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Indonesia's Responses to the "War on Terror": Several
Controversial Issues in the Transition to Democracy

*Respon Indonesia terhadap "War on Terror": Beberapa Isu
Kontroversial dalam Transisi Menuju Demokrasi*

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ABSTRACT

This article discusses Indonesian domestic responses to the "War on Terror" during Megawati Administration (2001-2004). It shows that several controversial issues emerge with regard the involvement of Indonesia in this war starting from Megawati's visit to Washington a week after September 11 Attack, the dilemma of the government in responding the war in Afghanistan, the existence of international terrorist network in Indonesia, and the legislation of anti-terrorism laws. This paper argues that the pros and cons on these issues is a consequence of transition to democracy in this country. In the situation that democracy has not been consolidated yet, civil society in Indonesia worries that a deep participation of Indonesia in this kind of "war" can shift democratization process in this country.

Key words: war on terror, Megawati administration, democratization, terrorism network, democracy

ABSTRAK

Tulisan ini mendiskusikan respon-respon domestik terhadap "War on Terror" selama pemerintahan Presiden Megawati (2001-2004). Terdapat beberapa issue kontroversial yang muncul dalam kaitannya dengan keterlibatan Indonesia terhadap perang ini mulai dari kunjungan Megawati ke Washington setelah serangan 11 September, yaitu dilema pemerintah dalam merespon perang di Afghanistan, adanya jaringan teroris internasional di Indonesia, dan legislasi hukum anti-terorisme. Tulisan ini menyetengahkan argumen-argumen pro dan kontra mengenai issue-issue ini sebagai konsekuensi dari transisi era demokrasi di negara ini. Dalam situasi ini demokrasi belum dikonsolidasi, sementara masyarakat sipil di Indonesia khawatir bahwa partisipasi negara Indonesia yang terlalu dalam terhadap "perang" semacam ini akan menggeser proses demokratisasi di negara ini.

Kata kunci: perang terhadap teror, pemerintahan Megawati, demokratisasi, jaringan teroris, demokrasi

When a democratization process has been going on in Indonesia since the collapse of Soeharto, in international affairs since September 11 Attack 2001, the United States (US) has

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campaigning a “global war on terrorism”. Washington saw that the attack against twin buildings of World Trade Center (WTC) and Pentagon Military Headquarters as an act of “war” that had to be responded by military operations to any countries which support terrorists. The US put Taliban regime in Afghanistan as a target of retaliation attack because this regime became a sponsorship of terrorists by giving a base for Al-Qaeda and Osama bin Laden who was accused by the US as an actor behind September 11 Attack. To realize the attack, Washington asked its allies to participate in the Afghanistan War as a part of “global war on terrorism”. Several European countries (NATO), Australia, and Japan participated in this war.

Besides in Afghanistan, the US also launched “international war on terror” in the Southeast Asia and Iraq. The Southeast Asia became the second front of the “global war on terror” after the Middle East as the first front. In late January 2002, the escalation of an insurgency by Abu Sayyaf in Mindanao in the Southern Philippines pushed the Bush Administration to send 660 troops to the Philippines. The deployment was followed by the arrests of dozens of alleged al-Qaeda operatives in Singapore, Malaysia, and the Philippines (Gershman 2002, Glassman 2005). Meanwhile, in Iraq the US invaded this country in 2003 to change Saddam Hussein regime. The US attacked Iraq under Saddam with the reasons that this regime had weapons of mass destruction (WMD) and Iraq had a connection with September 11 Attack and transnational terrorism, the two accusations that have not been proven yet until now.

However, the US’s policy in Afghanistan and Iraq was criticized by international community especially in the Muslim world. It can be seen from the wave of demonstrations and protests in many countries from Mauritania to Indonesia before and after the US and its ally invasion to Afghanistan and Iraq. In other words, the implementations of the “global war on terror” in Afghanistan and Iraq led by the US are not fully supported by international community. Moreover, the United Nations Security Council did not give mandate to the U.S. when this country invaded Iraq.

