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DRAFT LEGISLATION AND "DERADICALISATION"?

Proposed Amendments to Indonesia's Terrorism Laws and The "Brainwashing" Of Convicted Terrorists?

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Introduction

As I write this paper, it is 12th October 2011. Exactly nine years, to the day, since Indonesia's most deadly terrorist attack, in Bali in 2002. Which, in turn, was exactly one year, one month and one day after September 11, 2001. How the world has changed in one decade. The post-9/11 response to terrorism has had broad implications from security procedures at airports, hotels and shopping malls, to global politics and economics. It has caused wars to rage across the globe, and it may be said that there are very few people on earth whose life has not been touched in some way by those attacks and their consequences.

Indonesia's response following the attacks in Kuta on 12 October 2002 was swift. Using her emergency powers under the Constitution, President Megawati Soekarnoputri enacted an interim law, which was later adopted by the parliament and remains the current anti-terrorism legislation (*Undang-Undang Nomor 15 Tahun 2003 Tentang Penetapan PERPU Nomor 1 2002 Tentang Pemberantasan Terorisme, Menjadi Undung-Undang* 2003). Using this law, Indonesian authorities have caught and prosecuted over 700 terrorism suspects, with an impressive successful conviction rate of about 85% (Anggadha, 2011; Soeriaatmadja, 2011).

However, terrorist attacks continue to occur. Most recently a suicide bomber attacked a packed church in the central Java city of Solo, on 25th September 2011. While the attacks appear to be reducing in size, coordination and deadliness (the last two attacks succeeded only in killing the bombers themselves) many civilians were injured, and some commentators warn that larger attacks are being planned (AFP, 2011).

While the numbers of terror suspects caught, prosecuted and/or neutralised by Indonesian authorities may be considered impressive, more concerning perhaps are the numbers which have been convicted, served their sentences and released from prison. As of September 2010, the number stood at 126 (Anggadha, 2011). One year later, the number is surely much higher. Even more concerning perhaps, are indications that, due to a laxity in Indonesia's correctional system, convicted terrorists are able to carry on communications with their networks from prison.

Sidney Jones of the International Crisis Group, a recognised authority on Indonesian terrorism related issues, wrote in 2006 that Indonesia's prison regime is open to serious criticism in terms of handling inmates but because it is too lax rather than too harsh. Virtually all inmates have hand-phones or access to them, some of them state-of-the-art communicators. Several appear to have regular access to internet chat rooms that they access through a combination of hand-phones and laptop computers. Some of the most hard-core idealogues have produced audio cassettes, CDs, and books from prison and have found ways of disseminating these to their followers on the outside and beyond (Jones, 2006).

Even more worrying than the numbers of convicted terrorists that have been released from prison, is the number that go on to reoffend and commit violent terrorist acts, or to recruit and train new members to assemble bombs and commit acts of terrorism. The International Crisis Group's report "Indonesian Jihadism: Small Groups Big Plans" (ICG, 2011) released in April 2011 outlined the changing strategies of Indonesian terrorist cells which appear to be moving away from large-scale coordinated attacks on foreign targets to smaller groups operating independently with a greater focus on local rather than foreign enemies. Dr Jones recently commented that "Every time we've seen one of these smaller networks emerge, there have been at least one or two members with links to

older networks." (Alford, 2011) This includes several who have been convicted, imprisoned, and who then return to violence after their release from prison.

The current legislation has been frequently criticised for being too weak (ANTARA, 2010; Post, 2010; Suryanto, 2011). However it has been effectively used by law enforcement authorities to apprehend and prosecute hundreds of terrorists. If a criticism may be levelled at Indonesia's legal system perhaps it would be more effectively directed at the later stages of the judicial process, i.e. sentencing and corrections.

This paper seeks to examine the question of whether it would be more beneficial to incarcerate convicted terrorists for longer periods (post-trial rather than pre-trial), and ensure a more effective, rehabilitative incarceration (including efforts to "deradicalise" inmates) rather than reforming the current legislation to give enforcement authorities more powers to apprehend suspects and detain them for longer periods during the investigative process. This will include an examination of what extra powers it is currently proposed to grant law enforcement authorities, and an examination of the current conditions inside Indonesian prisons, and the prospects for reforming and deradicalising terrorists based on recent studies and reports.

