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## Terror Tactics – Shootings of Indonesian Police and the definition of terror

Adam Fenton<sup>1</sup>, Hery Firmansyah<sup>2</sup>, and David Price<sup>3</sup>

### Abstract

*Strategies of Indonesian jihadist groups have undergone significant change over the last five years. There has been a shift away from high-cost, highly planned and lethal bomb attacks on symbolic foreign targets such as embassies, hotels and tourist destinations, in favour of domestic targets, notably assassinations of police officers. In the past five years over twenty Indonesian police officers have been killed in attacks believed to be linked to jihadist groups. While these killings caused public outrage and debate over the ability of police to ensure the safety of the community, they elicited very little sympathy from a community that is suspicious and hardened towards police abuses of power. This paper explores issues relating to this shift, as well as whether the assassinations ought to be regarded as “terrorist” in nature. It appears that these attacks have not caused widespread terror, and were not necessarily intended to do so. The paper questions whether an attack on police which has links to jihadist groups, but does not cause terror in the community, can or should be categorised as an act of terrorism. This, in turns, raises the question of whether those responsible ought to be prosecuted for terrorism or for other crimes such as murder under Indonesia’s Criminal Code. The answers are of relevance as evidentiary and procedural rules under the anti-terrorism legislation (ATL) are significantly different to those under the Criminal Code. The paper discusses the various interpretations of terrorism in the context of the failure of the international community to arrive at a universal consensus definition – due mainly to biased, political usage of the term. It examines the relevant provisions of Indonesia’s anti-terrorism legislation and international law and suggests that, arguably, where an attack fails to cause terror as a matter of fact, logically and legally, it ought not be regarded as terrorism. However, seen in the wider context of a sustained campaign to overturn the Indonesian government and establish an Islamic state, violent actions with connections to Indonesian and international terrorist cells ought to be regarded, and charged, as terrorist crimes. Ultimately the question needs to be considered and settled by a higher Indonesian court, such as the Supreme Court (Mahkamah Agung) or the Constitutional Court (Mahkamah Konstitusi).*

### Introduction

The strategies of jihadist terrorist cells in Indonesia have undergone significant change over the last five years. Terrorist groups have moved away from large-scale, high-cost, highly planned bomb attacks against symbolic foreign targets such as embassies, hotels and tourist destinations and focussed their attacks on domestic targets such as police,

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provincial governors, and even the Indonesian President (Mydans 2009). There may be many reasons for the shift of focus of jihadist groups. Assassinations of police officers have stood out over the past three to four years as a characteristic tactic of jihadist terrorist groups. In some cases, the targets were low-ranking officers at remote posts; in others, they were senior officers targeted for their position and status. While connections to jihadist groups have been demonstrated in most cases, where an attack is not intended to, or does not in fact cause terror within the community, is it in fact a terrorist act? Arguably, where an attack is, as a matter of fact, neither intended to cause terror nor causes terror, logically and legally, and to avoid bias in the application of the law, it ought not be regarded as terrorism. However, if considered in the wider context of a sustained campaign of violence using multiple tactics, such as bombings, assassinations and other violent methods, it arguably should be considered and charged as terrorism. The paper takes account of the international law background to the vexed question of defining terrorism, and also examines the provisions of the relevant Indonesian anti-terrorism legislation. A definitive answer to this question would require it to be considered and settled by a higher Indonesian court, such as the Supreme or Constitutional Courts. However, this is unlikely, as the current practice is for all violent crimes connected to jihadist groups to automatically be charged as terrorism.

## **Background**

The last major bombings of symbolic foreign-owned targets in Indonesia were the synchronised bombings of the Marriott and Ritz-Carlton hotels in Jakarta's Kuningan business district in July 2009, which killed eight and injured at least 50 people (Glendinning & Weaver 2009). A month after the Marriott/Ritz-Carlton bombings, police infiltrated a plot in the advanced stages of planning to assassinate the President – a truck rigged with explosives was to be detonated at the Presidential Residence (Mydans 2009). This event appears to have signalled a dramatic, almost overnight, shift in targeting strategies of Indonesia's manifold jihadist groups. Over the past five years, targets of terrorist attacks have been predominantly domestic, most notably police officers (IPAC 2014).

There are several possible reasons for this shift in targeting strategy. The success of police, particularly the elite counter-terrorism detachment, Densus 88, in infiltrating, neutralising and arresting suspected terrorists – over 700 have been arrested and around 60 killed in counter-terrorism raids over the past ten years – is certainly a factor (Schonhardt 2012). Arrests and killings, especially of influential and violent leaders such as Noordin M Top, have an impact on the operational capabilities of groups to commit terrorist acts. An ideological shift towards focusing on educational and religious outreach may also be a factor. The number of innocent Muslims killed in indiscriminate bombings is also likely to deter some jihadists from pursuing that tactic, especially where groups are trying to build public support for the cause of establishing an Islamic state in Indonesia. Simple revenge is also a likely factor. The leader of the Eastern Indonesian Mujahidin (Mujahidin Indonesia Timur; MIT), Santoso, has made several comments which indicate that Densus 88 are the real enemy and should be targeted. In a video uploaded to YouTube in July 2013, a man claiming to be

Santoso incited war against Densus 88, saying “Hopefully, we are the generation who will battle against the hostility of Densus 88. Densus 88 is the real enemy, the real demon” (Perdani & Sangadji 2013).