This essay will discuss the government and public response in Indonesia to the “international war on terrorism” especially during Megawati Administration (2001-2004). What was Indonesian government response to the “war on terrorism”? How did public, represented by mass organizations, pressure groups, and political parties, attitude to the government response to the “war on terrorism”? And how did the government accommodate the international and domestic pressure in terms of “war on terrorism”?

To address the response of the government and public in Indonesia to the “global war on terrorism” led by the US, the author will focus on the response of the government and Indonesian public during the Megawati Administration. It will be argued that different points of view between the government and the public to respond the war raised several controversial issues in Indonesia. These are controversial issues on the response to September 11 Attack; the response to the US attack against Afghanistan; the existence of international terrorist network in Indonesia; and the legislation of anti-terrorism laws.

The Response to the September 11 Attack

A week after September 11 Attack of 2001, President Megawati Soekarnoputri went to the US. President’s journey to the US had already planned before the terrorist attack to WTC and Pentagon. This planning was not a sensitive issue in Indonesia before the attack, but after the attack President’s journey to the US became a controversial issue. Muhammad Amien Rais as a Chief of People’s Consultative Council (MPR) asked Megawati to postpone the visit, because according to him the White House was still in the sorrow situation. President Megawati, however, argued that the visit was the most appropriate choice. President Megawati said in front of chief executive officers of the U.S. companies after meeting with George W. Bush, ‘It is the most appropriate time for Indonesian government and people to express sympathy and support to American people’ (Habib 2001). The other proponents of the visit revealed that Indonesia as a biggest Islamic country in the world had to deliver sympathy to the victims of the attack and

condemned the terrorist attack. This could reduce a stigma that terrorists were identical with Islam. Moreover, in this occasion President Megawati asked President Bush to consider Islamic World's feeling and opinion in terms of "war on terrorism" (Jawa Pos 1/10/01).

President Megawati when visited the US brought several important agendas. These were international aids (IMF and World Bank) for Indonesian economic recovery, military cooperation especially lobbying Washington to end military embargo against Indonesia, and me-moratorium (debt rescheduling). The other aim of this visit was to strengthen the US's commitment to recognize Indonesian national integrity (Mallarangeng 2001:50). Foreign Minister Hassan Wirajuda added that Megawati's visit had a psychological effect in terms of increasing investment and trade in Indonesia (Wirajuda 2001). Hasnan Habib, a former Indonesian Ambassador of the US (1982-1983) maintained that Megawati's visit to the US after September 11 Attack was just a symbol that Indonesia as an Islamic country supported the "war on terror" and the acceptance of the White House to Megawati justified that the war on terror led by the US was a war against terrorists and was not a war against Islam (Tempo 30/9/01).

The involvement of Indonesia in the war on terrorism is supposed overcome the problems of economic, military, and separatism. When President Megawati visited the US, cooperating with Congress, Bush Administration promised to give economic aid for Indonesia of approximately US\$ 130 million, US\$ 15 million for developing Aceh and Maluku, and US\$ 10 million for Indonesian Police training. Besides, Bush agreed to decrease tariffs for Indonesian product of approximately US\$ 100 million. In the press conference after Bush and Megawati meeting, Bush also agreed to revoke non weapon military embargo for Indonesia and he asked the Indonesian military to participate in the multilateral battle training. Moreover, Bush convinced to support the integrity of the Republic of Indonesia. In other words, the statement of President Bush, according to Indonesian Foreign Minister Hassan Wirayuda, indicated that other countries should not support every separatism movement in Indonesia (Habib 2001).

The Response to the U.S Attack against Afghanistan

When the US initiated to attack Afghanistan under Taliban regime to hunt Osama bin Laden, Indonesian government faced a dilemma to respond the US policy. On the one hand, the support and involvement to the "war on terrorism" led by the US could raise domestic critiques and protests and could de-legitimate the government. On the other hand, during the *reformasi* era Indonesia under Megawati government needed assistance especially from great powers such as the US and Western countries to recover economic crisis and to maintain national integrity because of separatism in Aceh, West Papua, and Maluku. The dependency of Indonesia on the US was admitted by Amien Rais (Kompas 12/10/01). Consequently, Indonesian Government should support other countries agenda especially "war on terrorism" campaign led by the US.

