COUNTERMEASURES TERRORISM IN INDONESIA:
AN ANALYSIS THROUGH POINT OF VIEW OF SOCIOCOLOGICAL AND JURIDICAL APPROACH

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ABSTRACT

Terrorist cells still exist in Indonesia despite the Indonesian security authorities having achieved success in their counter-terrorism operations. Counter-terrorism and counter-radicalisation efforts need to be adapted to changing challenges. Understanding the motivations and causes of terrorism helps to frame a comprehensive counterterrorism strategy. Terrorists are not a homogeneous group. Their roots are diverse, not being the same from place to place. Some see themselves as legitimate geopolitical actors, while others are nothing more than gangs or thrill-kill cults. In the past decades, Indonesia has suffered severe terrorist attacks, faced major terrorism challenges and has made impressive progress in countering it. The trend of terrorist groups operating in Indonesia to focus on “soft” targets. Indonesia has made notable progress in strengthening the legal regime against terrorism, in conformity with the international treaties against terrorism. Further measures are however needed to complete the legal regime building processes. This paper will demonstrate analysis of countermeasures terrorism in Indonesia by sociological and juridical approach.

A. Background

The Indonesian government which it letter in the Undang-Undang Dasar 1945 must be protected the whole nation of Indonesia citizen and entire citizen of Indonesia. Therefore state is obliged to protect Indonesia citizen from every crime treat of terrorism, that have characteristic of national terrorism or international terrorism. The Act Number 15 Year 2003 is the Legislative policy to tackling the terrorism in Indonesia and also fight the international terrorism, that can be in Indonesia too. Indonesia has earned a reputation as one of the most successful countries in the world at combating terrorism since September 11th 2001, with hundreds of arrests and convictions. But with increasing numbers of “legal” radicals going underground to join or form terrorist cells, that reputation is now in jeopardy. Terrorism is one of the most crimes that make International society or Indonesian society very fear. Indonesia recognizes the urgent need to mount a universal and concerted response to prevent and respond to criminal acts of terrorism. Indonesia has adopted antiterrorist laws that target terrorists and their activities with specific investigative and prosecutorial powers. This criminal justice strategy has been combined with an intense effort to counter the misguided beliefs of Islamic terrorists. Terrorists have attempted to hijack the Islamic doctrine of “jihad” as a religious mandate to attack all persons who are representatives of nations they perceive as antagonistic toward or in violation of Islamic law.

Terrorism and counterterrorism have become high priorities in Indonesia. Several bomb explosions since the fall of New Order government in 1998 until the J.W. Marriott and Ritz - Carlton hotels on July 17, 2009 such as Christmas Eve bombing, Bali bombing, Australian Embassy and J.W.Marriot bombing demonstrates that terrorism is a continuous threat. This paper discusses the counterterrorism measures taking by the Indonesian government to deal the problem. The
aim of this study is: to verify support given by ASEAN Countries to fight terrorism in Indonesia.

Although The Jemaah Islamiyah network in Indonesia has been mortally wounded due to disruption by the security authorities, terrorism is still a threat in the country 10 years after the Bali bombing. Though smaller in scale, Indonesia terrorist groups have continued to operate across the archipelago. One school of thought suggests that the growth of democracy in Indonesia has created space for the development of radicalism and the revival of JI by Abdullah Sungkar and Abu Bakar Basri after the collapse of the New Order regime. However another school argues that JI arose initially as a rejection of the secular reformasi movement as well as the secular government. It benefited from both the growing resistance to the Suharto regime and the emergence of the Taliban in Afghanistan. It was not democratisation per se that triggered the radicalisation process in Indonesia. Yet another school of thought suggests that promoting moderation which is inherent in Islam can debunk or counter the tendencies towards radical violence. While this is a valid approach for improving the counter-terrorism and counter-radicalisation efforts, it needs to take into account the varied make-up of Indonesian Islam itself.

The discourse on Islam in Indonesia has never been dominated by one single Islamic thought from the very beginning of Islam arrival in the nusantara or what is now Southeast Asia. Although the traditionalist Nahdlatul Ulama (NU) and the modernist Muhammadiyah are the dominant actors in Indonesian Islam, there are many other Islamic groups that influence society in Indonesia. Most of these Islamic groups do not readily or whole-heartedly accept the arguments of the mainstream Islamic groups, including NU and Muhammadiyah. In other words, these groups agree to disagree with each other regarding their differing persuasions within the larger Islamic society.

Hence it would be ineffective to promote de-radicalisation efforts by cooperating with only one or some of these groups. There is a need to reach out to a wider range of Islamic groups to enhance the counter-radicalisation and counter-terrorism strategies.

A. Criticism

1. Local factors

There is also a need to understand local incubating factors behind the new genre of terrorism. According to a foreign counter-terrorism expert Ali Soufan, as cited in Tempo magazine, local elements are now paramount in launching a person on the path of radical violence. These elements could be economic, political, or even ethnic in nature. Thus, to achieve effective counter-terrorism and counter-radicalisation efforts, local factors should be better understood by the authorities.