In 2011, in a report titled *Indonesian Jihadism: Small Groups, Big Plans*, the International Crisis Group commented that:

The emergence of small groups has been accompanied by a change in tactics and targets. The preferred method of operation (*amaliyah*) is no longer the bombing of iconic buildings but secret assassinations (*ighiyalat*) that are less likely to cause inadvertent Muslim deaths or prompt massive arrests. The targets are increasingly local. Police are top of the list (ICG 2011, p. 5).

In December 2012, Indonesian terrorism expert Al Chaidar commented on prior attacks on Christians at Christmas, saying that “At present attacks on Christmas are decreasing... because they [the terrorists] are now targeting police or police stations” (Marhaenjati 2012). In January 2013, terrorism expert Sidney Jones observed that “particularly since 2009, all but one of those killed by jihadists or in terrorist attacks in Indonesia have been police: ten in 2010, three in 2011 and eight in 2012” (Jones 2013, p. 1).<sup>4</sup>

In 2014, three senior police officers were killed in Bima on the island of Sumbawa, including Ambalawi Police chief Abdul Salam; Second Brigadier Muhamad Yamin, head of the Bima Police intelligence and security unit; and the head of the Bima Police’s anti-drug unit, Second Inspector Hanafi (Arnaz, Farouq 2014). The killers were allegedly connected to the MIT jihadist group led by Santoso. In October 2014, a team of police investigating a bomb explosion in Poso Pesisir were ambushed by individuals suspected to be terrorists connected to the MIT network (Sangadji 2014). One officer was injured in the attack, which was thought to be retaliation for the prior arrest of three men suspected of being members of the terrorist cell.

In the second half of 2013, Indonesia Police Watch reported 22 incidents of shootings of members of Indonesia’s national police force, POLRI (Post 2013a). At least five of those attacks were thought to have connections to jihadist terrorist groups (Araf 2013). These shootings included the murder of Second Brigadier Sukardi in front of the headquarters of the National Corruption Eradication Commission (KPK) – leading some commentators to question whether there was any connection between the shooting and any of the sensitive and controversial investigations (Butt, Simon 2012) conducted by the KPK into corruption among Indonesia’s public officials (Jong 2013; Marhaenjati & Cahyadi 2013). The shooting of Sukardi, which attracted much media attention at the time, demonstrated two salient points about the murders of police. Firstly, those conducting the attacks possessed a high level of skill, professionalism and ruthlessness. Second, as the police force deals with a wide variety of criminal activities on a day to day basis, it was uncertain whether such shootings were

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<sup>4</sup> Note that attacks against police and civilians in the Indonesian Papuan provinces are not charged as terrorism; however, the sentences handed down are generally much harsher than those given to jihadist terrorists. For a discussion see: Papuan 'separatists' vs Jihadi 'terrorists': Indonesian policy dilemmas (Jones 2013)

done for an ideological/jihadist/terrorist purpose, or whether there were other motives, such as a connection to other criminal cases, including narcotics, corruption or organised crime.

In October 2012, two police officers were found with their throats cut, reportedly while searching for a terrorist training camp in an area near Poso, Central Sulawesi (Roberts 2012). In 2011, a suicide bomber targeted a police mosque in Cirebon, injuring 23 officers, but only succeeding in killing himself (RSIS 2011). Also in Poso in October 2011, two police officers and a security guard were seriously injured after a bomb attack on a police post (Mujib Rahman 2013). According to IPAC, “the death toll from terrorism was ten in 2010, all police; three in 2011, all police; and 10 in 2012, eight of them police” (IPAC,2014). The IPAC report not only demonstrates the dimension and regular occurrence of such attacks, but also the common ground attribution of such attacks to terrorism.

The attacks on police have been characterised as being utilitarian rather than ideological, insofar as they provide a source of weapons, and are used as a training and initiation exercise for those *mujahidin* that have undergone training but need a live target. Jones commented that:

It used to be that jihadis saw the creation of fear as a very specific objective. One man involved in the 2004 Australian embassy bombing, when asked what his aim was, said, “We wanted to make Western nations tremble.” The aim now isn’t that cosmic; it’s much more instrumental. It’s about getting weapons, taking revenge, and giving militants something to do, particularly after they’ve undergone training. While the attacks are sometimes couched – usually after the fact -- in terms of moving against *thaghut* (anti-Islamic oppressors supported by the West), that kind of rationalisation is less frequent these days. The main aim of killing police is certainly not to create fear (Jones 2013, p. 2).

