

The Eradication of Terrorism Acts: Effectiveness and Human Rights Violation

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Abstract

Indonesian government requires the amendment of Law of No 15 of 2003 on Eradication of Terrorism Crime because it is considered not effective and has not well implemented in eradicating terrorism in Indonesia. One of the critical points of this amendment is the deradicalisation program. This program is being criticised because it potentially infringes human rights, in particular the right to fair trial and presumption of innocence, right to liberty and security and freedom of thought, expression, and opinions.

Keywords: Terrorism, Deradicalisation

Introduction

As stated by Professor Randall Law '[t]errorism is as old as human civilization... and as new as this morning's headlines'¹, terrorism is not a new issue yet today, it is still endlessly discussed around the world. After the remarkable terrorist act of the world, the 9/11, the United Nations urged all head of states to create counter-terrorism acts in their states. However, Indonesian government did not act immediately to create a counter-terrorism law after the 9/11. Instead, the Indonesian government created the first counter-terrorism law after the Bali Bombing 2002. To combat against terrorist acts, the Indonesian government has taken an approach from legal enforcement. The aim of this approach is to diminish individual terrorist, the leaders, the funding and logistic pipelines and the direct support network.² However, after being enacted, these laws seem have not worked well because numbers of terrorism events in Indonesia still occurred.

What is more, in 2016 the number of terrorism acts increased more than doubled that in 2015, from 82 to 170 cases. Indonesian Police General Tito Karnavian claims that the increase is due to the ISIS attacks which cause unstable politics in Suriah and Iraq.³ Therefore, the Indonesian government has initiated to create a draft of *the amendment of Law of No 15 of 2003* because the existing laws are considered as not capable anymore of overcoming terrorism acts in Indonesia. This law has been in the priority list of People's Representative Council of the Republic of Indonesia.⁴

In spite of the urgency to enact the law, several articles have been criticised. In particular, this research will discuss the deradicalisation article, which states that investigators have authority to detain suspected persons who allegedly conduct future terrorist acts, in a secret place for up to six months. This article has raised many critics among human rights activists due to the black history of human rights violation in Indonesia during reformation era. It is argued that deradicalisation program is potentially infringed human rights and there is no absolute way to measure the effectiveness of this program.

At first, this essay will explain how counter-terrorism and the aim of the draft of the amendment of Law of No 15 of 2003 laws work in Indonesia. Second, this essay will briefly discuss human rights violation according to ICCPR that are likely to occur: liberty and security and freedom of thought, expression, and opinions. Third, this essay will examine deradicalisation programs in UK and Saudi Arabia. Last, this essay will analyse whether this program will be useful in preventing terrorism acts in Indonesia.

Indonesian Government Efforts

After the Bali Bombing 2002, Indonesian government enacted the first counter-terrorism law that was the Government Regulation In lieu of Law No 1 of 2002 on Eradication of Terrorism Acts⁵ followed by Presidential Instruction No 1 of 2002 on the Appointment of the Authorized Government Agencies to Coordinate Acts Against Corruption⁶. In the following year, Indonesian government enacted Law No 15 of 2003 on Eradication on Terrorism Crime Eradication⁷ (hereinafter Law No 15 of 2003).

It was not an easy task to enact an anti-terrorism law due to the pluralism and political issues in Indonesia. Nevertheless, the Indonesian government had success to convince particular Muslim groups regarding the benefits and the consequences of this law. As for the paradigms of this law are ‘to protect and defend state interest’, ‘to protect offenders’, and ‘to protect and rehabilitate the victims’ which are called the triangle paradigm approach.⁸

Terrorism, pursuant to article 6 of Law No 15 of 2003, is defined as every persons who intend to use violence or threat which causes terror or fear widely or causes mass casualties by depriving freedom or loss of life and property of others, resulting a damage or destruction of strategic vital objects or environment or public facility or international facility.⁹ Moreover, there are specific characteristics of this act that are different and not governed by Criminal Code¹⁰:

1. The length of detention is 7x24 hours rather than 1x24 hours.
2. The sufficient evidence, which is obtained from intelligent reports.
3. The evidence of proof can be obtained from electronic media.
4. The blocking of property.
5. Tapping.