Legislative Reform

To consider the question of whether amendments to the current anti-terrorism laws are warranted, it is necessary to consider what the proposed amendments are. Draft legislation has been considered by parliament and is still under consideration. It has not yet been finalised and it remains unclear as to when it might be ratified, if ever. However, there are several substantial amendments proposed, all of which grant greater powers to enforcement authorities, or create new offences in order to make it easier for authorities to arrest and charge suspected terrorists. I will briefly outline each of the proposed amendments here.

The following are English translations taken from the Draft legislation as downloaded from the Department of Law and Human Rights, with comments attached, as of 3 November 2010. (Author's note: translations of the draft provisions are the author's own translations into English from Indonesian and

do not represent official English translations of the draft legislation). *Rancangan Undang Undang Republik Indonesia Tentang Perubahan Atas Undang-undang Nomor 15 Tahun 2003 Tentang Pemberantasan Tindak Pidana Terorisme* 2010.

a. Article 9A creates a new offence of "Trading materials which could potentially be used as explosives, or endangering the lives of humans and/or the environment." This offence carries a maximum penalty of 12 years imprisonment. Further, in the event that the materials in question are actually used in a terrorist act the maximum penalty is raised to 15 years. A note attached to this article requests further clarification of the terminology used.
b. Article 13A creates a new offence, with a maximum penalty of 7 years imprisonment, for any person who knows of a terrorist act that will be carried out and does not report it to the relevant authorities. Further, in the event that the terrorist act in question actually occurs, the maximum penalty is raised to 12 years. This section has been criticised for its implications for freedom of speech and the press.
c. Article 13B creates a raft of new offences and provides a minimum of 3 years and a maximum of 15 years for any person who:
    i. Becomes a member of a terrorist organization or group which plans to conduct actual terrorist acts ("secara nyata").
    ii. To request or loan money and/or goods to or from an organization or group which has plans to conduct actual terrorist acts ("secara nyata").
    iii. To organize paramilitary training with the aim of committing terrorist acts.
    iv. To participate in paramilitary training within Indonesia, or overseas, with the aim of committing terrorist acts.
    v. Spreading hatred or enmity which may encourage or influence a person or precipitate the commission of a terrorist act.
d. Article 14 provides life imprisonment, or death, for any person who plans or mobilises others to commit terrorist acts as set out in Articles 6,7,8,9,10,11 and 12. A proposed amendment would add a subsection providing between 3 and 15 years imprisonment effectively for an attempt to commit the offence outlined in Article 14, where the actual terrorist act is not committed.

e. Article 17, relating to terrorist acts committed by corporations, is proposed to be amended to add "authorised persons" to the category of persons who can commit terrorist acts in the name of a corporation. It remains unclear to the author what the actual effect of this amendment is.

f. Article 25 is substantially amended to extend the length of time given to authorities to investigate and prosecute a terrorist offence. Previously the entire period given for both processes of investigating and prosecuting the offence was 6 months. In the draft legislation it is proposed that the investigation take no longer than 120 days. While the prosecution is given 60 days. Giving a total of 6 months. However, under the draft legislation a mechanism is provided where each period of detention may be extended by order of the Chief Judge of a District Court. Each extension is for a length of 60 days, so effectively provides for up to an extra 4 months – giving a grand total of 10 months. This article however appears unclear and may need further clarification to make its meaning unequivocal. I note that at least one commentator has read this section to mean that it provides a maximum detention period of 14 months (Imparsial 2011). How this length of time is arrived at is not explained.

g. A proposed amendment to Article 26 would allow investigators to use intelligence reports as sufficient preliminary evidence for initiating proceedings against a suspect. The requirement for these reports to be inspected and approved as sufficient evidence, by the Chief Judge or Deputy Chief Judge of a District Court has been relaxed, to allow ANY District Court Judge to provide the requisite judicial approval. This effectively increases by a significant factor the number of judges able to sign off on an intelligence report as providing sufficient preliminary evidence for an arrest.