In the Indonesian context, these local aspects also play a crucial role in the radicalisation process. Even though it is not a primary factor, socio-economic injustice could become a trigger for people to become radical or even engage in extreme violence. Such conditions of socio-economic injustice is not only associated with poverty. In fact, not all poverty-stricken people become terrorists. On the contrary, there is evidence that affluent people can also become terrorists, with Pepi Fernando the best example. Holding a university degree and enjoying a middle class income, Pepi was the mastermind of six terrorist attacks in 2011, including one on President Susilo Bambang Yudhoyono, as well as sending book-bomb to several Indonesian figures. Further, the primary targets of the recent attacks are no longer Western-affiliated institutions or venues. The terrorists direct their attacks at the local government, especially the police. An effective counter-terrorism campaign is one of the triggers of the recent attacks on the police whom the terrorists see now as their main enemy because the police are the key players in the capture of the terrorists. Moreover, the counter-terrorism measures have been able to disrupt the terrorist networks. The terrorists are impeded materially in their access to resources and ideologically by the changing preferences of their supporters. Consequently, the terrorists need to adjust their missions, and the local authorities are seen as their new targets Implications for counter-radicalisation efforts. Although the counter-terrorism efforts in Indonesia have produced notable achievements, such as the detention of several JI members, and the counter-terrorist
authorities such as Detachment 88 have the upper hand, more radical groups are still emerging. The Indonesian government must maintain its vigilance to prevent the possibility of more terrorist attacks. Furthermore, the time is right for the government to develop a more comprehensive strategy in counter-terrorism and counter-radicalisation by involving all Islamic groups in Indonesia to counter ideas that support radical violence. The Indonesian government should maintain a stable socio-economic environment to prevent the spread of radical ideas while practising good governance and sustaining a democratic climate that guarantees the people rights. Poor governance could render the people susceptible to radical ideas, which they see as a solution for their problems. Like a mutating organism, the terrorists always adjust to their circumstances and try to find the weakest parts of the society to exploit. Therefore, counter-terrorism must be ever responsive to such mutations.

Indonesia is waging one of the world's most determined campaigns against terrorism and much of the credit goes to the country's American-trained police unit Detachment 88. The horror and audacity of the Bali bombings proved to be an epiphany for Indonesians, alerting them to the homegrown extremists in their midst and helping forge a national consensus against terrorism. The following year, Detachment 88 was set up with the backing of the U.S. and Australian governments; today, it numbers 400 personnel drawn from the elite of the Indonesian police's special-operations forces and it has built up an extensive intelligence network to nab terrorists. Undercover operations in which agents pose as itinerant noodle vendors or new members of a Muslim prayer group enable Detachment 88 to track extremists and convince some to inform on others. Once top militants are located, explosives specialists, snipers, forensics teams and surveillance experts take position.

Through deradicalization programs, Detachment 88 agents take on the role of spiritual counselors, working to convince militants of the error of their ways. Some convicted terrorists now cooperate with the police in community outreach programs. We have no Guantánamo prisons. Our police understand the terrorists' psyches. A nation of 17,000 islands spread across more than 5,000 km, Indonesia might seem too sprawling, messy and diverse to efficiently combat terrorism. While its 210 million Muslim faithful are overwhelmingly moderate, a small band of radicals is calling for Indonesia to abandon its secular underpinnings for an Islamic state. Chief among them are members of Jemaah Islamiah (JI), the militant group blamed for the 2002 Bali bombings, among other attacks. JI and other splinter factions were formed by Indonesians with battlefront experience in Afghanistan and the insurgent-wrecked southern Philippine. In 1998, Indonesians overthrew a dictator who had ruled for 32 years and ushered in a democratic government. It is precisely the nation's status as the world's third-largest democracy that has fueled Detachment 88's success. Wary of the military, which enabled strongman Suharto for so many years, Indonesia's parliament gave the police responsibility for the nation's antiterrorism effort. Instead of imposing an internal security act or other draconian laws that carried the whiff of dictatorship, Indonesia's newly democratic leaders decided to prosecute terrorists publicly through the normal court system. That meant no indefinite detentions that could nurture further radicalization. And to placate an increasingly vocal Islamic political movement, the government took the most controversial stance of all: to consider terrorists not as intractable criminals but ideologically confused souls. "It is Detachment 88's policy that suspected terrorists be treated as good men gone astray," says Sidney Jones, an expert on Indonesian terror with the International Crisis Group, a global conflict watchdog. "When they are fully in police custody, suspects are treated with kid gloves in order to get information on the terror network."

During interrogation sessions, Detachment 88 officers, the majority of whom are Muslim, allow prisoners to worship, often joining them in prayer. Little tricks, like greeting inmates in Arabic instead of Indonesian, help convince terrorists that the police are not infidels, as they have been brainwashed to believe by radical clerics. On occasion, Muslims with impeccable religious credentials are brought in by Detachment 88 to discuss Koranic theology with inmates. The careful handling has paid off. Of the 400-plus terrorism suspects in custody, the Indonesian police estimate that around half have either cooperated with police or renounced violence. Sometimes
even the simplest incentives work. Those who cooperate with Detachment 88 officers have had their children’s tuition, their wives’ employment and even their prison weddings paid for by the government.

2. Countermeasures Terrorism Through Point of View Sociological Approach

Modern sociological perspectives are primarily concerned with the social construction of fear or panic, and how institutions and processes, especially the media, primary and secondary groups, maintain that expression of fear. It is important for students to be able to critically assess the social construction of terrorism and grasp sociological viewpoints, and as a good starting point.

Some societies become "softer" targets after terrorism (especially after short-term target hardening), and other societies become stronger in the long term. It depends upon interaction patterns, and stabilities and interpenetrations among the structural subsystems (economy, polity, religion, law). However, there are probably only three people in the world who understand the kind of Parsonian functionalism I’m describing, so it will most likely be the case that labeling and learning theories will dominate sociological thought on terrorism, followed by conflict or radical theories which all-too-often overdo the implication of state crime, fiscal crisis, capitalism, or imperialism with terrorism. For a promising approach that more carefully attempts to tread these sociological waters.