If the main aim of an attack is *not* to create fear, ought these attacks be described and prosecuted as acts of terrorism, or some other crime? The question is of real relevance to law enforcement for several reasons. It is a core principle of criminal law that, for an accused person to be found guilty of a crime, each element of an offence must be proven beyond doubt through the use of admissible evidence. The consistent and logical application of the law is a safeguard against the introduction of bias and assumptions about the guilt or innocence of an accused person. The rule of law, enshrined in Article 1(3) of the Indonesian Constitution, dictates that each case must be considered on its merits, without regard for a person’s background or status. Furthermore, in practical terms, whether a person is charged under Indonesia’s anti-terrorism legislation, the Interim Law on the Eradication of the Crime of Terrorism No. 1 2002 (*PERPU Nomor 1 2002 Tentang Pemberantasan Tindak Pidana Terorisme* 2002) (hereinafter “the ATL”) or under the Criminal Code (*Kitab Undang-Undang Hukum Pidana* 1958) will have implications for criminal procedure. Under the ATL, criminal procedural laws differ from the Criminal Procedural Code (*Kitab Undang-undang Hukum Acara Pidana* 1981); for example, a suspect under the ATL may be held for seven days, compared with one day under the KUHAP. Also, certain types of evidence are admissible under the ATL which are not admissible under the KUHAP (Butt, Simon 2008).

On the question of whether these attacks are terrorism or ordinary crime, IPAC comments that:

The failure of most plots to materialise and the criminal aspects of those that do – bank robberies, assaults on police – underscore how much “terrorism” in Indonesia looks more and more like ordinary crime, even if motivated by jihadist ideology. Any large-scale attack along the lines of those on Kenya’s Westgate Mall, Algeria’s In Amenas oilfields or India’s Taj Mahal Hotel is almost unthinkable in Indonesia today. Not only are there no unstable or unfriendly neighboring states from which such an operation could be launched, but no one is even thinking on that scale. The focus remains very much on domestic targets and on operations that do not require resources much beyond one’s own cell. To some degree this may be a question of ideological orientation, but it is also a lack of training and a (fortunate) failure of imagination. (IPAC 2013, p. 1)

While establishing a universal definition of terrorism has been described as the “Bermuda triangle of terrorism studies” and is prone to endless controversy and debate (Schmid 2011), it would appear that the one element that *can* be universally agreed upon – indeed, is essential to the very notion of terrorism – is that it creates terror or fear. As Muladi explains, the Latin root of the word *terrere* means to shake with fear (Muladi 2002). The central question, therefore, is whether a mere connection to a jihadist group is sufficient nexus for a violent crime against police to be categorised as a terrorist attack.

Three things should be noted about the absence of attacks on symbolic, foreign targets over the past five years. First, prior to the Marriott/Ritz-Carlton bombings of 2009, there had been a pause of around four years without a major terrorist attack. The last major bombing prior to 2009 were the synchronised bombings in Kuta and Jimbaran, Bali, of October 2005, which killed 26 and injured over 100 (Quijano et al. 2005). A pause of several years in terrorist bombings does not mean that terrorist groups are not planning further attacks or have aspirations for another major bomb attack, possibly against a foreign target. Second, the success of police in apprehending large numbers of terrorists, has had a double-edged effect. Many of those terrorists arrested and convicted have been, or are shortly due to be, released from prison, having served their sentences. Around 200 prisoners are due for release over the next one to two years (IPAC 2014). Some argue that Indonesia’s prisons are effectively incubators for spreading terrorist ideology, and a lack of monitoring and deradicalisation programs leaves many convicted terrorists more skilled, connected and committed to their violent cause, than when they entered prison (O’Neill 2011). Studies have shown that many of the terrorist attacks over recent years in Indonesia have involved at least one member who was a former inmate with terrorist skills and connections (ICG 2011; Ungerer 2011). Third, the rise of the Islamic State or ISIS in Syria and Iraq could potentially lead to renewed attacks against foreign targets, as well as the threat of returning foreign fighters rejoining and reinvigorating Indonesian jihadist cells (IPAC 2014). In September 2014, ISIS spokesperson Al-Adnani exhorted supporters of ISIS to kill foreigners linked to the US-led coalition. The statement was translated into Indonesian within 24 hours by convicted terrorist Aman Abdurrahman, a cleric who is currently imprisoned at Nusakambangan maximum security

prison (IPAC 2014). IPAC wrote that the call from ISIS “could also provide an incentive to Indonesian ISIS supporters to target westerners as a way of earning approval from the leaders of the self-declared caliphate” (IPAC, 2014 p.1).

## **Theory and Definitions**

It may seem extraordinary to a casual observer that, given the pervasiveness of terrorism in the post-9/11 social and political discourse, there is no agreed comprehensive definition of terrorism. This is not, however, from a lack of trying. Institutions such as the United Nations, national and state parliaments, legions of academic researchers, and even insurance companies have formulated and proposed many various definitions for terrorism, none of which have been deemed universally acceptable. Disagreement usually arises due to issues related to the legitimate use of violence in the context of nationalist independence movements.

