyers during the initial stages of interrogation heightens the risk of torture and forced confessions (Hicks and McClintock, 2005: 9-10). As stated in Article 28, "Investigators may arrest anyone strongly suspected of carrying out terrorist crimes based on sufficient evidence as intended in Article 26 clause (2) for at most 7 x 24 (seven times twenty-four) days." And Article 25 states that, "in order to carry out the police investigation and prosecution, the investigating officer is given authority to detain the suspect for a maximum of 6 months." (Hicks and McClintock, 2005: 9-10).

Third, the role of intelligence: uncorroborated intelligence reports produced by agencies run by the armed forces, police, and the State Intelligence Agency (BIN) may be used to initiate investigations and order detentions. It loosened the rules of evidence allowed in the Criminal Procedure Code (KUHAP), for the first time allowing preliminary investigations to be carried out on the basis of intelligence reports alone, whether from the police, the military, the National Intelligence Agency (BIN) or the director general of customs. It also allowed electronic and recorded audio and video data to be introduced into court (Jones, 2006: 4). Moreover, the language vaguely states "To obtain sufficient preliminary intelligence, investigators may use all intelligence reports." It is unclear what kind of reports can be used, or if the reports themselves constitute such evidence (Hicks and McClintock, 2005: 9-10).

Finally, freedom of expression: critics have pointed to "rubber clauses" that are dangerously vague. For example, under Article 20, anyone responsible for bothering or intimidating an investigator can be sentenced to up to 15 years imprisonment. But the terms "intimidation" and "bothered" could be interpreted to include activities as innocuous as a press release or a peaceful demonstration. Article 14 provides for the death penalty for anyone who incites (others to carry out acts, a vague formulation that could interfere with freedom of expression (Hicks and McClintock, 2005: 9-10).

4.3. Critiques on Implementation

Human rights defender groups not only articulate their criticism towards the contents of the anti-terrorism law but also towards its implementation and practice on the ground. To monitor the implementation of anti-terrorism law on the ground, human rights defender groups do two main things, first, they actively monitor the workings of a special counter-terrorist police unit—*Densus 88*—in hunting down persons alleged to be involved in terror networks. Secondly, they also actively provide the legal aid for the suspected terrorists. However, this critical role is mostly played by *Tim Pengacara Muslim* (Muslim Lawyer Team, TPM). TPM claims that they work professionally as Defence Lawyers to make sure defendants receive the due process of law (Michdan, 2009).

As has been elaborated in Chapter III, *Densus 88* was established after the 2002 Bali bombings and became operational in 2003. This anti-terror police unit has significantly disrupted the activities of the Central Java-based Islamist movement AJAI and many of its top operatives have been arrested or killed. Although it has made many achievements in denting the terror network, however, human right groups have expressed their concern about the counter terrorist police unit. For instance, Thamrin writes the following critiques (Thamrin, 2007: 88-91).

Firstly, *Densus 88* is keen to act quickly and to avoid public attention. However, this leads to their ignoring the basic principles of law and often arresting the wrong persons. Secondly, after they have arrested the alleged terrorists, *Densus 88* tortures them by hitting and forcing them to admit to something the police want. Thirdly, *Densus 88* do not use "presumption of innocence" and use weak evidence in arresting the alleged terrorists. They often confiscate the belongings of the suspected terrorist that can be used for evidence. Fourthly, *Densus 88* tend to target persons who have "Islamic appearance," Islamic names, or the former Afghan war veterans. Fifthly, after arresting the suspected terrorists, *Densus 88* usually bring them to a secret place. Even their family are not allowed to know the location for so long. Sixthly, when arresting the suspected terrorists, *Densus 88* usually do not bring the proper documents. Seventhly, *Densus 88's* operations usually take place at night so that this can create shock and trauma for the family. Eight, they quite often shoot the suspected terrorists, although the suspected terrorists do not strike back. Finally, they do not give any thought to the family of the suspect and his children by using violence in front of them (Thamrin, 2007: 88-91).

Arguably, the most active group that monitors vigilantly and articulates strong criticism of the implementation of the anti-terrorism law on the ground is *Tim Pembela Muslim* (Muslim Lawyer Team, TPM). It happens because most of the terrorists captured "claim themselves to be devout Muslims who struggle for the Islamic cause." TPM do not only convey critiques on the procedure of *Densus 88* in capturing the suspected terrorists. They also intensively provide legal aid for Muslims suspected of terrorist activities. TPM claim that they work professionally as Defence Lawyers to make sure defendants receive the due process of law. They advocate proper implementation of the Indonesian criminal procedural law (KUHAP) and the respect for the defendants' inalienable human rights (Michdan, 2009).