h. A proposed amendment to Article 27 specifically adds Intelligence Reports to the list of acceptable forms of evidence which may be used at trial to prove an offence (For an excellent discussion of "alat bukti" and "bukti permulaan" under the Anti-terrorism legislation and a comparison to the KUHP general criminal code see Simon Butt's article "Anti-Terrorism Law and Criminal Process in Indonesia (Butt, 2008).

i. A proposed amendment to Article 28 increases the initial detention period from 7 days to 30 days. This is a significant increase, given that during this

period, suspects "are held incommunicado...and sometimes tortured." (Jones 2006)

j. A proposed amendment to Article 31 alters the wording of the section from giving investigators "the right" to open, inspect and seize letters and packages sent by post, to give them "the authority" to do same. The practical difference between the two is not clear to the author. Further, in the same article the conditions relating to "bugging" a suspect are altered so that any judge of a District Court may give authorisation, and that the period is for the judge to determine rather than being for one year, as is the case in the current legislation.

k. Article 34A specifically provides for the use of video conferencing in the giving of evidence in court proceedings, without the witness having to face the accused. This type of evidence was objected to in the most recent trial of Abu Bakar Bashir, and was the cause of him and his legal team leaving the court during sessions when evidence was presented by video conferencing.

l. Finally, a new chapter, Bab VIIA, provides for the establishment of a National Coordinating Body for Counter Terrorism. In reality though, this body has already been set up by Presidential Decree. It is uncertain whether including these Articles in legislative amendments would give the body any more weight or authority. It is likely that the draft legislation was simply written before the Presidential Decree was issued.

The proposed amendments as outlined above provide for a range of new offences, they relax some of the conditions tied to the current procedures and they increase substantially the periods of time that suspects may be detained before trial. The underlying aim is clear: to make the job of law enforcement authorities, in investigating, arresting and prosecuting suspected terrorists easier. It is a response to criticism, that terrorist acts continue to occur in Indonesia, and that the police are powerless to take pre-emptive action.

A common criticism of police is that they are only able to take action after a crime has been committed, however it would appear that these amendments attempt to address that issue, to facilitate arrests and investigations by providing greater powers than they already possess, and by implication

reduce the rights of those suspected of terrorist activities. It should be remembered that these are just draft laws at this stage and it is not sure when they may be passed into law, if ever. However, significant concerns and objections have been made on the basis that these proposed laws, if passed, could have implications for issues such as freedom of speech and freedom of association, especially the articles relating to the "spreading of hatred and enmity" and membership of a terrorist organization.

Criticism has been aimed at the draft changes on the basis that some of the terms used are vague and open to multiple interpretations. (Imparsial, 2011; Setara, 2011) It is true that at the draft stage some of the terminology and phrases such as "memperdagangkan bahan-bahan potensial sebagai bahan peledak, atau membahayakan jiwa manusia dan/atau lingkungan" "to trade in materials which may potentially be used as explosives, or endanger the lives of humans and/or the environment" indicate poor legislative drafting, and would require further clarification or judicial interpretation. In fact, the current draft legislation contains several notes to this effect. However, it would appear that the intention is generally fairly clear, and this does not represent an insurmountable problem to the application of the laws.

Perhaps the article which is most vunerable to the argument of vagueness, is the new offence of "spreading hatred and enmity". Such a provision appears to be open to a very wide interpretation, and given the vehemence with which some religious sermons are delivered is potentially applicable to a very wide category of suspects. Again, the intention is of course to make it easier for police to arrest those who incite others to terrorist acts and remain untouchable themselves, however the serious implications for freedom of speech and freedom of the press must be considered. Consider the case of a journalist who interviews a terrorist suspect but does not inform police due to a journalistic code of ethics which protects the identity of sources (Saragih, 2011).

