

National Security, The Media, And The Promotion of Rights In Indonesia^{*}

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The (Counter-Terrorism) Law provides authority to the state to detain and arrest people without due process of law. Its' foundation provides more freedom for the state to conduct violent acts and human rights violations. Even without the Internal Security Act disguised in the Counter-Terrorism Law, pro-democracy activists and the people have to face threats from the state in the multi-interpretative articles in the Criminal Code (Hanzaai Artikellen) and from the Counter-Terrorism Law. The arrest and detaining of people of Bulukumba is clear evidence... Not to mention many pro-democracy activists who have been arrested and penalised through the Criminal Code's multi-interpretative articles.¹

The above quote reveals three issues about the state of national security in Indonesia. Firstly, it demonstrates how the Indonesian government by enacting counter-terrorism laws responds to global concerns about terrorism and national security. Secondly, it shows human rights activist's view of national security in a country in which the state is repressive and use of military power common. Thirdly, the statement shows how human rights activists make use of the media in communicating their criticisms against the state.

These three issues will be discussed in this paper. As I will show, there is a need for national security measures to prevent further terrorist attacks in Indonesia, but that enacting draconian laws is not necessary and can be used as a tool of the state to oppress the people. This concern has been justified by a recent series of arrests conducted by the state without due process of the law. I will review the law and its implementation and will discuss how the media tackles national security issues in Indonesia and the role of the media in promoting rights.

The legal framework of National Security in Indonesia on the Aftermath of Bali Bombing

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¹ Press Release "Bulukumba Berdarah, Korban Keganasan Koalisi PT London Sumatera Tbk dan Aparat Negara," released by National Solidarity for Bulukumba (*Solidaritas Nasional Untuk Bulukumba*), 19 August 2003. Translated by Bivitri Susanti.

Indonesia's Counter-Terrorism Law

Not long after the September 11th attack in New York the US Government shifted their support policy in Indonesia to a focus on counter-terrorism measures within Indonesia.² Some officials of the Indonesia's Department of Justice were sent to the US to learn about internal anti-terrorism measures for proposed implementation, and soon after this visit an Indonesian Counter-Terrorism Law was drafted.

After the Bali Bombing in October 2002 the Government expedited the deliberation of the Law. As the Parliament (DPR, *Dewan Perwakilan Rakyat*, People's Representatives Assembly) was not in session, the Government issued a Government Regulation in Lieu of Law No. 1 of 2002 regarding Counter-Terrorism and the Government Regulation in Lieu of Law No. 2 of 2002 regarding the Implementation of the Government Regulation in Lieu of Law No. 1 of 2002 to the Case of Bali Bombing. The latter specifies that, as an exception to the principle of legality, the Government Regulation in Lieu of Law No. 1 of 2002 that is enacted *after* the Bali Bombing can be implemented to the case. The Government Regulation in Lieu of Law No. 1 of 2003 and No. 2 of 2003 were soon enacted as Law No. 15 and 16 of 2003 by the Parliament without any changes in the content.

Some special features of Indonesia's Counter-Terrorism Law are:

- The definition of proof has been broadened to recognise as proof information that is: said, sent, received or kept in electronic or optic forms, including data, record, and information that can be seen, read, and heard. (Article 27).
- A person can be arrested for investigative purposes for a maximum of six months with authorization of the Head of District Court (Article 25 section 2). (In Criminal Procedural Law (Law No. 8 of 1981), the allowed maximum of arrest without authorisation is only 20 days plus 30 days .)

² When President Megawati Soekarnoputri visited the US a week after the 11 September 2001 attack, Bush government immediately pledged to withdraw embargo on weapons upon Indonesia. Also, the US pledged fund for security and counter-terrorism program in the amount of more than 50 million US\$. The fund is used for the training for police force, the establishment of special counter-terrorism unit, and regional counter-terrorism scholarship. See "Bantuan Militer AS: Untuk Apa?" *Kompas Daily*, 15 August 2002.

- A proof can be obtained from any intelligence report (Article 26).
- A suspect can be detained for seven days, whereas the Criminal Procedural Law allows a maximum of one day detention (Article 28)
- An investigator may tap and keep a suspect under surveillance (Article 31)

I will not elaborate further on these articles but will now review the debate surrounding the Law and its implementation.

Only a few months after the enactment there was another bombing at J.W Marriott Hotel Jakarta in August 2003. Yet, instead of admitting that there were weaknesses in the work of intelligence and the police, Matori Abdul Jalil, the Minister of Defence, stated that Indonesia needed an Internal Security Act in order to prevent terrorist attacks in the future.³ The Chief of the Army, Gen. Endriartono Sutarto; the Minister of Internal Affairs, Hari Sabarno; and the Coordinating Minister of Politics, Social, and Security, Susilo Bambang Yudhoyono positively responded to this idea. Almost immediately human rights activists and academics issued critical statements and articles about the incident and the government's reaction in the media. The statement of a group of human rights activists responding to a repressive action against farmers in Bulukumba, South Sulawesi cited in the beginning of this paper is an example of how Human Rights activists view the idea of national security vis-à-vis human rights.