However, public in Indonesia that was represented by organizations and political parties rejected to the war campaign led by the US in Afghanistan. They demanded the Government of Indonesia to conduct a strict response to the US's policy. The rejections to the war in Afghanistan came from different ideological backgrounds. The Cross-Religions Forum (FLA), for instance, that consists of Muhammadiyah, Nahdlatul Ulama (NU), Bethel Church of Indonesia (GBI), Church Consultative Body, Christian Church of Indonesia, and Parisadha Hindu Dharma in Surabaya demanded the US to stop the war (Jawa Pos 13/10/01). The expressions of anti-America in Indonesia spread from moderate to radical actions. Muhammadiyah and NU, the two Islamic organizations that have millions members in Indonesia, took moderate action to condemn the US's policy. Those organizations did not participate in anti-America demonstrations. Meanwhile, since the US had planned to attack Afghanistan, other Islamic organizations such as Islamic Front Defender (FPI), Youth Islamic Movement (GPI), Indonesian Islamic Student (PII), Indonesian Islamic Student Association (HMI), the Unity of Indonesian Muslim Student Action (KAMMI), the Cross-Campus of

Muslim Student Association (HAMMAS), Youth Ka'bah Movement (GPK), the Youth Guard of National Mandate Party (BM PAN), Youth Movement of Justice (Garda Keadilan), Indonesian Muslim League (LMI), Indonesian Mujahiddin Council (MMI), and Syabab Hidayatullah demonstrated in the US Embassy in Jakarta and in the US Consulates in Surabaya and Medan. Demonstrations anti-America broke not only in those cities, but also in several cities in Java, Sumatra, Kalimantan, and Sulawesi. They expressed a rejection to the US's war on terror in Afghanistan. In several cities such as Solo, Makassar, Surabaya, and Jember, FPI threatened to expel foreigners from the US and its ally through sweeping action if the US attacked Afghanistan. Several Islamic organizations such as GPI and also FPI opened registrations to be voluntary soldiers of Afghanistan (Tempo 21/10/01).

What happened in Afghanistan and many demonstrations in Indonesia was responded by Megawati administration. The official response of Indonesian Government to the US's plan to attack Afghanistan and the domestic protests was released by Coordinator Minister of Politic and Security Susilo Bambang Yudhoyono. Although the sweeping action was just an empty threat and never occurred in any parts of Indonesia, Indonesian Government responded by releasing a ban of sweeping action and sanction will be given for everyone who committed this action. Then, Indonesian Government also banned the deployment of voluntary soldiers to Afghanistan. Besides, Indonesia hoped that the international response to the "war on terrorism" should be proportional, precise, not over doses, and not create new humanity tragedy. Indonesia also emphasized on a multilateral cooperation to fight against terrorism and asked the United Nations to take initiative to prevent open war in Afghanistan (Kompas 5/10/01).

When the US attacked Afghanistan on October 7, 2001, Indonesian Government did not give clear and final response to the US attack. Minister of Communication and Information Syamsul Muarif maintained that Indonesian Government did not take final decision yet because the government had to consult with parliament (DPR), considered public aspirations and also considered Indonesian national interest in relationship with other countries (Kompas 19/10/01). In other words, the government floated its response to the US invasion in Afghanistan. It means that Indonesia did not condemn and did not support the invasion.

Pressure groups especially coming from Islamic organizations criticized the soft of government reaction to the US invasion in Afghanistan. Demonstrations in Jakarta were not only directed to the US Embassy, but also were directed to Merdeka Palace. The wave of demonstrations, as indicated by Susilo Bambang Yudhoyono, was directed to change the government (Jawa Pos 18/10/01). Moreover, in several circumstances Vice President Hamzah Haz as a representative of Muslim political power had hard attitude to the U.S. policy in Afghanistan, such as giving green light for Muslim society to demonstrate anti-America (Kompas 12/10/01). Then, Indonesian Ulama' Council (MUI) as an official representative of Islamic mass organizations in Indonesia declared *fatwa jihad* in Afghanistan and demanded Indonesian Government to close diplomatic relationship with the US as a response to the attack against Afghanistan (Tempo 21/10/01).