For this reason, terrorism as a term is susceptible to emotive and imprecise usage driven by biased political interests. It can be used as a label to delegitimise and demonise one’s enemies. Conversely, the label “freedom fighter” connotes allegiance, a noble cause and approbation. In both cases, the nature of the political violence used becomes irrelevant – the political outcome is paramount. The notion is summed up in the now ubiquitous phrase “one man’s freedom fighter is another man’s terrorist”. A less well known, and in some ways more illustrative, statement of the concept is that by United States President Reagan in 1985 at a meeting with leaders of Afghanistan’s Mujahideen. In the context of a global anti-Soviet struggle, a struggle for freedom, Reagan praised them as “our brothers, these freedom fighters, and we owe them our help” (Reagan 1985). At the time political advantage was to be gained by praising the violent struggle of anti-Soviet fighters against a common enemy. An offshoot of the Afghani Mujahideen, who were armed and supported by the US, later became that country’s terrorist enemies in the form of the Taliban.

Similarly, groups on both sides of the Israel-Palestine conflict are regularly labelled as terrorist. This raises the issue of whether states can commit terrorism, or whether it is a crime which can only be committed by “sub-national or clandestine groups” as United States government’s definitions<sup>5</sup> generally stipulate.

A clear and universal definition of terrorism is therefore needed to depoliticise the debate over which groups and individuals are terrorists. The focus of the debate ought to be on the tactics used, particularly the deliberate targeting of civilians to cause fear and intimidation for a political cause.

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<sup>5</sup> References to violence committed by “unlawful” or “clandestine” groups such as those contained in most US government definitions of terrorism preclude the possibility of terrorism being committed by the state. The definition provided by the US National Counterterrorism Center (NCTC) is typical and the same as United States Code 22 USC § 2656f(d)(2) and defines a terrorist act as: “... premeditated; perpetrated by a sub-national or clandestine agent; politically motivated, potentially including religious, philosophical, or culturally symbolic motivations; violent; and perpetrated against a noncombatant target.”

The United Nations (UN) in particular has devoted enormous amounts of time and resources to defining terrorism – which has been debated, inconclusively, since the 1960s. Unable to agree on a comprehensive definition of terrorism, the UN has created 12 sectoral treaties dealing with separate aspects of terrorism (Scharf 2004). The UN’s project to create a Comprehensive Convention on International Terrorism – touted as the last word on terrorism – has failed to reach a conclusion, largely due to irreconcilable differences over the definition (Deen 2005).

According to Scharf, the UN Convention for the Suppression of the Financing of Terrorism (the SFT Convention) (UN 1999), which contains a definition of terrorism at Article 2(b) and has been ratified by over 140 countries, “was as close as the international community has ever come to adopting a widely accepted general definition of terrorism” (Scharf 2004, p. 360). The Convention defines terrorism as any act falling into one of the 12 terrorism conventions<sup>6</sup>, or:

(2) "any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act."

In 2005, then UN Secretary General Kofi Annan endorsed the findings of a High Level Panel on Threats, Challenges and Change and called on the international community to put aside their differences and agree on a definition of terrorism. He said:

It is time to set aside debates on so-called "State terrorism". The use of force by states is already thoroughly regulated under international law. And the right to resist occupation must be understood in its true meaning. It cannot include the right to deliberately kill or maim civilians. I endorse fully the High-level Panel's call for a definition of terrorism, which would make it clear that, in addition to actions already proscribed by existing conventions, *any action constitutes terrorism if it is intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a Government or an international organization to do or abstain from doing any act.* I believe this proposal has clear moral force, and I strongly urge world leaders to unite behind it and to conclude a comprehensive

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<sup>6</sup> In the absence of a comprehensive definition of 'terrorism', the UN has created a series of twelve conventions which proscribe specific acts which are considered to be terrorist in nature. This includes acts such as hijacking aircraft, taking hostages, and terrorist bombings. As Scharf points out, however, there are gaps in the existing anti-terrorist conventions – for example, an attack by a means other than explosives on a passenger train or bus, would not be covered, nor would assassinations of businessmen, or journalists, while similar attacks on diplomats are prohibited. (Scharf, 2011: para 10). This situation therefore underlines the need for a comprehensive consensus definition of terrorism. (Schmid, 2004: 19) The twelve conventions listed in the Convention Annex include the following:

Convention for the Suppression of Unlawful Seizure of Aircraft, 1970; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973; International Convention against the Taking of Hostages, 1979; Convention on the Physical Protection of Nuclear Material, 1980; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988; and the International Convention for the Suppression of Terrorist Bombings, 1997.

convention on terrorism before the end of the sixtieth session of the General Assembly. (Annan 2005) (emphasis added)

It appears therefore that, in practice, agreement on the key elements of a universal definition may be closer than many observers realise. That is, a definition along the lines of those set out in the SFT Convention, and that endorsed by Kofi Annan – both of which essentially cover the same elements. It might reasonably be asked, why, when there is such high level support and agreement on the essential elements of terrorism, has the international community failed to finalise a definition. The answer is bound up with issues of the legitimacy of struggles for independence from foreign rule, and state terrorism. Were states to agree on a universal definition of terrorism, it may leave some of them open to liability for their own past acts. Davis discusses the ambivalence on the part of states to define terrorism in the following terms:

States maintain this ambiguity because it enables them to utilise the phrase “terrorism” without having to clarify what it means. Simultaneously it allows states to avoid condemning behaviour which conforms to the definition of terrorism. Agreeing on a definition of terrorism would restrain its use. It does not suit the purposes of many states to have terrorism defined: either because they do not want some actions to be defined as “terrorist”; or because they want to term something “terrorist”, where in reality the word is inappropriate. (Davis 2013 p,2)

This has been a stumbling block to the finalisation of a consensus definition of terrorism within the UN. If terrorism is defined as something which can only be committed by a sub-national or clandestine group, states will be effectively immune from any charges. As pointed out by Kofi Annan, the use of force by states is already highly regulated, for example through international law as it relates to war crimes and crimes against humanity.

Despite the lack of a consensus, terrorist attacks continue to occur and “people die every day from acts of terrorism” (Schmid 2011 p, 376). Schmid points out that “when governments ask young men and women to fight a war on terrorism the soldiers, policemen and other first line responders are entitled to a proper answer to the question of what exactly they are supposed to fight” (Schmid 2011 p, 376). While there is currently no universal definition of terrorism, agreement on a definition and limitations on what is or is not categorised as terrorism is needed on a practical level in order to bring about legal certainty. As Fergal Davis points out:

This matters – and not just because it makes terrorism research more difficult. In the aftermath of the terrorist attacks of 11 September 2001, the United Nations Security Council issued Resolution 1373 calling on member states to take co-operative legislative action against terrorism. Unhelpfully, Resolution 1373 left “terrorism” undefined. (Davis 2013)

A lack of international consensus on what constitutes terrorism complicates and impedes the ability of states to cooperate in their efforts to eradicate it. Cross-border law enforcement is likewise hindered through a lack of international agreement on a legislative definition of terrorism. Groups or actions which are considered terrorist in one country may

not be seen as such in another country. The urgency of these issues demonstrates the need for a settled international definition of terrorism.

Schmid and Jongman conducted seminal research on the question of defining terrorism in 1988 and again in 2011 (Schmid 2011). From the definitions provided by hundreds of scholars throughout the world, they were able to distill 22 recurring words or phrases with commonalities in definitional elements, and arrive at an *academic* consensus definition. The academic definition, while it incorporates most of the elements seen as important by academic researchers and commentators, is long and unwieldy, and not suited to criminal prosecutions.<sup>7</sup>

In the absence of an agreed international definition, and by sheer necessity, legislatures around the world, including Indonesia, have enacted definitions of terrorism within their domestic legislation, though needless to say there are differences across those various jurisdictions. However, it appears there are some common elements which point to a core understanding of terrorism.

Davis and colleagues “identified a surprising amount of agreement in an area usually characterised by discord” (Davis 2013), and therefore offer the following “modest proposal” for a legislative consensus definition of terrorism:

“Terrorism is some form of purposive and planned violence that has a political, religious, or ideological motivation. It is intended to coerce or intimidate and is targeted at civilians or government. Legislation prohibiting terrorism ought to have extra-territorial effect.” (Davis 2013, p. Para 11)

It is important to note here that *each* of the definitions above (that is the SFT Convention, the Kofi Annan proposal, the Schmid and Jongman academic consensus definition, and the Davis legislative consensus definition) contains a reference to an act which is intended to create fear or intimidate a population.

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<sup>7</sup> In discussing the academic definition of terrorism, Schmid states: Terrorism is a contested concept. While there are many national and regional definitions, there is no universal legal definition approved by the General Assembly of the United Nations (the one proposed by the Security Council in Res. 1566 (2004) is non-binding, lacking legal authority in international law). The Ad Hoc Committee on Terrorism of the 6th (legal) Committee of the General Assembly has, with some interruptions, been trying to reach a legal definition since 1972 – but in vain. In the absence of a *legal* definition, attempts have been made since the 1980s to reach agreement on an *academic* consensus definition. The latest outcome is the revised definition. It is the result of three rounds of consultations among academics and other professionals. A description how it was arrived at can be found on pp. 39 - 98 of Alex P. Schmid (Ed.). *The Routledge Handbook of Terrorism Research*. London and New York: Routledge, 2011. The same volume also contains 260 other definitions compiled by Joseph J. Easson and Alex P. Schmid on pp. 99 -200  
The revised academic definition contains twelve elements. The first element states: 1. Terrorism refers, on the one hand, to a doctrine about the presumed effectiveness of a special form or tactic of fear-generating, coercive political violence and, on the other hand, to a conspiratorial practice of calculated, demonstrative, direct violent action without legal or moral restraints, targeting mainly civilians and non-combatants, performed for its propagandistic and psychological effects on various audiences and conflict parties; The 5th element states: At the origin of terrorism stands terror – instilled fear, dread, panic or mere anxiety – spread among those identifying, or sharing similarities, with the direct victims, generated by some of the modalities of the terrorist act – its shocking brutality, lack of discrimination, dramatic or symbolic quality and disregard of the rules of warfare and the rules of punishment. (Schmid 2011, pp. 86-7)