It is also interesting to note that almost immediately after the Law was enacted, there arose an issue of the possible enactment of two other two laws relating to national security, namely the Bill on Indonesian National Military and the Bill on Intelligence. It is suspected that the military wants to use the issue of national security as a way of winning back power in the political arena⁴.

To examine policies regarding Indonesian national security we cannot use the usual method of reading the law as a text without the possibility of distortion. Particularly in these cases the text of the law has to be seen as a product of a power struggle

³ See "Menhan Matori Abdul Djalil: Saatnya Indonesia Membuat ISA," *Kompas Daily*, 10 Aug 2003: 2.

⁴ The doctrine of dual-function of the Indonesian military says that the military plays roles in both the defence area and political area, this enabled the military in Indonesia to hold political power.

between contesting groups. Contesting groups through the implementation of the text of law then will interpret the law differently.⁵ Thus, any implementation of the law depends heavily on the dominant interest of the state.

The above discussion paints a picture of the tension between the state and human rights activists over issues of Indonesian national security. It is a scenario that can be found in countries with an authoritarian regime or countries in transition, in which the status quo still holds power and wishes to maintain that power. "Terrorism" and "national security" interpreted by the state are used as tools to preserve state power.

This is undoubtedly the main problem of national security laws across the world. The paradigm used in such laws is the concept of national security, in which the state is placed above the society so as to carry its "presumed" responsibility in protecting the society's security. In this line of thought, the state then is given special authority to enter the private lives of individuals in the community in the name of national security. This paradigm is in a sharp contrast with the principles of civil liberties in which the rights of the citizens are the main concern and cannot be interfered by the state for any reason.

In a transitional country like Indonesia, the tension between national security and human rights is complicated by two problems. In the national context, room for human rights advocacy is wider than it used to be however due to the fact that the political configuration in reality has not changed, the state is still repressive and as a result civil society is not strong enough. . This condition is exacerbated by the second problem of poor international relations. Currently Indonesia has the highest Muslim population in the world and thus is largely unable to become part of a web of international war against terrorism without causing resentment from the Moslem community.

The Implementation of the Law

⁵ See also Colin Sumner, *Reading Ideologies: An Investigation Into Marxist Theory of Ideology and Law*, (London: Academic Press, 1979), at 22.

The above discussion is relevant in examining the implementation of the law. From the perspective of how the state positions itself in the (global) war against terrorism, it has implemented the Law in a sound manner. However, the impact to the human rights of certain people is negative.

After the well-received implementation of the Law in the Bali Bombing case, the Law has been used subsequently to destroy “terrorist networks” in Indonesia through the detention of people without due process of law. In September 2003, no less than 18 people were detained in one month in Jakarta, Lampung, Solo, and Semarang.⁶ These 18 people were arrested by the police in connection with the Marriot Bombing. PAHAM, a human rights NGO, stated that the number was actually 30.⁷ It was reported that the way that the police arrested them was comparable to an act of abduction. Some Human Rights NGOs then reacted to the situation. They formed the Team for the Victims of Anti-Terrorism Law (*Kuat, Korban Undang-Undang Antiterorisme*). It was this Team that found some of the arrested people were tortured during investigation.⁸

In the beginning, the Chief of the Police Force, Da’i Bachtiar insisted that the Police followed procedure in implementing the laws. In the end, however, after a meeting with *Majelis Ulama Indonesia* (the Board of Moslem Leaders), he admitted that there are some “flaws” in the field.⁹ It needs to be pointed out that the Police did implement the Law in a consistent manner. The Law states a ruling is required from the Head of District Court to authorise an intelligence report to be used in arresting a suspect, but the investigation by Tempo Magazine showed there was no ruling in the case. When Tempo challenged the Police, the officials then argued that the basis for the arrest was the use of Law on the Illegal Ownership of Weapon (Law No. 12 of

⁶ “Menciduk Tersangka Teroris,” *Tempo Magazine*, 28 September 2003: 24.

⁷ “Pukat Antiteror Menjerat Aktivis Masjid,” *Tempo Magazine*, 28 September 2003: 26.

⁸ *Id.*

⁹ *Id.*

1951), the implementation of which must use criminal procedural law that does not allow an arrest without due process.¹⁰

The Media and the Promotion of Human Rights

Tempo Magazine's active involvement in the case above shows that the media in Indonesia play an important role in promoting human rights. Some, although not many, engage in high quality investigative journalism, and some media show their noticeable support for human rights but others do not show any concern.