In light of comments such as this one by Densus 88 commander, Brigadier General Tito Karnavian, the new provision may be warranted, "Recruitment is still going on. We cannot stop it. The ideology is still spreading. As long as they are doing the things not violating the law, like regrouping or discussing with one another, we cannot stop it. This is our weakness" (Allard, 2010)

A further objection raised against the draft changes to the length of periods of detention of suspects is that they are unnecessarily long. A period of 30 days detention without charge appears excessive, when compared to one day which is allowed under the general criminal law (the KUHP), and the 7 days which is allowed under the current anti-terrorism legislation. Given that the current laws appear to have worked well, as judged by the number of arrests made and the relatively high percentage of convictions, it would seem that police and prosecutors would need to demonstrate a strong justification for this extension over the current arrangements, other than just to make their job easier.

However, as Sidney Jones has noted "a week is relatively short compared to the periods of detention allowable under most anti-terrorism laws "(Jones, 2006) And the Indonesian police have been scrupulous about releasing those they cannot charge within a week, which has led to the release of several known JI leaders to "howls of protest from Washington and Canberra". Perhaps this *is* sufficient justification to allow an extended period of 30 days detention before charge. The justification for the extended periods of detention are the result of comments from law enforcement agencies like this one from National Police chief General Bambang Hendarso Danuri who said "Seven days are too short. My men have difficulties uncovering a case in that time." (ANTARA, 2010)

The increased detention periods for investigation and prosecution also appear to require significant justification. Given the high rate of convictions secured it seems hard to understand why these extended periods are necessary. The actual period also requires clarification. Is it 14 months or 10 months maximum? Either way, the period is significantly longer than the 4 months provided under the general criminal law, and 6 months under the current anti-terrorism legislation.

The article allowing Intelligence Reports to be used as "bukti permulaan" forming sufficient initial evidence for an arrest would appear to be cause for concern. The judicial oversight condition has been relaxed by giving any District Court Judge the power to sign off on this, however more of a concern is that intelligence reports are unilaterally created documents, which may contain biased or untested claims or information. An independent judge reading such a report may not always be in a position

to know whether all of the information presented as fact, is indeed reliable or not. Based on that report an arrest may be made and a person held incommunicado, and possibly tortured, without charge for up to a month. This would seem to represent a serious and potentially unacceptable threat to the civil liberty of the general population.

Prisons - Breeding Grounds for Terrorists?

We turn from a discussion of the draft anti-terrorism legislation, to consider the current state of affairs in the Indonesian corrections system. What are the conditions like for prisoners convicted of terrorist offences? Are there serious attempts to rehabilitate terrorists while they are in prison? Are they effective? As we saw above it appears that, due to corruption in the prison system, prisoners are routinely able to gain access to mobile phones, laptops and the internet, and have even published audio recordings and books spreading their ideology. According to a Special Report by Carl Ungerer published in May 2011 (Ungerer, 2011):

> *Terrorist convicts are often housed in the same block of a prison, although not always. They remain relatively free to mingle and congregate with one another, and this has actually helped to expand their personal networks within the militant circle. The men interviewed said they had the opportunity to meet inidividuals they wouldn't have otherwise met because of the small cell structures and high levels of secrecy.*

Also:

> *Not only is the apparent further radicalisation of terrorist convicts in prison an issue, but the potential radicalisation of the inmate population* and *the prison officers is a problem as well. In 2005, Benni Irawan, a warden at Kerobokan Prison in Bali, helped smuggle a laptop into prison for the Bali bomber, Imam Samudra, who was then on death row. It was subsequently revealed that the laptop was used by Samudra to chat with other militants and help plan the second Bali bombing.*

In a shockingly perverse scenario therefore we find a convicted terrorist, in prison, conversing and indoctrinating others both within the prison and outside,

and planning the commission of further terrorist acts with the knowledge and aid of prison staff. Can there be any greater argument for an urgent reform of Indonesia's correctional system than this?