To accommodate public aspiration, President Megawati delivered the highest tone of the government critique to the US policy in the *Isra'* and *Mi'raj* Commemorate in Istiqlal Mosque on October 15, 2001. Megawati in this Mosque said that it was unjustified that someone, or a group of people, or even a government with a reason to look for or hunt a person who committed violence, then attack another nation or state (Kompas 16/10/01). Although Megawati did not mention the US in this statement, there was no any other interpretation that this statement was directed to the US policy in Afghanistan. Responding this statement, the Islamic political power such as Justice Party (PK) asked the government to take Megawati's statement as an official response of the government to the U.S. policy (Jawa Pos 20/10/01).

Megawati had to accommodate Muslim aspiration because she had principal opponents from Islamic parties that resisted her to be president after general election in 1999.² She as a vice president became a president after President Abdurrahman Wahid was driven from his office in 2001. The position of Megawati with a support from the Indonesian Democratic Party for Struggle (PDIP) as secular-nationalist party that gained around one-third of the total voters in the general election in 1999 (see Table 1) made her difficult to take decisive action in terms of “war on terrorism”, because this issue was sensitive among Muslim and usually associated with Islam. She tried to balance his action to maintain her position (Malley 2003:136). Moreover, in the next general election in 2004 the president and vice president would be elected directly by people.

Table 1. Vote Composition by Party: Indonesia, 1999 General Election

Party	Ideological Background	Percentage
PDIP (Indonesian Democratic Party for Struggle)	secular party	33.8
Golkar	secular, Islamic party	22.3
PKB (National Awakening Party)	secular, Islamic party	12.7
PPP (United Development Party)	Islamic party	10.7
PAN (National Mandate Party)	secular, Islamic party	7.0
PBB (Crescent and Star Party)	Islamic party	1.9
PK (Justice Party)	Islamic party	1.4
Others		10.2

Source: A. Ananta et al. (2004) Indonesian Electoral Behavior: A Statistical Perspective. Singapore: Institute of Southeast Asian Studies. 259.

International Terrorist Network in Indonesia

Before Bali became a target of terrorist attack on October 12, 2002, there were several controversial issues in Indonesia: whether Indonesia was a base of terrorists; whether the international terrorist network existed in Indonesia or not; and whether *al-Jama'ah al-Islamiyyah* (JI) was as a real or not. After Bali Bombing, debating was going on between some who believed that Bali bombing was operated by local group that had international network and some who believed on foreign conspiracy (intelligent operation) behind the attack (Yudhoyono 2003). Prior to the Bali Bombing, intelligence agencies in Asian and Western countries warned Indonesian government about the international terrorist network in Indonesia especially a link between Al-Qaeda and JI. The warning was based on information from Omar al Faruq who was captured by Indonesian intelligence and turned him over to the US (Time 23/9/02). President George W. Bush phoned Megawati and he urged her to take strict action to prevent terrorist

² Before general election of 1999, the controversial issue among Islamic political powers in Indonesia was about a women president. Is it permitted or not according to Islam? Most of Islamic political power rejected a woman to be president. Although PDIP led by Megawati became a winner in the general election in 1999, Megawati did not directly become a president. Islamic political parties chose Abdurrahman Wahid as a president. As a compromise among Islamic political parties and secular-nationalist parties, Megawati was chosen to be a vice president.

attack. In other words, Indonesian government had to arrest Abu Bakar Ba'asyir who is suspected as a JI's spiritual leader. Indonesian support for the "war on terrorism", from the U.S. perspective, has been half-hearted (Rieffel 2004:105). However, Vice President Hamzah Haz rejected that there was an international terrorist network in Indonesia. To express his rejection to the U.S. pressure, he hosted a dinner for Abu Bakar Ba'asyir and other Muslim activists (Malley 2003:136-137). Besides Hamzah Haz, other mass organizations such as Youth of Catholic, KNPI, Presidium of GMNI, Gema MKGR, GP Anshor, Betawi Mampang, and DPN GMMPI rejected the 'black propaganda' of the U.S. that Indonesia was a base of terrorists (Misrawi 2002).