The explosion of violent and terrorist actions in the name of jihad after the demise of Indonesia’s New Order regime in May 1998 marked the expansion of, and an increase in, the influence of Islamist radicalism and terrorism in the contemporary Indonesian political landscape.

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effort to ‘express their identity’ openly, political discourse and nuances begin to take shape as their contestation with the state increases.

However, the Qur’an instructs the followers of Muhammad to subjugate the world to his religion, and this includes, if necessary, the use of military conquest. This religious mandate has the direct and practical consequence of persecuting non-Muslims as well as Muslims who are independent intellectual thinkers. Therefore, it is fair and objective to present news articles when the news results from obedience to the Qur’an and the Sunnah.

Very near the end of his life, Muhammad left his followers with this command,

Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Messenger, nor acknowledge the religion of Truth, (even if they are) of the People of the Book, until they pay the Jizya with willing submission, and feel themselves subdued. Sura At-Tawba 9:29.

In summary, Sura at-Tawba 9:29 is a call to Muslims to fight,

A. 1. Atheists and polytheists who don’t believe in Allah or the Last Day of Judgment.
2. All who don’t follow the prohibitions set forth by Muhammad.
3. All non-Muslims who don’t follow Muhammad’s new religion.
4. People of the Book, meaning Jews and Christians, who are to be fought until they are,
   a. Conquered
   b. Pay the subjugation poll tax, Jizya
   c. Feel subdued with the laws of the dhimmi.

Jihad is more than seeking to persuade others to accept the beliefs of Islam. Muslim believe the Qur’an teaches that Jihad includes military power.

And make ready against them all you can of power, including steeds of war (tanks, planes, missiles, artillery, etc.) to threaten the enemy of Allah and your enemy, and others besides whom, you may not know but whom Allah does know. And whatever you shall spend in the cause of Allah shall be repaid unto you, and you shall not be treated unjustly. Al-Anfal 8:60.

Of course, Jihad is a dangerous enterprise. The Qur’an urges them fight even though they may disliked it.

Jihâh (holy fighting in Allâh’s Cause) is ordained for you (Muslims) though you dislike it, and it may be that you dislike a thing which is good for you and that you like a thing which is bad for you. Allâh knows but you do not know. Al-Baqarah 2:216.

In the Introduction to the Sahih al-Bukhari, Sheikh Abdullah bin Muhammad bin Hamid of the Sacred Mosque of Mecca, Saudi Arabia tells us that “The Fighting” is disliked because of the waste, damage, destruction, and fear caused by war. Clearly, if Jihad were merely seeking to invite others to accept Islam, there would be no destruction.

So “The fighting”; even though by its nature is disliked by the human soul because of the liability, of being killed, or being taken as a captive, or being injured, with the wasting of the wealth, the damaging of the industry, the destruction of the country, the spreading of fear and awe in the souls and the (possibility) of being exiled from one’s homeland. Allah has made ready an immensely good reward that can not be imagined by a human soul.

The most important reward of Jihad is the certainty of eternal salvation. Other deeds of obedience to Allah count towards obtaining eternal bliss, but they do not make Paradise
certain. The Qur'an states that it is blessed to visit and maintain the mosques, do the established prayers (salat), to give charity (zakat), to fear Allah, and to give drinks to pilgrims. However, these acts of devotion are not equal to striving in the cause of Allah (Jihad). Those who believe enough to suffer exile and strive with all their might, main, goods, and persons will have the highest rank with Allah. They are the people who will most certainly achieve salvation, glad tidings, good pleasure, gardens of eternal delight, and, finally, the blest presence of Allah for ever and ever.

Religious terrorism can be quite extreme in its tactics. Not only does it strive to avenge a long history of persecution and injustice, but it frequently carries out preemptive attacks. This is because a high level of paranoia is usually maintained about the actual degree of threat that the enemy trend poses. Rarely are religious terrorists swayed by secular sources of information about the degree of actual threat, but instead are driven by doctrinal differences of opinion over interpretation of holy scriptures. This results in two things: (1) a rather non-selective targeting pattern, lashing out blindly, often harming innocents; and (2) the creation of numerous offshoot, spin-off, or fringe groups who believe they are commanded to follow a different mission imperative. Add to this the fact that most adherents have already long felt like alienated and marginal members of society, and you've got a recipe for perhaps the most dangerous or prolific kind of terrorism in the world today.

Even in the face of such a multifaceted phenomenon, Indonesia simply does not have a systematic, well-thought-out grand strategy. As the Head of the Indonesian National Police’s Special Detachment 88 (Densus 88) Brigadier-General Tito Karnavian said, ‘any “soft” and “hard” measures we have successfully conducted thus far were actually personal and ad-hoc initiatives—things that we thought would work best [operationally] under the circumstances’. This argument underlines one of the biggest challenges confronting Indonesia in its ‘war against terror’ after the 2002 Bali bombings that killed hundreds of innocent victims.

While the absence of a unified ‘grand strategy’ in dealing with the threat of terrorism underpins the heart of the matter, this research paper suggests that we need to take a step back in history in order to discern a complex of political, ideological and identity factors that lie at its root. Of particular concern here is the nature of the responses of the Indonesian state and government. Specifically, this paper argues that in nearly all of the state’s responses, ‘neutralizing the enemy’ has been the key guiding principle. In other words, state responses to radicalism and terrorism have been guided by an ‘enemy-centric’ strategy. This is in large part because of the dominance of the security apparatus (primarily the Indonesian military for the better part of the country’s history) in shaping state responses to radicalism and terrorism.