## The Indonesian Legislative Definition<sup>8</sup>

The Interim Law on the Eradication of the Crime of Terrorism No. 1 2002 (*PERPU Nomor 1 2002 Tentang Pemberantasan Tindak Pidana Terorisme 2002*) (Indonesia's Anti-terrorism law, hereinafter "the ATL") contains the legal "definition" of the crime of terrorism used within the Republic of Indonesia. Article 6 states:

Any person who by intentionally using violence or threats of violence, creates a widespread atmosphere of terror/fear or causes mass casualties, by taking the liberty or lives and/or property of other people, or causes damage or destruction to strategic vital objects, the environment, public facilities or international facilities, faces the death penalty, or life imprisonment or between 4 and 20 years imprisonment.

Article 7 is worded in the same terms, however "intends to" is inserted before "creates a widespread atmosphere of terror/fear."

As some commentators point out, Article 6 is not a definition of terrorism *per se*. Rather, it is a statement of certain elements which may constitute a terrorist act (Zulakrial 2009).

The elements of the offence of terrorism in Indonesia according to the ATL are therefore:

- Intentionally using violence or threats of violence
- Creating a widespread atmosphere of terror/fear *or*
- Causing mass casualties
- By taking liberty or lives and/or Property *or*,
- Causing damage or destruction to:
  - strategic vital objects,
  - the environment,
  - public facilities or
  - international facilities

Whether Article 6 of the Indonesian legislation can be considered a definition or not, it is clear that for an act to be classified as terrorist in nature, it must "create a widespread atmosphere of terror/fear", or – where the acts do not actually succeed in creating terror – they must have intended to do so, pursuant to Article 7.

As Butt points out in his analysis of the ATL, "Articles 6 and 7 are so broadly worded that a wide variety of acts fall within their ambits. In particular, critical terms such as 'widespread atmosphere of terror or fear', 'mass casualties' and 'very high' are not defined. This leaves them open to subjective interpretation and raises many questions about how these

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<sup>8</sup> Indonesia's Criminal Code, the Kitab Undang-undang Hukum Pidana or KUHP, does not contain a reference to terrorism. However, it does contain other relevant crimes, such as murder. Furthermore, other laws may be of relevance in prosecuting terrorist crimes, such as the Emergency Law No. 12 of 1951, which contains Articles relating to the possession of firearms.

provisions could be applied.” (Butt, Simon 2008, p. 4) He raises three important questions in relation to the “creation of fear” element:

- how “widespread” would the fear need to be – would fear in one village be enough, or would it need to spread to the district, provincial or even national level?
- As a matter of evidence, how would you prove the creation of a widespread atmosphere of terror? Would you need to take a poll or call witnesses, or would the judge make a determination based on their own perceptions? And;
- Does the terror need to be an objectively reasonable response to the threat, or does a subjective test apply? What if parts of a community overreacted to the violence or threat of violence and what if it was overblown by media reporting? (Butt, Simon 2008, p. 4)

Importantly, Article 1(2) defines “any person” to include “individuals or groups of people, whether civil, military or police who are individually responsible, or corporations”. The Article is significant in that state organs, i.e. the police and military, are *not* excluded from the operation of the ATL. Given the evasiveness of states at the UN level to expose themselves to charges of terrorism, it is significant that the Indonesian legislature has taken this step.

An understanding of the definition of terrorism is a fundamental and very important first step before conducting various counter-terrorism operations. Indonesia’s law enforcement officials still require a greater understanding of the definitional differences between terms such as “terrorist”, “fundamentalist”, and “radical”. A person may be fundamentalist or radical in their political or religious views, but if they never resort to violence or threats of violence they cannot be regarded as terrorist. It is the very purpose of a definition to delineate meaning, to avoid the politicised, emotive and imprecise usage of a term: to avoid the unjust labelling of individuals or groups for political purposes.

Returning to the original question of attacks against Indonesian police, it is debatable whether these attacks therefore can be characterised as “terrorist”. According to Indonesian law, they do not fulfill the elements required under Articles 6 or 7 of the ATL if they do not create a widespread atmosphere of terror/fear, or are not intended to do so. It is equally debatable whether the attacks on police in fact created fear or were intended to create fear. Jones’ comments above indicate that the intention is no longer to create fear. Neta Pane, head of IPW Indonesia Police Watch, claims that the community is *resah* (worried/restless) with the inability of police to ensure the safety of the community and themselves (Gatra 2013). Whether this “restlessness” qualifies as a widespread atmosphere of terror would be a question for judicial determination.