After Bali Blast I, although some people believed that there was an international terrorist network in Indonesia, the existence of JI still became a controversial issue. The existence of JI, Hasyim Muzadi as a leader of NU maintains, was just an intelligent fact and not a judicial fact. In other words, the emergence of JI as a terrorist group was more political motive of intelligence than judicial motive (Maulani 2003:105). Z.A. Maulani, a former Chief of Intelligent Agency during the Habibie Administration, was also unsure about the existence of JI in Indonesia because the existence of JI was based on Al-Faruq admission and Indonesian government did not have any access to cross check the information.³ Commission for Disappear People and Victims of Oppression (Kontras) indicated that the existence of international terrorism was used local terrorist to commit Bali bombing. Kontras analyzed that Bali Bombing was an actualization of conflict elites in Indonesia. Conflict occurred among nationalist faction, religious (Islam) faction, and the military (TNI). In the situation that among faction tried to establish their position, (local) terrorists used this situation to launch the attack without worrying because the stigma that committed this kind of attack will be pointed to international terrorists (Kontras 2003:42). If there is an incident, the instinct in the West will be to point the finger at JI and its sympathizers (Rieffel 2004:105).

Legislation of Anti-Terrorism Laws

The U.S. led 'anti-terror coalition' helped several countries in East Asia, South Asia and the Middle East justify continued authoritarian at home in the face of new threat, while winning welcome Western support (Thompson 2004:1091; Foot, 2005). This can be seen, for instance, from the appreciation of Bush Administration to the former Malaysian Prime Minister Mahathir Muhammad and his successor Ahmad Badawi because of counterterrorism cooperation, even though this country uses Internal Security Act (ISA) that was usually criticized by human rights activists, and weakened internal opposition especially PAS (*Partai Islam Semalaysia*) and Justice Party led by Anwar Ibrahim's wife, Wan Azizah Wan Ismail (Thompson 2004:1087). Bush Administration and its allies especially Japan also supported the military government in Pakistan, Tajikistan, and Uzbekistan because of their contribution in the war campaign against terrorism in Afghanistan (Hughes 2004:438). Then, in the name of "war on terrorism", the U.S. and other Western countries reject and isolate a political power that come to power through democratic process such as the Islamic Resistance Movement (Hamas) in Palestine (the Economist 22/4/06). The view that Islamic revivalism is a threat leads the Western countries to support secular regimes in Muslim world, even though these regime are repressive and ignored the Western value such as democracy and human rights. They do not want to take risks by giving an opportunity for an Islamic oriented government coming to power (Esposito 1995:190).

³ Al-Faruq was captured by Indonesian intelligent in Bogor on 5 June 2002 and he was given to CIA and was sent to Guantanamo Bay. The difficulty of Indonesian authority to cross check information directly to him raised a speculation in Indonesia that he is a US agent (Maulani, 2003:63-68).

Table 2. The Number of Bomb Attacks between 1976 and 2002 in Indonesia

1976	1 case
1978	1 case
1984	2 cases
1985	2 cases
1986	1 case
1991	2 cases
1994	2 cases
1996	2 cases
1997	1 case
1998	6 cases
1999	7 cases
2000	32 cases
2001	81 cases
2002	2 cases
Total	142 cases

Source: Kontras (2003) Analisis Kasus. In: R. Marpaung and A. Araf (eds.). *Terorisme: Definisi Aksi, dan Regulasi*. Jakarta: Imparsial 37.

When it comes to Indonesia, a country with a largest Muslim in the world, the formulation of anti-terrorism law was accused by Muslim activists as a kind of the Western efforts to prevent Islamic movement coming to power. What happened in several countries above raised a question among human rights activists in Indonesia whether the US campaign on “war against terrorism” was even going to become a war against democracy (Perwita 2005:177). As a result, the legislation of Anti-Terrorism Law became other controversial issues in terms of combating terrorism in Indonesia. The tragedy of September 11 in the U.S. and other terrorist attacks in many regions of the world, including in Indonesia (see Table 2) forced Indonesian government to form Proposal of Anti-Terrorism Law (RUU Anti-Terrorisme).