6. The protection of witnesses, investigator, prosecutor, and judges include family members.
7. Attendance of the accused nonetheless the absence of the accused, the case can proceed and the accused can be executed under all of the evidence.¹¹

In the dialog of law enforcement in preventing terrorism act states that there are four elements that have not been covered by recent law: determination of criminal act of any acts that support terrorism; second, dissemination of hate speech and hostility; third, an involvement of an individual in terrorist group; and fourth, rehabilitation of the accused. This law is considered as repressive and not suitable for recent terrorism acts anymore.¹² Numbers of terrorism acts still occur these days as well as the number of people who involve in terrorist acts. National Body in Combating Terrorism of Indonesia states that 2.7 million of Indonesian have engaged in series of terrorist attacks. This number has not included the followers and supporters of terrorist networks. The number is about one percent of the total of the Indonesian citizen.¹³ In particular, after the terrorist accident on 14 January 2016, the Indonesian government was urged to amend this law.

Indeed, this law is urgently amended. However, some articles of the draft of Law of No 15 of 2003, have been denounced. For instance, the definition of terrorism is broader; the length of detention, which previously is 7x24 hours, will be extended up to 30 days. The most criticised article is regarding the deradicalisation program. Pursuant to Article 1 (8) of the draft, deradicalisation is 'a process of action undertaken with the aim that individuals or groups of persons do not engage in acts or thoughts that require a violent or extreme expression that leads to a criminal act of terrorism'.

Unfortunately, deradicalisation is explained unclearly in the article 43A of the draft. This article describes that investigators or prosecutors regarding the countermeasures are able to restrain a person who is alleged will conduct terrorist acts in the future, to be taken and placed in a particular place up to six months. The location is not described explicitly whether the place is a detention place like penitentiary or attorney detention or any special detention that is going to be built in Sentul.¹⁴ Placement of alleged not accused terrorist is considered as arbitrary detention because to detain a suspected person is not allowed for a more extended period of time (in this case up to six months according to the Article 43A(1)) in fact it is only allowed to a person with a clear legal status (the suspected, the defendant, and the convicted).¹⁵

The aim of the creation of deradicalisation program is to restore condition and build awareness, attitude, and behaviour of individuals, groups or social environments by norms and life of nation and state.¹⁶ Imprisonment and other sentences are considered not enough in discouraging and stopping terrorism acts.

Therefore, law enforcement accompanied with deradicalisation program for detainees and former detainees and other parties that potentially will involve in terrorism have shown positive results in preventing violence and terrorist acts.¹⁷ On the contrary, this program still raises skeptical arguments in regards to protection of human rights.

Human Rights Violation

Deradicalisation is 'the process of abandoning an extremist worldview and concluding that it is not acceptable to use violence to effect social change.'¹⁸ Thus, the Indonesian government has included this program in the draft of Law No 15 of 2003. Nonetheless, instead of efficiently eradicating terrorist attacks in the future, this draft is considered will be likely to infringe human rights: the right to fair trial and presumption of innocence, right to liberty and security and freedom of thought, expression, and opinions.

In the article of deradicalisation program states that a person can be taken and placed in a particular place up to six months. This apparently violates Article 9 of ICCPR¹⁹ which asserts that 'everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention...'. Contrast claims that this program is potentially misused as captivity and also no such an agreement is made with the person who is 'alleged will conduct terrorist acts in the future'. How can the authorized officers identify whether a person is likely to conduct any terrorist acts in the future is unclear? Besides, deradicalisation also often use hard measure approach. It is argued that the aim of deradicalisation is to change the radical thought, however, in fact, this can trigger the radicalism itself.²⁰ The involvement of Indonesian National Army and Indonesian Police Officer will be likely to cause a collision between the main tasks of each body. The roles of both of them are divided explicitly in Law No 22 of 2002 and Law No 34 of 2004. This article is claimed that this law seems like Guantanamo Bay detention and this may recall the history of human rights violations during Old Order. Even today there are some cases found that alleged terrorists have been abused by authorized officers. For example, an alleged terrorist from Klaten, Siyono, had died after being arrested by Densus 88.²¹ Rafendi asserts that rather than strengthening the control division and surveillance; instead this leads to arbitrary and non-transparent law enforcement.²²

Article 25 of the draft contradicts with article 14 and 15 of ICCPR, which highlight rights to fair trial. This right is one of the most essential human rights due to the recognition of fair trial rights in Articles 10 and 11 of 1948 Universal Declaration of Human Right. To conduct a fair trial, the presumption of innocence must always be upheld and respected. However, article 25 of the draft explains that the suspected person can be detained up to 180 days and can be extended by prosecutor up to sixty days. In relation to that, the length of detaining on behalf of

prosecution can be extended to ninety days, and this also can be extended by the judges of the district court up to sixty days. An exception to the length of detaining that has been mentioned previously, on behalf of the investigation and prosecution, can be detained up to sixty days. As a result, the total of extension is 450 days. Likewise, this article does not comply with Criminal Procedure Code, which only detains a person totally up to 170 days.