It is noteworthy that TPM agrees with the government that terrorism should be wiped out since it is a crime against humanity. TPM also asserts that their lawyers do not condone any terrorist acts and TPM is

struggling to uphold the law, the truth, and justice. However, although Indonesia is the largest Muslim country in the world, TPM believes that Muslims are now being targeted by unjust and false propaganda. To defend the suspected terrorists, TPM has representatives in many cities: Jakarta, Bandung, Serang, Semarang, Solo, Yogyakarta, Surabaya, Denpasar, Palu, Poso, and Ambon. TPM actively provides legal aid to the hundreds of suspected terrorists, including the alleged "spiritual leader" of AJAI, Abubakar Ba'asyir and the convicted terrorists, such as Amrozi, Imam Samudera, Ali Imron, and Ali Gufran etc. (Michdan, 2009).

5. IMPLICATIONS FOR INDONESIA'S COUNTER-TERRORISM POLICY

The governments from Megawati to Yudhoyono have not been able to ignore their voices and articulation—but have had to make political concessions—to avoid a domestic political backlash. Although the government has been determined to fight terrorism since the Bali Bombing 2002, it has tried to keep away from adopting unpopular policy measures that spark resistance from the Muslim community. If the government takes measures which meet resistance, it will cancel them. Those societal constraints are evident from the following crucial policy issues the government's hesitancy to act against the alleged "spiritual leader" of AJAI, their indecision to outlaw AJAI, the hesitancy to develop vigorously an ideological" approach to counter radical ideology, and the failure to adopt a more draconian anti-terrorism law.

First, the hesitancy to deal with the "AJAI Spiritual Leader." Indonesian government perceive that Ustadz Abu Bakar Ba'asyir is the "spiritual leader" of AJAI. Together with the late Abdullah Sungkar, he was the co-founder of this organization during their exile in Johor, Malaysia. Both were also the founders of *Pondok Ngruki, a pro-Syariah* Islamic boarding school located at Sukoharjo, Central Java in 1983. Ba'asyir is also the Amir of *Majelis Mujahidin Indonesia* (MMI), a Muslim "revivalist" organization founded in Yogyakarta in August 2000.

However, the government faced a dilemma to deal with the Muslim cleric because of its sensitiveness in this Muslim country. *Sabili*, one of magazines representing the voices of Muslim revivalist groups, enthroned him as the "Man of the Year" and described him as soft-hearted *da'i* (Muslim preacher) and friendly to anyone (Awwas, 2003: 74). According to Awwas, many Muslim activists respect him because of his insistence (*istiqamah*) in the struggle for Islamic law (*Syariah*) although he has always faced severe political and physical repression (Awwas, 2003: 74). Revivalist groups believe that accusing a *da'i* (Muslim preacher) as "a terrorist" is offensive and unacceptable. Many Muslim politicians, including the vice president (Hamzah Haz), the chairman of MPR (Hidayat Nur Wahid) show their sympathy for Ba'asyir.

In the court, Ba'asyir swears to God that he never knew of the existence of AJAI. Since the court's failure to present strong evidence against him, the judge only found him guilty of document fraud. However, Greg Barton believes "there was a large volume of evidence that could have been tendered in court, but was not." Barton contended that the prosecution produced only one witness, a Malaysian arrested in Singapore named Faiz Abu Bakar Bafana, who could incriminate Ba'asyir. The Indonesian judges discounted his testimony because it was presented by video link from Singapore and the prosecutors had not arranged for him to be cross-examined by the defence. In addition, Bafana's testimony differed from that given by other witnesses. Consequently, the judges found Ba'asyir guilty of being involved with AJAI, but held that the prosecution failed to prove he had become the Amir after Sungkar's death in 1999 (Barton, 2004).

Secondly, the failure to outlaw *Al-Jamaah Al Islamiyah*. The government officials believe firmly that AJAI is a terrorist group whose radical faction has been implicated in various bombings in Indonesia. The international community is also demanding the government to outlaw AJAI. However, up to the present time, AJAI is not an illegal organization in Indonesia and mere membership is not a crime. According to the present anti-terrorist law, someone has to be tied to a terror attack to be detained. The main reason why AJAI has not been outlawed is that the government is worried that it will generate an unnecessary political backlash from within the Muslim community.

As Sydney Jones writes, another reason for the government's unwillingness to outlaw the organization is that "*Jemaah Islamiyah*" can be simply translated as the "Muslim Community" (Jones, 2006: 166). Understandably, the Indonesian Muslim community would feel cornered if the government were to proscribe the "Muslim Community." The Head of the Counter-terrorism Coordinating Desk, Ansyaad Mbai, says plainly that "the reason this is not being done immediately [outlawing JI] is because the political situation is still very sensitive" in this Muslim majority country (Abuza, 2004: 62).