However, RUU Anti-Terrorism raised debate among politicians, non-governmental organizations, social scientists, and the government. Some people, especially Indonesian Police and Intelligent Body, believed that the threat of terrorism really exists in Indonesia. Chief of BIN A.M. Hendropriyono, for instance, warned the establishment of international terrorist network in Indonesia. Terrorists operated bomb attacks in several targets in Indonesia, such as bomb attack in the Philippines Embassy in Jakarta and Christmas bombs in several churches in Indonesia (Republika 2/10/01). To prevent the threat of terrorism, the government should prepare a special law on terrorism. Romli Atmasasmita, a member of anti-terrorism law formulation, argued that terrorism was an extraordinary crime and crime against humanity that was not enough to be covered by the Criminal Code (KUHP). Moreover, Anti-Terrorism Law

was directed to prevent international terrorism (Atmasasmita 2002:2). Others, however, did not agree with the establishment of special law on terrorism. They suggested the government to strengthen the implementation of the Criminal Code that already exists in Indonesia. They argued that Anti-Terrorism Law gave opportunity to state to conduct anything partially with the reason fighting against terrorism (Haramain 2002). Todung Mulya Lubis, Chief of the Indonesian Human Rights Monitor, added that the Anti-Terrorism Law potentially returned the New Order model under Soeharto that carried away civil rights and ignored the principle of law state (Lubis 2003:79).

The Government of Indonesia used Bali Blast I as a momentum to realize a legislation of anti-terrorism law. After Bali Blast I, in emergency situation Megawati Administration issued the Government Regulation to Replace Law (Perppu) No. 1 on Elimination of Criminal Acts of Terrorism, that already prepared since 1999-2000, and Perppu No. 2 on Elimination of Criminal Acts of Terrorism of Bali Blast on 12 October 2002. These laws then were followed by President Instruction (Inpres) No. 4 of 2002 and Decree of Coordinator Minister of Politic and Security No. 26/Menko/Polkam/11/2002 on the Establishment of Coordinator Desk of Combating Terrorism (Salam 2005:158). Public in Indonesia have aware about the real threat of terrorism after Bali Blast I. The victims that were dominated by foreign tourists put Indonesia to be international concern in combating terrorism. Perppu No. 1 and 2 that were proposed by the government passed to be Law No. 15 and No. 16 of 2003 after being agreed by DPR.

The contents of anti-terrorism law in Indonesia based on the three paradigms: the protection of the sovereignty of the territories of the unitary state of the Republic of Indonesia; the protection of the rights of its citizens both domestically and overseas; and the protection of the rights of the suspects/defendants of criminal acts of terrorism that have become universal rights that should not be ignored (Atmasasmita 2002:46-47). These Laws were umbrellas for other legislation relating to the elimination of criminal act of terrorism and contain provisions that enable the President to establish a special ad hoc institution on the advice of the National Police Chief. These Laws also contain provision on the financing of terrorist activities as criminal act of terrorism, simultaneously strengthening the Law on Criminal Acts of Money Laundering (Atmasasmita 2002:54-55). The three paradigms and other specifications of the Laws that were set up by the government indicated that Indonesian Government tried to take a middle way in combating terrorism. It means that the government in facing terrorism does not overreact or shows weakness as if they are powerless or ignorant.

NGOs, human rights activists, and several political parties, however, criticized Law No. 15 and 16 because these laws give more authority for the state to prevent and fight against terrorism without providing instrument to protect civil rights. In terms of Law No. 15, they criticized article 6, 7, 8, 14, and 20 that are multi-interpretative and can be misused by the state.⁴ Article 20, for instance, states that:

‘Any person who uses violence or threats of violence or who **intimidates** detectives, investigators, public prosecutors, etc... who are handling any criminal act of terrorism...shall be sentenced with imprisonment for three years at the minimum and fifteen years at the maximum’ (Atmasasmita 2002:108).