Ramelan, a professor of criminal law and former terrorism prosecutor, has argued that in assessing a terrorist act, the complete background and context of the act should be considered – that is, whether it is part of a wider, systematic campaign of violence. Are actors’ motivations the overthrow of the legitimate government and the establishment of an

Islamic state? Are there connections to international terrorist groups which have committed clearly terrorist acts such as beheadings (BNPT 2014)? Considered in this wider context, it is more likely that these acts would be regarded as part of a terrorist campaign than isolated instances of ordinary criminal violence.

### **The Fatal Shooting of Bripka Sukardi**

On September 10, 2013, an Indonesian police officer, Second Brigadier Sukardi bin Said, was shot and killed by four assailants in the centre of Jakarta (Jong 2013; Post 2013b). Shortly after the shooting, Ansyaad Mbai, head of Indonesia's National Counterterrorism Agency, publicly announced that the killings were linked to terror groups, namely, the so-called Mujahideen Indonesia Barat (West Indonesia Mujahideen or "MIB") (IPAC 2013) in cooperation with Mujahideen Indonesia Timur (East Indonesia Mujahideen or "MIT") (Patty 2013). However, the claim led some to speculate whether the police were too hasty in their assumptions, and to question whether police had solid evidence to prove that "terrorist" groups were actually involved in the killings (Araf 2013). Some of the circumstances surrounding the shooting of Sukardi were notable and possibly pointed to alternative motives, unrelated to jihadist terrorism (Perdani & Saragih 2013).

Firstly, the location of the killing, being directly in front of Indonesia's high profile anti-corruption commission (the KPK), led some to immediately question whether there was a connection to any of the commission's investigations (Jong 2013). Then there was the manner of the killing; a well-planned and executed assassination (Saragih 2013). The killers shot Sukardi at close range, only about 2–3 metres from the victim, similar to previous attacks (Perdani & Saragih 2013). A police spokesman, Senior Commissioner Rikwanto, said that the "gunmen used 9-millimeter pistols, the same type of firearms used in a recent string of attacks that killed three police officers in Greater Jakarta in the last two months" (Saragih 2013).

It is also relevant to consider that, at the time of the shooting, Sukardi was reportedly "moonlighting" (Perdani 2013) (as described by the local media) by providing a security escort for trucks carrying construction materials. Sukardi was not on official police duty at the time of the incident, even though he was wearing his police uniform. This led Indonesia Police Watch Chair Pane to question whether "commercial rivalries could lie behind Sukardi's murder" (Perdani & Saragih 2013).

Responding to the shooting of Sukardi, vice chairman of the Indonesian parliament Priyo Budi Santoso stated that the community's sense of security was in the "red zone" (Akuntono 2013). Santoso added that if the shootings weren't solved quickly it would cause speculation about the police's ability to ensure public safety. In examining the public response to the killings of police, what is remarkable is the lack of sympathy expressed by the community. Rather, the tone of the public response was to criticise police for their failure to uncover the killers immediately – that the police's "homework" was to solve the murders as

soon as possible (Asril 2013). Imanuddin Razak, for example, commented in the *Jakarta Post* on 13 September 2013, just three days after the killing of Sukardi:

A large number of people from various walks of life have expressed their discontent and anxiety about the police's inability to uncover the truth behind the incidents, particularly as to who the perpetrators are and their motives. ... Such discontent and anxiety are understandable as people have started to worry about their safety, especially upon learning that the police have made little progress in their investigation into the attacks, let alone uncover the identity of the perpetrators and their motives (Razak 2013).

Such direct, unsympathetic commentary on the murder of a police officer belies a public which remains deeply suspicious of police motives and methods. In the same vein, Razak continues:

A failure to uncover the truth behind the serial attacks on police officers will create a backlash from the general public due to the continuing public distrust of the police's capability and credibility. Such a failure would also encourage speculation and conspiracy theories, most of which might be wild speculation, although some might have a degree of validity (Razak 2013).

The conspiracy theories alluded to by Razak included an inference that the police themselves had orchestrated the killings in order to garner sympathy and support from the public. If that was the real motive, then it would appear to have failed. Another conspiracy theory, perhaps more plausible, is that the police, by deliberately increasing the sense of threat and fear among the community, can justify demands for greater levels of funding – in this way terrorism is seen as an industry or a “project” for government agencies.

The fact that the killers stole Sukardi's pistol would tend to support Jones' argument outlined above, that the killings are utilitarian in nature, though, in itself, it does not point to whether the killers were linked to a jihadist group.

In examining the question of whether this murder was a terrorist act, it is necessary to consider whether it created, or was intended to create, a widespread atmosphere of terror. As discussed above, the community response was a kind of unsympathetic exasperation at the police's own failings. However, whether the shooting caused a widespread atmosphere of terror or fear is uncertain, bordering on unlikely. As during the trial of the 2002 Bali bombers, to answer the question, evidence could be sought as to any kind of disruption to the normal course of affairs in the affected area. On that measure, it would appear that normal activities in the vicinity of the killing were not seriously affected. Jong reported on 12 September that it was “business as usual” at the KPK headquarters. The killing having occurred on a Tuesday night, “as of Wednesday afternoon, the police had retracted the police line on the crime scene, returning the traffic in the vicinity of the KPK building to normal” (Jong 2013).