This article will infringe Article 8 of ICCPR about freedom of thought, opinions, and expression²³ because the limitation of opinions in regards to terrorism is not evident in this draft. What is more, in the legal draft explanation does not explicitly state that whether the person will be able to contact his or her family during the deradicalisation program or not; who is going to hold the responsibility of the family if the alleged person has a family; what about his or her job? Will he or she be able to have or find a job after deradicalisation program? All of these concerns either have not been governed in the draft of Law No 15 of 2003 or explained in the legal draft explanation. Not to mention the social stigma that will inherent to a person or his or her family after involving in deradicalisation program.

On the contrary, *Majelis Ulama Indonesia* (MUI) – Indonesian Ulema Council argues that radicalisation is vital because radicalism is counterproductive with values of Islam as long as deradicalisation does not lead to *deislamisation*.²⁴ In fact, this should be explicitly clarified because what the terrorists have done was not an agreement among Islamic leaders.²⁵ A triumphant story of deradicalisation comes from Nasir Abbas. Nasir Abbas was a former Afghan militant and also the trainer of the Bali Bombing's perpetrators. He was released in 2004 and joined deradicalisation program afterwards. As a result, he has helped Indonesian police officers to track down and arrest several of his former colleagues. Furthermore, he also has visited several former terrorists in prisons and tried to convince them that what they did was utterly wrong.²⁶

Different from Nasir Abbas, in the case of Abdullah Sonata who had the same convicted on terrorism act in 2006, using deradicalisation as a tool, he received a leave to attend a party and incentives from the police when his wife gave birth.²⁷ He was then released in 2009 and yet returned to his previous group. Consequently, he was involved in another terror attacks to kill the President and other high-profile targets.²⁸ Such program is claimed not always succeed in giving deterrent effect to people. As Debra Killalea reported that 'it appears clear the program has now failed' when a 16-year-old boy in Sydney was charged for an offence of planning or preparing a terrorist act after being in deradicalisation program.²⁹ The success and effectiveness of deradicalisation will be discussed further in the following section.

In contrast, Jessica Stern suggests deradicalisation program as one of the tools to rejuvenate and combat against the ideological influence of terrorist acts. This program should be separately used from counter-radicalisation programs.

Stern asserts that 'deradicalisation can thus be distinguished as a tool that supports broader counterterrorism and counter-radicalisation strategies'.³⁰ Deradicalisation program in Iraq, Saudi Arabia and some other countries answer the challenges of how former terrorists can commit to avoid clandestine activities after being released from custody by combining education, vocational training, religious dialogue and other programs that can be helpful for detainees to adjust with society.³¹ Likewise, Mark Dechesne also notes that deradicalisation is a strategic means to prevent further increase of violence. It also creates a conducive atmosphere to discuss.³²

Deradicalisation Programs in the UK and Saudi Arabia

There are about forty deradicalisation programs around the world, which intend to rehabilitate and reintegrate anyone who has involved in terrorism acts.³³ This program is also varying in each of country. After the 9/11 and the 7/7 UK has started its counter-terrorism strategy and deradicalisation is one of UK government's counter-terrorism strategies.³⁴ Approximately 850 radicals in the UK have travelled to Syria and Iraq to join Islamic State in Iraq and the Levant (ISIL), and less than fifty percent of them have returned to the UK.³⁵ The necessity to take early intervention becomes more exigent. In 2005-2006, the UK started its 'prison-based deradicalisation program' with the aim to rehabilitate newly recruited Islamists. The prison has imams which provide individual counselling session and train the prisoners how to think critically about the authenticity of Islamic teachings, the Qur'an, and the Hadiths.³⁶ These imams do not provide psychological counselling instead they give the prisoners state-sponsored social work assistance.³⁷ The jihadist custodies are only labelled Category A, which is the top-level among the four security categories in UK prison system instead of being assessed.³⁸ After the prisoners being released, UK is perhaps the only state to engage community groups in assisting the former prisoners to probationary programs.³⁹ Vocational training or education in academic, psychological counselling or group discussion regarding theology and political issues are provided by some of these community groups.⁴⁰ However, the word deradicalisation in schools, universities, and hospitals has caused criminalisation in Muslim groups.⁴¹