Term ‘intimidate’ can be interpreted from real action to comment. This depends on the state interpretation. The formulation of this article can threaten to free press and freedom to speak, because if mass media or NGOs or anyone who deliver critiques or demonstrate to protest

⁴ In Indonesia, a formulation of an article that has multi-interpretative meaning is called *pasal karet* (rubber article or unpredictable article). These kinds of article (*pasal karet*) were found in Subversive Law that was already omitted during the *reformasi* era. By using ‘rubber articles’ in Subversive Law during the Soeharto era, many vocal activists and politicians were jailed.

judicial process relates to criminal act of terrorism can be qualified as 'intimidator' and shall be sentenced from three years to fifteen years

Other critiques to the Law No. 15 are formulations of article 25, 26, 29, and 30. Besides potentially threaten the individual rights, these articles also potential to be misused by intelligence agency. In article 25 states that to obtain adequate preliminary evidence, the investigator may use every intelligence report. Then, in article 30 is mentioned that state institutions have several authorities to request information from bank; open, examine and confiscate mails and packages by post; and bug any conversation by telephone that only based on the intelligent information. Human rights activists worry that the intelligence can misuse the authority, because up till now there is no institution that monitor and control the intelligence agency.⁵ The involvement of non-judicial institutions such as the TNI and the State Intelligence Agency (BIN) in the terrorism cases, in the situation that those institutions are still repositioning, can threaten judicial system independency (Imparsial Team 2003:51-53).

One of the main agenda of *reformasi* in Indonesia is turn the TNI back to the state defense force. In other words, *reformasi* puts the TNI in the civil control. *Dwi fungsi* (dual function), in which the TNI was a social and political function, was criticized by pro-democracy activists. During Soeharto era the military as an institution was misused by the ruling power to pressure opposition. Sporadic critics toward *dwi fungsi* during *reformasi* movement in 1997-1998 caused *dwi fungsi* eliminated in Indonesia by omitting faction of the TNI in the parliament (DPR). SBY stated that to realize a 'new paradigm', the TNI reformed internally to anticipate a changing situation, especially when the Republic of Indonesia Armed Forces and *dwi fungsi* were beginning to lose its prestige (Yudhoyono 1999:335).

However, the realization of military reform has faced problems because of human rights violations in the past that involved members of the TNI. Transition to democracy in many countries usually faces the settlement of human rights violations that occurred in the authoritarian regime. This happened in South Africa after ending apartheid regime and in several countries in Latin America. The patterns of solving the human rights violations determine the success of transition. In this case, the new government of Indonesia also faced the human rights violations that were done by the military (Tanuredjo 2001). Riot in East Timor after referendum is one case of human rights offence that should be settled by the government after Soeharto, because international community, especially the UN paid attention to this case. The other cases that relates to the human rights offences are Tanjung Priok massacre, the riot in the central board of PDI on the 27 July 1996, Talangsari Lampung massacre, Haur Koneng, the riots between 12 and 14 May 1998, the shooting of students in Semanggi I and II, human rights abuses in Aceh and Papua, and the case of Munir assassination.

In the situation that repositioning the TNI in Indonesia is still in process, giving more authority to military in the new agenda on the "war on terrorism" can threat the transition to democracy. Public is still trauma with the broaden authority of the military in the past. Intelligence operations during and after Soeharto era that disobey rule and law, for instance, strengthen the worry of human rights activists if a broaden authority is given to this institution. Based on experiences in several cases before, when conflict among elites happened, some elites used intelligent operation by creating unsecured situation. Malari riot in 1974, for example, was caused by conflict between General Soemitro and General Ali Moertopo (Ramadhan 1994). In the 1980s, Komando Jihad (Jihad Command) emerged as a contra intelligent operation that was initiated by intelligent forces under controlling General LB Moerdhani to respond Petisi 50⁶ that

⁵ In Indonesia right now is raising a discourse to establish a body in the parliament that monitors the State Intelligence Agency (BIN), especially because of the assassination of Munir that is indicated involves the members of BIN.