In late October, 2013 police arrested eight suspects in connection with the killings of police in August and September 2013 in Ciputat, Cireundeu and Tangerang, and confirmed that they were linked to jihadist terrorist networks (Badudu, Aditya & Nurhasim 2013). This

would appear to settle the question of whether those killings had links to “terrorist” groups, although it does raise the further question of whether revenge played a role in the killing. Police have been severely criticised in the past for alleged abuses of human rights and legal processes in their past handling of terrorism suspects (Saifullah 2013). The elite counter-terrorism detachment, Densus 88, has killed around 60 suspects in counter-terrorism operations over recent years, some of them allegedly in circumstances in which the suspects showed no resistance (ICG 2012). Police have been accused of torturing captured suspects, and a YouTube video emerged in 2013 depicting the torture and non-fatal shooting of a bound terror suspect (Arnaz, Farouk 2013). Following the video some prominent politicians called for Densus 88 to be dissolved (Sihite 2013).

It appears that an unofficial, low-level war is raging between two factions, namely the police and jihadist groups, which is fuelled to some extent by simple revenge. When the leader of the MIT, Santoso, appeared in a YouTube video in mid-2013 inciting a war of revenge for the killing of his Mujahideen “brothers”, he said “hopefully, we are the generation who will battle against the hostility of Densus 88. Densus 88 is the real enemy, the real demon” (Perdani & Sangadji 2013).

Commenting on community anger towards police tactics, IPAC stated:

Police tactics need to be examined as well. The tactics that were appropriate in the face of al-Qaeda-style bombings ten years ago probably need to change to take the new “terrorist-as-petty-criminal” phenomenon into account. Anger at the police over arrests and killings of family members has created a new generation of younger brothers and sons – and probably sisters and daughters, though harder to tell – who want revenge. When that motivation is combined with ongoing extremist preaching and radical recruitment, it becomes another problem waiting in the wings (IPAC 2013).

However, police representatives counter with the argument that these terrorist groups and individuals are armed and extremely dangerous, and that police will take no chances when dealing with them. According to former BNPT official Tito Karnavian, the acquisition of weapons is a key moment in the police response. “If they possess weapons... Then it is time to move, with any price including a gun fight” (Karnavian 2012).

In the context of breaking the cycle of violence, and accusations that Densus 88 are “trigger happy” and have “fueled jihad” (Dewan 2013), it is worth pointing out that other counter terrorism options are available to police. Law No. 9 2013 on the Prevention and Eradication of the Financing of Terrorism (*Undang-undang Pencegahan dan Pemberantasan Tindak Pidana Pendanaan Terorisme* 2013), presents enforcement officials with a range of new powers and processes to list and freeze the assets and property of suspected terrorists and terrorist financiers (Fenton & Price 2014). Used effectively, the law can form a “powerful tool” in the fight against terrorism. However it is currently not being fully implemented. Indeed, the Financial Action Task Force, has reprimanded Indonesia for failing to implement the laws in line with international commitments.

## **Conclusion**

Despite the lack of international consensus on a definition of terrorism – a process which has been hampered by the political self-interest of UN member states – there is a widespread understanding of the core elements of terrorism. That is, terrorism is the use of violence or threats of violence against civilians with the intention to create fear or intimidate a population or a government for a political purpose.

Adopting such a definition allows the depoliticisation of the debate surrounding terrorism. It also facilitates a criminal law approach to terrorism, where each violent act is prosecuted on a case-by-case basis. The shootings of police officers in Indonesia over recent years, and particularly in the second half of 2013, were immediately labelled as terrorist in nature, before all facts were known. This indicates the potential circumvention of legal processes by judging a suspect as guilty of a crime before each of the elements are proven. In breaking the cycle of violence between Polri and jihadist groups, police need to pay due attention to legal processes, refrain from shooting suspects where non-lethal alternatives exist, preserve sources of operational intelligence, and defuse violence. Paying due respect to legal process will enhance the image of police in the community and contribute to reconciliation of a public which is deeply distrustful. Doing so will form an important step forward in preventing violence, increasing respect and standing of Indonesian police in the community, and ensuring the impartial application of the Rule of Law to the Indonesian citizenry.

On the central question of whether shootings of police by jihadist groups are acts of terrorism or criminal acts, an act of terrorism should cause, or be intended to cause terror within the community. Where the creation, or the intention to create terror does not exist, it is arguable that the act is not terrorist in nature, but rather an ordinary crime to be prosecuted under the domestic Criminal Code. However, in alleging a crime of terrorism, all of the surrounding facts of the case should be examined, including the wider context, the motivations and any links to terrorist groups, domestic or international, and their long term aims. In this context, it is much more likely that the shootings of police may be seen as terrorist acts. Ultimately the question is one for the courts to determine, whether each of the elements of an offence as charged by the prosecution has been fulfilled.

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