This strategy and mindset of targeting the enemy remains in place in responding to the threats posed by Islamist terrorism (most notably by Jemaah Islamiyah or JI, and its offspring, or related violent radical groups), after the fall of Suharto’s regime in 1998. Implying that the target is the enemy (‘the terrorists’) suggests that security approaches and tactical measures predominate. This ‘enemy-centric’ strategy also implies that when ‘terrorism’ is defined as nothing more than the ‘method or tactic of the “terrorists”’, the focus is on their

In order to frame Indonesia’s current counter-terrorism efforts effectively, it is important to look at how Indonesia has gradually shifted from an ‘enemy-centric’ towards a ‘population-centric’ strategy.

In the case of Indonesia’s present terror threats, and perhaps elsewhere in South-East Asia, the ‘prize’ for Islamist radicalism and terrorism remains the support of the indigenous populations the larger society while the obstacle is the existing political order. The chosen method is extreme violence. From the perspective of the Indonesian government, the problem of ‘Islamist terrorism’ is therefore better understood as an insurgency: a struggle for, or resistance against, established government structures by a small number of individuals who offer an alternative rule through mobilizing popular support and using various political, informational, psychological and military means. However, such a perspective has been criticized not only because insurgencies conjure up the image of a band of guerrilla fighters carrying arms and attacking state targets. It also puts too
much emphasis on the security aspects of Islamist terrorism, at the expense of its political and historical aspects. Like many other movements against the government, Islamist terrorism is in fact not always correctly described as rebellion. The Aceh Freedom Movement and the Papua Freedom Movement, for instance, emerged as legitimate reactions to economic, social and political injustice as well as state violence.

In spite of this criticism, classifying Islamist terrorism as insurgency appears to be a tactical choice for the Indonesian government in order to ensure the effectiveness of its efforts in countering Islamist radicalism and terrorism. Insurgency is essentially a struggle to control a contested political space between a state and one or more popularity-based non-state challengers. It often only needs a small number of people and by nature is an organized, protracted politico-military struggle that is designed to weaken the control and legitimacy of an established government or political authority, to replace them with one that conforms to their political, economic, ideological, or religious vision.

In this regard, terrorism (as an indiscriminate violent tactic) and religious radicalism (as a form of socio-political vision vis-à-vis the state), can also be embedded in and subordinated to the insurgency. After all, violence can foster an identity, create a cause, outpace rivals, attract outside support and, most importantly, lead states to overreact. The dividing line between ‘pure’ terrorist groups and insurgents is their alternative political, socio-economic vision.

Based on this understanding, Indonesia has developed a new strategic framework to counter terrorism, Counter-Insurgency (COIN). From the perspective of COIN, the key to defeating an insurgency not only lies in defeating the insurgency militarily, but also in maintaining a monopoly over governmental legitimacy, which requires attention to the political, economic, social and psychological factors affecting the population. The key role of the civilian population in this strategy has increased attention to the position of civilians in the process of conflict stabilization and counter-terrorism. In other words, counter-insurgency is an all-encompassing approach to counter irregular insurgent warfare—an approach which recognizes that a military solution to a conflict is not feasible; only a combined military, political, and civilian solution is possible.

In contrast to the repressive militaristic approach promoted by the military regime of the New Order, which considerably worsened violent resistances and claimed thousands of lives across Indonesia, COIN, as discussed in recent literature on counter-terrorism, necessitates both a deeper understanding of the terrorism problem and the participation of, and dialogue involving, civil society. Using COIN as a strategic framework, Indonesia’s counter-terrorism has therefore increasingly focused on how to strengthen the ability of the local population not to be ‘infected’ with radical ideologies, while simultaneously reducing the individual’s or group’s capability to ‘infect’ them or execute terror acts. In this strategy, the role of civil society is decisive in strengthening social resilience and disseminating a peaceful, moderate Islam at the grass roots level. This, of course, does not in any way suggest that

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6 Jason Rineheart, ‘Counter-Terrorism and Counter-Insurgency’, Perspectives on Terrorism, vol. 4, no. 5 (2010).
the state is irrelevant in the contest to win over society from radical groups and violent elements.

Indonesia has a long history in tackling the threats of Islamist radicalism and terrorism. The story began when S.M. Kartosuwirjo proclaimed an independent Islamic state in 1949 in West Java. This dramatic event sparked the Darul Islam/Tentara Islam Indonesia (DI/TII) movement in West Java. The Indonesian government framed the movement as an insurgency and swiftly ordered the army to suppress the movement and recapture the province and other areas under the DI/TII control. Yet it took more than a decade (from 1949–1962) for the Indonesian government to eliminate the rebellion successfully, leading to thousands of deaths. This was partly because of simultaneous rebellions in South Kalimantan, South Sulawesi and Aceh, and partly because of the lack of experience in counter-insurgency.

It is worth noting that the history of the DI/TII was inseparable from heated debates about the foundation for the would-be Indonesian state in the run-up to independence in 1945. Islamist leaders in the Majelis Syura Muslimin Indonesia (Indonesian Muslim Consultative Assembly, Masyumi) proposed what was later known as the Jakarta Charter, in which there is a stipulation that requires Muslims to conform to the shari'a, a requirement that would place the state unequivocally behind Islam. But their struggle ended in failure, defeated by the opposition of secular nationalists and like-minded leaders who preferred a secular republican model based on the Pancasila and the Constitution of 1945. As a result, many Islamist leaders felt betrayed.