Religious classes held in prison are reportedly recruiting grounds for new followers to the jihadist cause (Karmini, 2011). Associated Press reporters who were granted access to Surabaya's Porong Prison interviewed Muhammad Syarif Tarabubun a former police officer sentenced to 15 years for his role in attacks on Christians. "He laughed easily and smiled broadly as he explained his extremist views. He said he plans to join a jihad in Afghanistan, Iraq or Lebanon after his likely early release in 2013 for good behaviour." (Karmini, 2011)

This type of report raises the question of the lengths of sentences handed down by the courts and whether they are sufficient for effective rehabilitation of inmates, and the related question of the length of sentence actually served after remissions for good behaviour. It would seem perverse to any reasonable observer that a terrorist prisoner who openly discusses plans to commit further terrorist acts upon his release, be granted a reduction in sentence due to good behaviour. More worrying perhaps are the "celebrity" terrorists such as Abu Bakar Bashir, and the effect that they may have when they are able to unleash their fiery rhetoric on a captive audience such as a group of prison inmates. "Experts say the imprisonment of Bashir...is unlikely to stop him from providing crucial spiritual sanction for terrorism." (Karmini, 2011)

Attempts at Deradicalisation

Attempts to "deradicalise" terrorists in Indonesia have so far been somewhat haphazard. In the absence of a clear standardised government approach on this issue, it appears that the burden has fallen to individuals to take up the challenge. Comments from Nur Achmad, the chief warden at Porong Prison are illustrative. "He was shocked when he took over late last year to see regular inmates moving freely in and out of Block F (the cell block where terrorists are held). Some (general prisoners) had changed their appearance, lengthening their hair and beards in imitation of the militants. 'I have to stop this,' Achmad said. 'I don't want them spreading radicalism to other inmates.'"

Achmad implemented measures to segregate the terrorists and restrict access to the terrorist cell block. Prisoners are still able to study Islam with the militants but under tighter supervision and with closed circuit cameras watching. These study groups are a key element of the terrorist's strategy to recruit new followers, to invigorate their own jihadist spirit and maintain their movement in the long run. According to the "Jihadists in Jail" report (Ungerer, 2011) "that's why they continue to conduct their dakwah (religious outreach) in prison to ensure they can recruit new members and that their own zeal for militant jihad isn't diminished."

Any attempts to rehabilitate terrorist prisoners must address these issues head on. Alternatively when terrorists are released from prison, due to family and social ties, religious or social obligations or debt, individuals are likely to go back to the networks which put them in prison in the first place. Indeed the point has been made that many radicals *leave* prison with a greater sense of the jihadist imperative than they had when they went in.

Some attempts to "deradicalise" prisoners have shown signs of success. The "Jihadists in Jail" report contains several case studies of terrorists who have renounced their militant views and gone on to lead relatively normal lives, indeed several are being used to help deradicalise other prisoners (Ungerer, 2011). Further study in this area would be beneficial in determining which approaches are most effective, remembering that all not all prisoners respond equally to attempts to deradicalise them. That knowledge could then be used as the basis for a comprehensive approach to terrorist rehabilitation programs across the country.

Australia's Federal Police Commissioner Mick Keelty has noted the success of programs to de-radicalise or de-program terrorists in countries such as Indonesia, Pakistan and the UK (Barlow, 2006). Essentially the approach is to use a "reformed" terrorist, preferably someone with some standing as a leader, who then engages with radical inmates in an attempt to convert them back to a more moderate viewpoint. As Ungerer explains that in addition to offering financial incentives to some individuals, they've included elements of a counter-ideology program to convince militants that violence is not part of religion.

Accordingly, the police have spearheaded an initiative using former militants who've revised their stances on violence to engage other militants in prisons. This is based on the assumption that former hardliners have a more

lasting impact on supporters of violent jihad than appeals from moderates...Ali Imron, for example, is often sent into Indonesian prisons to convince other violent extremists, especially the ones newly incarcerate, that attacking civilians is forbidden in Islam."

Civil libertarians label these deradicalisation attempts as "brainwashing" and reject them, however this response requires further explanation. Based only on the reports available, the deradicalisation sessions appear to be more like discussion sessions than "brainwashing". Deradicalisation is based on the notion that if one can become radicalised, then logically one can also become "de-radicalised" through exposure to reasoned counter ideology. The reality is that, while these deradicalisation sessions have shown success in some cases, they do not work for everyone.