To add, besides prison-based deradicalisation, UK also has counter-terrorism strategies called PREVENT and CHANNEL. The aim of Prevent strategy is 'to reduce the threat to the UK from terrorism by stopping people becoming terrorists or supporting terrorism.'⁴² Channel is part of the Prevent strategy, and this program is design for anyone who is vulnerable to being drawn into terrorist activities.⁴³ One of the victims of this program is Umm Ahmed. Umm Ahmed was imprisoned for 12 months. Even though she was declared clear from terrorist activity and never posed a danger to society, she was still sent to UK's deradicalisation program.⁴⁴ She and her husband were treated arbitrarily by the

police officers. The police officers admitted that they had conducted the certain level of violence. Nonetheless it was necessary.⁴⁵ What is worst, they took off her hijab and refused to give it back to her.⁴⁶ That is not the end; a series of arbitrary and unfair treatment was also experienced by Umm Ahmed. To emphasize, Channel has been controversial since it was firstly introduced due to the requirement for public sector workers including teachers to 'have due regard to the need to prevent people from being drawn into terrorism'.⁴⁷

Moving to the rehabilitation program of Saudi, the Saudi's deradicalisation programs were initiated by the Interior Ministry. This program started in 2004 as a response to series of domestic terrorism events which then become a counter-terrorism strategy.⁴⁸ There are about 2,500 have travelled to Syria and joined the Islamic State.⁴⁹ Thus, in the last decade, Saudi Arabia has established 'the best funded and longest continuously running counter-radicalisation program in existence'.⁵⁰ This program has helped Saudi government to enhance the counter-radicalisation means by providing government facilitations for those who are likely to be radicalised and recruited, including friends and families of detainees.⁵¹ Also, one of the most helpful approaches was media campaign on a large scale. This approach apparently succeeded to lessen the recruitment process of al Qaeda.⁵² Saudi's deradicalisation program also tries to engage families, tribes, security officers and program staff who have involved in the life of the released custodies to help them lessen the opportunity to return to terrorist groups.⁵³ However, according to Marisa Porges, Saudi government should be open to people to access the methods and statistics of its deradicalisation program. How the government describes and measures recidivism is vague.⁵⁴

At first, the numbers of the deradicalisation programs in Saudi Arabia is incredible. Sheikh Al-Sadlan announced in 2007 that 90 percent of participants had left their radical thoughts. Additionally, 1,500 of the 3,200 custodies that had joined the program had been released.⁵⁵ However, some graduates of the Saudi's deradicalisation program have returned to terrorist attacks. For example, two al-Qaeda leaders in Yemen have successfully involved in terrorism activities against the US and its allies.⁵⁶

Pursuant to the explanation of the legal draft of Law No 15 of 2003, deradicalisation program includes three main activities: rehabilitation, reintegration, and reeducation.⁵⁷ In the draft, the deradicalisation program in Indonesia will likely to adopt a similar system like UK's deradicalisation programs. For instance, religious leader will have an involvement in a rehabilitation program. Indonesia also has a plan to engage society in a rehabilitation program. Moreover, it has been explained in the legal draft explanation of Law no 15 of 2003, the targets of this program are:

- a. The suspects and inmates of terrorism cases.
- b. The members of Al Jamaah Al Islamiyah⁵⁸ that never involved and its

sympathisers.

- c. The family of the suspects and inmates of terrorism cases.
- d. Society.

These targets are almost similar to the targets of Channel program and Saudi's deradicalisation program which targeting even the family members or people who are considered close to the suspects. This program is also alike with Saudi's deradicalisation program which targeting terrorist sympathisers. However, the method on how they will conduct the program is not mentioned in the legal draft explanation.

Furthermore, both UK and Saudi do not detain an alleged person up to six months in a place where only authorised officers know the location which potentially causes human rights infringement. Therefore, deradicalisation program in Indonesia should be reviewed further before being include in the new law.

The Success and Effectiveness of Deradicalisation

In the UK, the risk assessment model based on recidivism and psychometric tools is used to measure the success of deradicalisation. Almost in the same way, the officials of Saudi measure the effectiveness of deradicalisation program by using recidivism rate. They evaluate the indicator of success by counting how many the former detainees who 'go back to the fight'.⁵⁹

According to the research conducted by Mark Dechesne, even though deradicalisation program seems suitable with modern counter-terrorism means, it is still complicated to determine whether this program has successfully worked due to unclear processing work.⁶⁰ Moreover, basic facts regarding this program are limited. Tim Legrand and Teneille Elliott argue that 'there is no consensus on how to best measure effectiveness of CT laws.'⁶¹ Similarly, John Horgan and Kurt Braddock also state that 'no consensus on what constitutes success in reforming a terrorist...'⁶² The latest research indicates that many of disengaged terrorists are not necessarily deradicalised. Therefore, deradicalisation program cannot be used as a requirement for ensuring them not to commit future terrorism activities.⁶³