The fact that out of the 249 military operations that Indonesia conducted between 1945 and 2004, 67 per cent were related to internal security threats indicates that repressive ‘hard’ approaches indeed dominated. During the period of the New Order of Suharto, the Indonesian government often applied excessive force and abused human rights when it perceived that ‘national stability’ was at stake. Several factors lay at its origins. First, the existence of communist and regional rebellions automatically called for a military and police response. Second, the institutionalization of the ‘culture of violence’ within the security establishment made it seem ‘natural’ to tackle violence with more violence and repressive measures. How effective these have been is questionable. Research has shown that blunt repressive instruments have often set a spiral of violence in motion.

All of this changed dramatically after the 2002 Bali bombings, which demonstrated the grave threat that radical groups posed to Indonesia. In spite of Vice-President Hamzah Haz’s initial denial of the information provided by Singapore, Malaysia and the US authorities about the JI cells that had masterminded a series of bombing attacks in Indonesia, including those on Bali, the police investigation quickly punctured the idealistic bubble. It appeared that JI had a total of 2,000 members and a wider support network of about 5,000 people. The police also uncovered the strong ties that JI had with al-Qaeda. Indonesia now had a home-ground Islamist terrorist group linked to transnational groups in Afghanistan, Pakistan, Saudi Arabia, Yemen and elsewhere.

In addition, President Megawati issued Presidential Instruction No. 4 on 22 October 2002, which sanctions the creation of the Terrorism Eradication Coordinating Desk (TECD) under the auspices of the Office of the Coordinating Minister for Political, Legal and Security Affairs. This body was assigned the task to boost further cooperation among the police, military and intelligence communities, and to ensure closer coordination among other government agencies that are involved in counter-terrorism. The establishment of TECD was a means to counter the widely spread perception that the National Police and the National Intelligence Agency (Badan Intelijen Nasional, BIN) had failed to anticipate the series of dramatic bomb attacks.

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7 Pusat Sejarah dan Tradisi TNI, Sejarah TNI Jilid II (1950–1959) (Jakarta: Mabes TNI, undated), pp. 84 and 86

It should be noted, however, that behind the Special Detachment 88’s success in destroying terrorist networks, questions are being raised by human rights organizations and society at large. Between 2004 and 2009, the unit arrested 464 individuals and killed 40. Even worse, based on the data collected by KontraS, an influential NGO that is active in dealing with the issues of human rights’ abuses by the security apparatus, in only thirteen anti-terror operations launched during the period from January 2010 until June 2011, 33 terrorist suspects and some innocents were killed and nine others wounded. This unit also arrested some 30 people without sufficient legal procedure. Before being freed, they had to face intimidation and torture from the unit’s apparatus. This kind of human rights’ abuses will apparently remain and even increase if the unit continues to stand as a premier counter-terrorism unit receiving insufficient support from other state law-enforcement agencies.

Despite these impressive achievements, there are numerous problems that undermine Indonesia’s fight against terror. Geographically, Indonesia’s porous land and sea borders, endemic criminality and residual radical views continue to provide an attractive logistical and operational theatre for terrorist networks. Other weaknesses derive from the sub-optimal inter-agency cooperation, especially between the police and military. While the National Police has constituted the leading agency in dealing with the threat of terrorism, especially since the creation of the Special Detachment 88, the Indonesian Defence Forces (TNI) are keen to retain a certain role in counter-terrorism. This seems to be sanctioned by Law No. 34 of 2004 concerning the Indonesian Defence Forces (TNI) are keen to retain a certain role in counter-terrorism. The TNI’s tremendous experience and well-developed intelligence network, based on its territorial command structure, can be a tremendous asset. On the other hand, observers and civil society groups have warned against involving the TNI directly in counter-terrorism, as it would not only open the door for possible human rights’ abuses and a military ‘return’ to a security style of Suharto’s New Order, but also diminish the TNI’s overall readiness and effectiveness as a professional defence force.

At present, TNI units still retain counter-terrorism capabilities, especially those under the purview of the Army’s Special Forces Command (Kopassus). The bulk of their capability, however, is directed either at deep-cover infiltration of organizations that are considered to represent a threat to national security (the responsibility of Group IV, commonly known as Unit 81 Counter-Terrorism) or at anti-hijacking and special recovery missions (the responsibility of Group V, which works closely with the Special Detachment 88’s crisis response team). In addition, both the Navy and Air Force also have their own Special Forces that are tasked with counter-terrorism. The former has the Jala Mengkara Detachment of the Komando Pasukan Katak (Frog Command or SEAL equivalent), while Bravo 90 Detachment (Den-Bravo) is part of the Air Force’s Komando Pasukan Khas (Special Forces Command). Each of these units is supposed to handle marine, maritime, water and air-related hijackings or terrorist acts.

The rivalries between TNI and the police are to some extent reflected in the attempts made by BIN, which also has an anti-terror desk, to set up the Directorate 43, as mentioned earlier, in order for it to play more significant roles in tackling the issue of Islamist radicalism and terrorism. Although BIN constitutes a state civilian agency that is responsible directly to the Indonesian police can ‘request the assistance of the TNI in dealing with security issues that are regulated by a Presidential Decree’ (Chapter 41)—that is, the TNI can only become involved in counter-terrorism if the police request assistance.