If one lesson can be taken away from Ungerer's study, it is that the approach to reforming and rehabilitating militant terrorists needs to be tailored to the individual, and may involve several different strategies, from financial assistance to providing jobs and security to channelling their energies and focus away from jihadist activities towards something more positive. A "golden handcuffs" program in Saudi Arabia involves an approach of finding wives for captured terrorists and "enmeshing them in a web of personal, financial, religious and professional obligations once released is regarded as pioneering." (Karmini, 2011)

These programs however appear to come dangerously close to "rewarding" terrorists. And would need to be closely monitored to ensure that prisoners were actually sincere about their reformed beliefs, and not simply "playing along" in order to receive the benefits offered by the program. Some of the so called "white" groups of hardliners expressly reject these attempts to deradicalise them, and refuse to take part. Indeed they have created their own "counter de-radicalisation" strategies. In these cases forcing an inmate to take part may actually have the reverse affect and reinforce entrenched militant views. "They reject rehabilitation programs and oppose any attempts to 'tame' them...They do this by banding together and reinforcing one another's belief in the righteousness of armed struggle (Ungerer 2011)."

Therefore it is important to know the inmate and what their ideology is, and their motivating factors, in order to address them effectively. In some

cases simple disengagement and distancing these individuals from violence may be the most effective approach. Longer periods of incarceration may be warranted. Certainly individuals who express these sorts of recalcitrant views and the intention to commit terrorist acts upon their release should not be eligible for early release.

Conclusion

According to Ungerer, "Counter radicalisation programs in Indonesia are having limited effect on the trajectory of terrorism and militancy. Recidivism rates are on the rise."It would seem that little scholarly attention is being paid to these issues, and the police's approach to deradicalising and rehabilitating prisoners has been "largely ad hoc and unsystematic." Further study is needed on the sentencing of convicted terrorists, the numbers that are currently imprisoned and numbers that have been released. Closer monitoring of terrorists is needed to assess which individuals return to militancy and jihadism, and which go on to pursue relatively normal lives.

Further study should look at the motivations of terrorists and which rehabilitative processes yield the best results, bearing in mind that the same approach does not work for all. Police and prison officials with the assistance of foreign governments and stakeholders should commission further studies and monitoring and implement the results of those studies. What is clear is that the current approach is not working. However, the Indonesian police and government cannot be expected to do this work alone. Terrorism affects all of the countries of South East Asia, and the world, therefore governments should work cooperatively towards a solution.

The question of whether Indonesia needs amendments to its current anti-terrorism legislation is largely a matter that requires public scrutiny. Part of the aim of writing this paper is to raise awareness and discussion of these issues in the community. Legislation which has some serious implications for freedom of speech, freedom of the press and civil liberties in the wider community should only be enacted after public discussion takes place, and the community as a whole is aware of the changes that are being proposed.

It is possible to make the argument that, based on the numbers of terrorists that have been arrested and successfully prosecuted by Indonesian authorities over the last decade, the system is clearly not broken. Indeed Indonesia is often hailed as one of, if not *the* most successful country in the world in terms of its approach to tracking down and punishing terrorists and approaching it as a law enforcement problem - rather than an insurgency. Police and enforcement agencies, particularly Densus 88 have been allowed to go about their business and have achieved some stunning victories. This paper has not addressed the important issue of the numbers of terror suspects who have been shot and killed in police, particularly Densus 88, operations. Whether abuses of the powers granted to enforcement agencies, have occurred, and or will continue to occur if granted greater powers, is a question which also requires scholarly attention.

"SATGAS prosecutors have developed extensive experience prosecuting terrorism cases...and have developed long term close professional relationships with Densus 88. This has led to a new criminal model in Indonesia – police and prosecutors working together on cases from the onset instead of prosecutorial engagement beginning after a police investigation has concluded" (Unattributed, 2011).

So, to use the vernacular, if the system did not broke, why fix it? Instead of granting longer periods of incarceration prior to trial, perhaps it would be more effective to examine the question of longer periods of incarceration post-conviction in order to facilitate a more comprehensive rehabilitation program. However, on the other hand police point to their inability to act pre emptively, and the criticism from the public when terrorist attacks continue to occur and cry out for law reform to give them increased powers. A balance must be struck – and that is a question for the community to answer – given voice and effect through the country's democratic institutions.

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