There are three factors that contribute to the media's role in promoting human rights in Indonesia. First, as a universal trend, is the market, second, is state policy regarding the media and third, media concerns over the state of the nation.

The impact of the spirit of reform after the fall of Suharto brought about the withdrawal of repressive policies towards the media. So that as far as state policy is concerned freedom of press is in existence. In addition, the media also regrouped in order to promote the role of the media in the reform process.¹¹

The poor condition of democracy and welfare in Indonesia affect the way in which the media report public issues. It can be said; in general the media play an important and positive role in promoting human rights. However, as happens in the media all over the world, the most significant influence comes from the media industry. Most of the media capable to play this role in Indonesia are the big media groups, such as Tempo, Gramedia (Kompas, The Jakarta Post, TV7, etc) and Media Indonesia (Media Indonesia, Metro TV).

Media Coverage on National Security Issues

¹⁰ *Id*

¹¹ They established press associations in a more democratic approach compare to the approach used during Suharto era. They also reactivated the Press Board (Dewan Pers) by inserting progressive people in the Board and some media people also established NGOs focusing on the issues of press freedom and initiated some community radio stations.

With regard to national security, there are no specific policies applied to the media. Apart from the factors discussed above, there is another factor that contributes to the freedom of the press over national security issues, namely nationalism and negative sentiments towards certain countries. The case of the Singapore's early *The Straits Times* in February 2002 is worth examining. The *Straits Times* published three reports regarding a plan to bomb the US Embassies in Singapore, Kuala Lumpur, and Jakarta. Many other media in Indonesia, Malaysia, and some international news agencies quoted the reports. Indonesia's *Tempo* magazine, however, considered that the authenticity of the documents that led to the reports were doubtful and would aid US pressure on the Indonesian government to take action against radical Moslems in Indonesia (in particular Abu Bakar Baasyir).¹²

A week after the reports, *Tempo Magazine* published an editorial saying that after September 11, 2001, many governments support the US-led war against terrorism, but it is not only about fighting so-called "international terrorism," but also to strike at their political opponents countries.¹³ Singapore and Malaysia do this by arresting Moslem activists in the name of the "war". After this incident *Tempo Magazine* (and the *Tempo Daily*) and *The Straits Times* reported each other's news.

Apart from aspect of negative sentiment towards other countries and the occasional affairs regarding terrorism like bombing and the arrest of some Moslem activists, most Indonesian people consider terrorism to be a less important issue than issues of internal politics and natural disasters that happen in Indonesia. Therefore, the coverage of the media tends to focus more on the anti-violence sentiment in a somewhat neutral manner, without prejudice to certain minority groups.

If a negative impact could be pointed out, it must be the limited room for groups of Moslems who are not "liberal" to publicize their voice. However, this is more because of the impact of the global media industry that creates prejudice against those groups. In Indonesia, this situation is exacerbated because of the bombings. Media

¹² Andreas Harsono, "Di Balik Ketegangan Indonesia-Singapura. Mengapa *The Straits Times* dan *Tempo* terlibat perang mulut soal terorisme?" *Pantau Magazine*, No. 24 - April 2002.

¹³ *Id*

concern over internal problems, “nationalism,” and negative sentiments towards certain governments to some extent balance this situation with the media being fairer in reports related to national security. An opinion of the Tempo Magazine exemplifies this condition:

Sometimes primary and secondary matters have to be separated, not only differentiated. In certain conditions we have to choose which one is to be prioritised, only because both cannot be done at the same time. For the police, the primary matter is to destroy the bombing terror network immediately; and procedural consistency becomes the secondary. However, it is difficult to be tolerant of this privilege since the reputation of the police services is still far from what is expected by society. Moreover, the privilege of the use of the power can only be understood in an extraordinary situation, which in long term can easily become the abuse of power.¹⁴

On this level of neutrality, reports on the Bali Bombing for example, focus more on the humane aspects and is coloured by the interests of the nation. Newspapers and magazines report the trials with neutrality and publish articles from the academics and human rights activists regarding the trials. For instance, *Media Indonesia* published an article to view the testimonies of the suspects from a psychological perspective.¹⁵ Some newspapers also have reported the impact of the bombing on the country’s tourism industry.

It is important to emphasise that opinions from human rights activists as well as academics colour issues of national security in the media. Publishing opinions in the media is an opportunity for the human rights activists and academics to take a stance with regard to national security issues, and places the media depending on whose opinion they chose to publish within a particular political stance.

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¹⁴ *Tempo Magazine*, supra note 7. Translated by Bivitri Susanti.

¹⁵ Reza Indragiri Amriel, “Menakar Kebenaran Pengakuan Tersangka Bom Bali, “ *Media Indonesia* 5 June 2003.

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