In the debate on the division of labour between the police and military, military officers and defence officials have advocated a greater contribution from the TNI to fight terrorism. The TNI’s tremendous experience and well-developed intelligence network, based on its territorial command structure, can be a tremendous asset. On the other hand, observers and civil society groups have warned against involving the TNI directly in counter-terrorism, as it would not only open the door for possible human rights’ abuses and a military ‘return’ to a security style of Suharto’s New Order, but also diminish the TNI’s overall readiness and effectiveness as a professional defence force.
president, it is always led by ex-military, until 2009 when ex-police chief Sutanto took over. Apparently, BIN was hesitant about giving up its pre-existing dominant role in dealing with any national security issues together with the TNI, either because of a sense of superiority over the police or indeed because of its rich experiences and capabilities. During the New Order, a number of BIN’s high-ranking personalities—at that time still named BAKIN (National Coordinating Intelligence Board)—including Ali Murtopo and Pitut Suharto, were involved in engineering the case of Komando Jihad (Jihad Command), leading to arrests and even the killing of hundreds of its activists and members without due process of law.10

3. Countermeasures Terrorism Through Point of View of Juridical Approach

The relationship between terrorism and international criminal law has provoked a good deal of discussion in the wake of the terrorist attacks of September 11, 2001 in New York City and at the Pentagon in Washington, D.C. A particularly challenging issue pertains to whether terrorism is an international crime or a transnational crime, and if and in what context offenders and offenses, to which we affix the label of terrorist and terrorism, should or can be subject to the limited jurisdiction of the International Criminal Court (ICC) and other international and national criminal tribunals. While there are those who feel that terrorism should fall under the purview of universal jurisdiction, some scholars argue that even while the “international state of emergency triggered by the events of September 11 generated worldwide, extensive, and severe legislation internationalizing a crime that is mainly “set deep within national borders acts of terrorism fail to merit ICC jurisdiction because the parameters of such acts remain undefined due to politics. The ICC “would be hard pressed to fulfill the goals of deterrence and justice for victims, and in trying to do so some nations might respond to internal and external terrorist threats by erecting barriers to suppress fundamental rights “in the name of combating what seems to have become the ‘crime of crimes’ of the 21st century.11

The notion of adding terrorism to a similar level of universally recognized extreme crimes elicits several concerns. First, when we talk about terrorism, what are we talking about? Are we talking about actions of violence committed in different nations by the same group with the intent of terrorizing and scaring other nations who think they may be next? Or are we talking about terrorist groups confining their operations within a specific national territory, but having a presence and source of support in other nations, such as the Revolutionary Armed Forces of Colombia (FARC) that has long maintained a global network of cells committed to specific tasks and responsibilities for furthering its terrorist activities on Colombian soil? How the international community defines terrorism will have several ramifications for international justice.

3.1. The Characteristic of International Crimes

If a society’s essential values drive it to designate a conduct as a crime, then criminal law is a barometer of those values and is applicable to both domestic and international acts that affront and disrupt the rule of law. Taken a step further, crimes construed to be so egregious as to shock humanity, such as genocide, crimes against humanity, and war crimes12 became international

crimes by consensus of the international community. As a result, such crimes became subject to the jurisdiction of limited international tribunals, such as those created by the world community to investigate and try horrific acts committed in Bosnia, Rwanda, Sierra Leone, Lebanon, Cambodia, and East Timor.\textsuperscript{13}

The values of the international community have dictated that conduct violating basic human rights in ways that “shock the conscience of humanity constitute international crimes. Such conduct violates the “inherent values and interest of the community of nations and therefore concerns the ‘international community as a whole.”\textsuperscript{14} Such conduct violates the “inherent values and interest International consensus to criminalize such behavior is reached by virtue of the values protected and the interests threatened. The values and interests transcend individual goals, national borders, and sovereignty limitations because they are common to and affect all nations equally. Even if international crimes only occur in a few nations, their immediate and direct effect endangers the well being of the world as a whole and threatens the international peace and security of mankind.\textsuperscript{15}

In order to prevent damage to the values protected by the international community and to avoid impunity from those committing core crimes\textsuperscript{16} international law provides for universality—the principle of law that “permits a state to exercise jurisdiction over perpetrators of certain offenses considered particularly heinous or harmful to mankind, regardless of any nexus the state may have with the offense, the offender, or the victim.”\textsuperscript{17} Thus, universal jurisdiction permits a state to prosecute those accused of committing serious crimes regardless of whether they are in violation of the domestic law of the country wherein the crimes are perpetrated.

### 3.2. The Characteristic of Transnational Crimes

In contrast to the definition of international crimes, the criminalization of conduct classified as transnational crimes emerges from the concerns of individual states regarding their political, social and economic interests and assertions about the harm caused to these interests.\textsuperscript{18} For instance, money laundering is seen as a crime that erodes financial institutions, depresses economic growth, facilitates corruption, and increases economic instability\textsuperscript{19} while drug

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\textsuperscript{15} The preamble to the Rome Statute of the ICC provides that the parties to the statute “[r]ecognize[e] that such grave crimes threaten the peace, security and well-being of the world.” Rome Statute of the ICC.