President Yudhoyono says that he is willing to submit legislation to Parliament that could lead to the proscription of AJAI, but only after seeing proof that the organization exists. The coordinating minister of Politics, Law and Security Affairs, Admiral (ret.) Widodo A.S, insisted that, as a formal organization, AJAI has never existed. He stated that if the government is going to ban any organization, it cannot be called AJAI but must be a new "fringe group." Abuza cynically writes that Indonesian officials have hidden behind the nonsensical claim that since AJIA is not registered formally it is pointless to ban something that "is not a formal organization with card-carrying members." (Abuza, 2004: 62).

Thirdly, indecision about Expanding an "Ideological" Approach. The main goal of an "ideological" approach is to neutralize and to refute the 'evil ideology' that motivates the terrorist group and to prevent extremist ideology from spreading into society at large. The growth of this "malicious virus" in the community could be used by terrorist groups to find new recruits for their future action or suicide bombing missions. However, the government has faced constraints from Muslim community as well as other legal constraints.

Fourthly, the failure to adopt tougher Anti-terrorism Law. Although Indonesia has adopted an anti-terrorism law (Law No. 15/2003) in the aftermath of the Bali Bombing 2002, consecutive terror attacks still re-occurred, such as, the Marriott Hotel bombing (2003) and the Australian embassy bombing (2004). Understandably, hardliner officials close to president Megawati, namely the Defence Minister Matori Abdul Jalil, TNI Commander Gen. Endriartono Sutarto, BIN Chief A.M. Hendropriyono and Home Affairs Minister Hari Sabarno stated univocally that Indonesia needed the introduction of an Internal Security Act (ISA) similar to Malaysia and Singapore. TNI leaders also suggested that the military's role be enhanced to enable it to assist the police in their efforts to strengthen internal security (Sebastian, 2003: 376).

Security agencies were united in their calls for the new anti-terrorism laws to be revised on matters relating to the legal conditions of arrests and detention of suspects. Susilo Bambang Yudhoyono, while he was still the Coordinating Minister of Security in the Megawati cabinet, also spoke generally of the possible need to put human rights on the backburner in the interests of community safety (Smith, 2003: 42)

However, the idea of adopting a tougher anti-terrorism law sparked tough resistance and was opposed by human rights groups and Muslim activists for fear of a return to the authoritarianism of the Suharto New Order regime (Singh, 2004: 63). Human rights activists pointed out the fact that Indonesia's ineffectiveness in deterring terror lies more in the institutional incapacity of the security agency rather than the inadequacy of the anti-terror legal mechanism. This proposal has been wholly rejected by human rights activists. Human rights activists reject any proposed legislation along the lines of the ISA because of the opportunities it provides for human rights violations by the government. The fear is that such a law could bring about a deterioration in Indonesia's fragile democracy and human rights system and a return to the activities of the Suharto New Order regime. Under the ISA approach there could also be a return to the old anti-subversives law (Thontowi, 2004: 23-4).

5. CONCLUSION

This article has shown that explaining the direction of the Indonesian government's counter-terrorism policy cannot be detached from societal pressures originating from the domestic environment. It has demonstrated two main findings. Firstly, the restoration of democracy in the world's biggest Muslim majority country has created an opportunity for the resurgence of Islam as a political force. On the issue of terrorism, these Muslim groups tend to perceive distrustfully that "the war against terrorism" is a kind of "fight against Islam." It is important to note that their sceptical perceptions on terrorism are often shared by other sections of the Muslim community in general. Moreover, the restoration of democracy has also provided space for civil society to emerge: human rights defender groups, such as KONTRAS, *Imparsial*, and Muslim Lawyer Team (TPM). They monitor actively human rights abuses committed by the previous regime and have expressed their serious apprehension that some elements of the government's counter-terrorism policy could undermine human rights, civil liberty and democratic principles in an emerging democratic polity.

Secondly, as a result, the scepticism among those societal groups over the nature of terrorism and counter-terrorism have turned out to be constraints for the government's freedom to manoeuvre in adopting and implementing certain of its counter-terrorism policy measures. In order to maintain the support from the Muslim community and to sustain the political coalition with Islamic political parties in the parliament, the Megawati (2001—2004) and Yudhoyono administrations (2004—2009) tried to compromise with their sceptical perceptions. Furthermore, because of being monitored and criticized by human rights defender groups, both consecutive governments also refrained from adopting policy measures that could undermine human rights and civil liberty.

Finally, while the authorities have dented the terrorist network considerably, they have also faced societal constraints in several policy measures, such as acting against the alleged "spiritual leader" of AJAI, outlawing AJAI, developing vigorously an ideological" approach, and adopting a more draconian anti-terrorism law. In brief, the pressures originating from those societal groups have turned out to be constraints for the government's freedom to manoeuvre in adopting and implementing certain counterterrorism policy measures.

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