Either UK's deradicalisation program or Saudi Arabia's deradicalisation has shown insignificant result whether this will reduce numbers of terrorist attacks in the future or whether this is a practical and successful means to ensure people not to have any radical ideas. In particular, counter-radicalisation program in the UK requires evidence, which recommends that conscientious empirical methodology and measurement techniques should be applied.⁶⁴ However, what the evidence consists of and how it should be obtained often remain uncertain.⁶⁵

Deradicalisation program in Indonesia, which was conducted from January 2010 to July 2010 is claimed to have significant results.⁶⁶

1. Members of radical groups can be rehabilitated and returned to society.
2. Ideology and understanding can be changed and clarified; the radical group can be discredited includes the leaders.
3. The target of this program obtained supports from society.
4. This program has reached success in Counter-Terrorism Strategy.

Despite the statement of the success of the program, there is specific issue that seems uncertain: what methods that the government has used to measure the success of its Counter-Terrorism Strategy? What is more, Indonesian government or authority is never transparent in showing data in regards to the progress of deradicalisation programs. It is too early to claim that this program has success only by conducting it in six months. It is claimed by Abuza that disengagement program in Indonesia is 'underfinanced, understaffed, and not terribly institutionalised.'⁶⁷

Thus, according to some experts, deradicalisation programs cannot provide any guarantee for former terrorists not to conduct any terrorist attack. What is more, deradicalisation is also quite complicated due to the influence of economic, political, cultural factors.

As stated by Horgan and Braddock:

No such program has formally identified valid and reliable indicators of successful de-radicalisation or even disengagement, whether couched in cultural, psychological, or other terms. Consequently, any attempt to evaluate the effectiveness of any such program is beset with a myriad of challenges that are as much conceptual as they are practical.⁶⁸

All things considered, indeed there have been various deradicalisation programs, the result of these programs, the underlying mechanism involved, and also the economic costs are often unclear.⁶⁹

Therefore, Indonesian government should explain the concept of deradicalisation in the amendment or perhaps, instead of conducting deradicalisation program which is likely to create more harm, Indonesian government may use the soft approach such as the soft approach that was performed in Saudi Arabia. Important to realise that the Indonesian government's policy in encountering radical ideology mostly relies on security approach rather than soft approaches.⁷⁰ The soft approach that was performed by the Saudi's government was called as the Prevention, Rehabilitation, and After-Care approach.⁷¹ The government of Saudi Arabia has provided public with information about Islam and the threat of extremism. The Saudi's government emphasises that terrorists only use people to achieve their objectives rather than care about Islam. It is the root of radical ideas that should be abolished, and this should be started from society because the tendency of Indonesian people is it usually easily to agree with everything that they are taught without having a critical question. Community should be educated to become more open to welcome the former terrorists after

being imprisoned. A close relationship should be built so these ex-detainees will feel comfortable back in society. Thus, not only government officers should be responsible but also society to reduce further terrorist activities.

Moreover, Indonesian government should also focus more on the law enforcement and strictly verify documents of people who are likely to go to countries that are suspected as the terrorist headquarters. Geographically, Indonesia is vulnerable as it consists of approximately 17,000 islands and strategically located in world-cross position⁷², this can be an advantage for people to get into Indonesia from sea access. Many remote islands can be used to generate radical ideologies and train future terrorists. Therefore, security and law enforcement at sea and other remote areas must be improved. Lastly, the government should increase community engagements and provide social events among the youth.

Conclusion

After the 9/11 all states were ordered to create counter-terrorism law. Indonesia created its first counter-terrorism law after the 2002 Bali bombing. However, this law is deemed to be incompatible with current situations in Indonesia. As a result, the Indonesian government has proposed an amendment of the Law No 15 of 2003. This amendment has raised many critics in particular from human right activists. One of the significant concerns is Article 43 regarding deradicalisation program. Deradicalisation has been introduced as part of counter-terrorism program. The aim of this program is to rehabilitate former terrorists, alleged persons, their families, and anyone who is considered to involve in any future terrorism plans likely. This program is claimed will potentially infringe human rights: liberty and security and freedom of thought, expression, and opinions.

Effectiveness is hard to measure. Even though deradicalisation program is claimed as a successful program in reducing numbers of former terrorists to reengage in terrorist activities, this does not necessarily mean that this program is effective. Some former terrorists still involved in terrorist groups even after being in deradicalisation programs. Moreover, previous deradicalisation program in Indonesia was only conducted in six months. Therefore, it is premature to evaluate and to claim this program is successful and effective in preventing terrorism activities in the future. As a result, deradicalisation program should have been comprehensively reviewed. ***

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