\textsuperscript{16} General Assembly Resolution 95(I) of 1946 provides excellent support for this statement. G.A. Res. 95 (I), U.N. Doc. A/RES/1/95 (Dec. 11, 1946).


cts.pdf.
trafficking threatens public safety, economic productivity, public health, professional advancement and education, and public institutions.\textsuperscript{20}

The effect that transborder crimes could have on international peace and security is an indirect and collateral result of the crime. Moreover, any of these effects would depend not only on the commission of an illegal act per se (as it is for international crimes), but also on how extensive, violent, and damaging that illegal conduct is on states’ interests. Such is the case with drug trafficking in Colombia over the last two decades and more recently in Mexico.\textsuperscript{21}

Transnational crimes apply a limited extraterritorial jurisdiction.\textsuperscript{22} To exercise this jurisdiction, there is regard for where the crime is committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, and/or whether the crime threatens a state’s national security; if any or all of these are met, the authority to punish such crimes emerges under domestic law. However, extraterritorial jurisdiction is seen as an encroachment upon the sovereignty of nations; hence, this jurisdiction will come about only through the cooperation of nations willing to work together. With regard to extraterritorial jurisdiction for transnational crimes, jurisdiction seems to be limited to when there is an injury caused or threatened on a specific nation claiming jurisdiction. Transnational crimes address private injuries, while international crimes focus on international injury and injury to the international community as a whole. So, when we seek to obtain jurisdiction for transnational crimes, it seems that states ought to establish a link between the crime and the state in order to exercise that territorial jurisdiction. In contrast, with international crimes, there is no need for that specific link. In transnational crimes, we must respect the sovereignty of the state where harm is caused upon the private state and not on the community as a whole. We must look at the type of crime that is committed in order to justify extraterritorial jurisdiction. In other words, we need to emphasize that international crime threatens international values and harms international order, while transnational crimes only affect individual states. In addition, unlike in international crimes, the interests imperiled by transnational crimes, and the possible effects that such crimes may have on peace and security, do not justify a legitimate intrusion on nations’ sovereignty.

Crimes is jurisdiction justified according to the type of threat or injury, or the type of impact that the crime causes on the state or on the international community? This question reveals the basis for classifying terrorism. Those grave and heinous crimes that violate the jus cogens and encroach upon the fundamental interests of the constituting terrorism in other countries are similarly unlawful in the United States.\textsuperscript{23}

Armed with such domestic legislation, the United States will without hesitation go after any individual who it claims to be a terrorist. Through the execution of extraterritorial measures, including a practice known as rendition, the United States will try to reach within the borders of another country to grab a suspect and bring that


\textsuperscript{21} In Mexico alone, drug violence has claimed more than 7,000 lives since January 2007. See 60 Minutes: Mexico’s Drug War (CBS television broadcast Mar. 4, 2009), available at http://www.cbsnews.com/video/watch/?id=4836946n.

\textsuperscript{22} Boed, United States Legislative Approach to Extraterritorial Jurisdiction in Connection with Terrorism, 2INT’L CRIM. L. REV. 145, 145–77 (2002).

\textsuperscript{23} U.S.C. § 1182(a)(3)(B)(iii) (2006) (“The term ‘terrorist activity’ means any activity which is unlawful under the laws of the place where it is committed [ ] or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State.”).
suspect onto United States soil. However, the United States reserves the right to prohibit other nations from doing the same within the United States.24

Similar to terrorism legislation in the United States, the Canadian law is intended to bring terrorism offenses under Canadian jurisdiction.25 Armed with such domestic legislation, the United States will without hesitation go after any individual who it claims to be a terrorist. Through the execution of extraterritorial measures, including a practice known as rendition, the United States will try to reach within the borders of another country to grab a suspect and bring that suspect onto United States soil. However, the United States reserves the right to prohibit other nations from doing the same within the United States.26

3.3. Universal Jurisdiction in Domestic Courts

In past eras, nations were generally reluctant to cast the net of domestic adjudication over crimes having extraterritorial character. More recently, however, due in part to the global war against terrorism and the globalization and breakdown of trade, economic, and political barriers, states have enacted criminal legislation that asserts extraterritoriality. Such a move by nations toward universal jurisdiction represents the global coalescence of common causes, such as responding to gross violations of human rights, including “genocide, crimes against humanity, and trafficking of women and children, particularly where host states lack the capacity or will to hold perpetrators accountable.27

However, it must be noted that universal jurisdiction under domestic legislation does not impose a duty on a State to act against the perpetrators of extraterritorial crimes. Such legislation only “authorizes, rather than obliges States to prosecute and punish offenders” under international law.28 There is an inherent risk, however, in exercising universal jurisdiction in a domestic judicial venue over international terrorist acts. The specter of imperialism looms over the attempts by global powers, particularly the United States, to hold the perpetrators of terrorist acts accountable for acts that occur outside a prosecuting State’s sovereign territory. Austen Parrish makes the point, well taken, that the “extraterritorial application of American law certainly has the appearance of a unilateral instrument of American hegemony.29

3.4. International and Regional Cooperation

There are also other regional joint operations, intelligence exchanges, and extradition agreements with Malaysia and Singapore to hunt down suspected terrorists and safeguard the Malacca Straits. With this purpose, Jakarta has signed various accords with regional states, including a memorandum of understanding (MoU) on combating terrorism with Australia, a mutual legal assistance treaty with South Korea, and an agreement on information exchange with Malaysia, the Philippines, Thailand and Cambodia.44 Indonesia is also a party to the ASEAN Plan of Action to Combat Transnational Crimes.30

25 Canada Criminal Code, R.S.C., ch. C 46 §§ 7(3.73), 7(3.74), 8.03 (2010).
26 Canada Criminal Code, R.S.C., ch. C 46 §§ 7(3.73), 7(3.74), 8.03 (2010).
30 Jonathan T. Chow, ‘ASEAN
This cooperation has strengthened various counter-terrorism efforts initiated by the government, which altogether have contributed to Detachment 88’s success in destroying the JI-linked terrorist cells and arresting hundreds of actors behind a series of terror attacks in Indonesia. As a result, JI’s four regional divisions, mantiqis, have been broken up and have been subdivided into smaller operational companies.

Another important part of counter-terrorism policy is the countering of insurgent or terrorist financin mainly the regulation of monetary flows from outside into radical and violent groups within the country. In this regard, the police have cooperated with the Financial Transaction Analysis Centre (PPATK) to help track the funding of suspected terrorists. However, terrorist groups often do not utilize electronically recorded financial mechanisms or institutions and prefer to do everything by personal courier. Another problem is the co-mingling of funds from legitimate businesses (such as JI’s publishing company), or even religious charitable foundations, that often finds its way into the hands of the radical violent groups.

It has been reported that Abu Bakar Ba’asyir, the leader of Jamaat Ansyarud Tauhid (JAT) played a greater role in arranging fund-raising terrorist movements in Indonesia. Ba’asyir had given the money to Ubaid directly on four occasions, paying him IDR 5 Million, US$ 5,000, IDR 120 million and IDR 50 million. On the other hand, the police also found that on four occasions Ba’asyir had channelled money through Toyib, the JAT Surakarta branch treasurer, totalling IDR 200 million, IDR 10 million, IDR 25 million and IDR 75 million. In building Aceh’s training centre, Ba’asyir had also donated IDR 997.5 million and US$ 5,100.

Despite these impressive achievements, there are numerous problems that undermine Indonesia’s fight against terror. Geographically, Indonesia’s porous land and sea borders, endemic criminality and residual radical views continue to provide an attractive logistical and operational theatre for terrorist networks. Other weaknesses derive from the sub-optimal inter-agency cooperation, especially between the police and military. While the National Police has constituted the leading agency in dealing with the threat of terrorism, especially since the creation of the Special Detachment 88, the Indonesian Defence Forces (TNI) are keen to retain a certain role in counter-terrorism. This seems to be sanctioned by Law No. 34 of 2004 concerning the Indonesian Defence Forces (Chapter 17), which stipulates that key duties (tugas pokok) include to ‘eradicate terrorism’. On the other hand, the explanatory section of law states that the TNI are supposed to deal with ‘high-risk international terrorism networks working together with domestic terrorist groups that could threaten the national integrity and sovereignty’. In other words, purely domestic groups are not the TNI’s responsibilities.

To add to the confusion, the TNI can be assigned non-conventional functions, including counter-contradict Law No. 2 of 2002 on the Indonesian National Police, which argues that the police can ‘request the assistance of the TNI in dealing with security issues that are regulated by a Presidential Decree’ (Chapter 41) — that is, the TNI can only become involved in counter-terrorism if the police request assistance.

In the debate on the division of labour between the police and military, military officers and defence officials have advocated a greater contribution from the TNI to fight terrorism. The TNI’s tremendous experience and well-developed intelligence network, based on its territorial command structure, can be a tremendous asset. On the other hand, observers and civil society groups have warned against involving the TNI directly in countering terrorism, as it would not only open the door for possible human rights’ abuses and a military ‘return’ to a security style of Suharto’s New Order, but also diminish the TNI’s overall readiness and effectiveness as a professional defence force.

At present, TNI units still retain counter-terrorism capabilities, especially those under the purview of the Army’s Special Forces Command (Kopassus). The bulk of their capability, however, is directed either at deep-cover infiltration of organizations that are considered to represent a threat to national security (the responsibility of Group IV, commonly known as Counterterrorism Cooperation Since 9/11,’ Asian Survey, vol. 45, no. 2 (2005), pp. 302–321.

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Unit 81 Counter-Terrorism) or at anti-hijacking and special recovery missions (the responsibility of Group V, which works closely with the Special Detachment 88’s crisis response team). In addition, both the Navy and Air Force also have their own Special Forces that are tasked with counter-terrorism. The former has the Jala Mengkara Detachment of the Komando Pasukan Katak (Frog Command or SEAL equivalent), while Bravo 90 Detachment (Den-Bravo) is part of the Air Force’s Komando Pasukan Khas (Special Forces Command). Each of these units is supposed to handle marine, maritime, water and air-related hijackings or terrorist acts.

The rivalries between TNI and the police are to some extent reflected in the attempts made by BIN, which also has an anti-terror desk, to set up the Directorate 43, as mentioned earlier, in order for it to play more significant roles in tackling the issue of Islamist radicalism and terrorism. Although BIN constitutes a state civilian agency that is responsible directly to the Indonesian president, it is always led by ex-military, until 2009 when ex-police chief Sutanto took over. Apparently, BIN was hesitant about giving up its pre-existing dominant role in dealing with any national security issues together with the TNI, either because of a sense of superiority over the police or indeed because of its rich experiences and capabilities. During the New Order, a number of BIN’s high-ranking personalities—including Ali Murtopo and Pitut Suharto, were involved in engineering the case of Komando Jihad (Jihad Command), leading to arrests and even the killing of hundreds of its activists and members without due process of law.31

**B. Conclusion**

Indonesia’s attempt to combine both counter and contra (hard and soft) approaches in countering radicalism and terrorism has emerged as the best approach in the long run. In dealing with terrorism and radicalism, the ‘hard’ approach is defined as measures that are employed by the state that focus on the function and role of the security apparatus (primarily the National Police and Military) and their use of force, which includes, among other things, tactical raids, arrests, infiltration and killings. The soft approach, on the other hand, is seen as the function, role and activities of the non-security state apparatus (such as the Ministry of Education, as well as non-state actors (such as Islamic mass organizations), which do not resort to force. Indonesia should have strategy also follows several best practices in handling radicalism and terrorism that have been developed throughout Indonesia’s history.

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