⁶ Petisi 50 (Petition of 50) is a petition that was signed by 50 people that consisted of former prime minister in the Soekarno era, retired generals from army and police, student activists, Islamic clerics,

asked Soeharto to investigate Muslims massacre in Tanjung Priok. Another example is 'battles' between 'red and white' and 'green' factions within the TNI before collapsing Soeharto in Banyuwangi (Case 2000:54-55).⁷

During the *reformasi* era, the misuse of intelligent authority can be seen in several cases. After September 11 Attack Agus Dwikarna, Ahmad Belfast, and Tamsil Linrung, a treasure of National Mandate Party (PAN) led by Amien Rais at that time, were captured by police in Manila because of the message from Indonesian intelligence. They were accused bringing explosive materials in their luggage; however, they rejected this accusation. Public opinion in Indonesia believed that the Indonesian intelligence put those materials in their luggage. What happened in Manila raised anti-Philippines sentiment in Indonesia. As a result, two of them Ahmad Belfast and Tamsil Linrung (right now Tamsil is a member of parliament), were released by the Philippine government, whereas Agus Dwikarna was sentenced 10 years in jail. Amien Rais as a Chief of MPR warned to Indonesian intelligence to be careful in the transparency era and condemned action to achieve a goal by using unlawful means (Rais 2003:84-85). Then, the last case that is concerned by international community is the assassination of Munir, a human rights activist and Director of Commission for People Disappearance and the Victims of Violence (Kontras).⁸ Fact Finding Team of Munir Assassination (TPF Munir) faced difficulty to investigate this case because several members of BIN were indicated involve in this assassination (Tempo 15/5/2005).

Other critics to the Law No. 15 of 2003 is article 28 which mentions that investigator may detain any person who is strongly suspected for having committed any criminal act of terrorism based on adequate preliminary evidence for was 7 days. Indriyanto, a professor in the Faculty of Law and a lecture in the post graduate program at the University of Indonesia, criticized this article because Indonesian officers' still uses physical pressure in initial phases of investigation. The implementation of this article potentially violates human rights (Kompas 31/10/04). After J.W. Marriot Bombing in September 2003, for instance, Indonesian Police "kidnapped" several Mosque activists in Solo, Central Java. Press in Indonesia called kidnapping because the police captured them without notice to their family. The wives' activists reported the disappearance of their family to Komnas HAM (National Commission of Human Rights). What the police had done emerged protests from members of parliament, Legal Aid Services (LBH), Centre for Justice and Human Rights Advocacy (PAHAM), Indonesian Mujahidin Council (MMI), Medical Emergency Rescue Committee (MER-C), and Muslim Defense Lawyer Team.⁹

priests, and NGOs activists. Petition of 50 was a response to the military action against Muslims demonstration in Tanjung Priok in 1984 that killed hundreds of people.

⁷ 'Green' faction represented the military that came from Islamic background and tried to eliminate Beny's men (de-Beniization) in the military. 'White and Red' faction represented the military that came from nationalist secular background. The 'battle' between them happened, for instance, in Banyuwangi East Java Province in 1997 and 1998 when many practitioners of black magic were assassinated, but after that many Islamic clerics were assassinated too (Case 2000:54-55).

⁸ Munir was assassinated in the plane of Garuda Indonesia Airways (GA-330) by using arsenic powder on 7 September 2004 when he went to Amsterdam from Jakarta and transited in Singapore to pursue post graduate study.

⁹ According to Law No. 15/2003 article 26 paragraph 4 reveals, 'If during the investigation as stipulated in paragraph (2) it is established that the preliminary evidence is adequate, then the Head of the District Court shall immediately order that the pro-justicia measures be taken'. Meanwhile, Head of the District Court in Solo Mudzakir said that he did not release any order letters related to the kidnapping Islamic activists. Chief of Indonesian Police General Da'i Bachtiar at the first time when kidnapping occurred said that what the police done fulfilled the procedure of law. However, after meeting between Chief of Indonesian Police and the Indonesian Ulama Assembly (MUI), Bachtiar acknowledged that Polri conducted non-procedural action. See *Tempo*, 28 September 2003.

In terms of Law No. 16 of 2003 on Elimination of Criminal Acts of Terrorism of Bali Blast on 12 October 2002, critiques from human rights activists and politicians related to a retroactive principle in implementing this law. This principle can threaten to the civil rights, especially right to be treated equal before the law (Lubis 2003:80). Besides, in terms of Bali Blast on 12 October 2002, this crime was not crimes of genocide, crimes against humanity, war crimes, and crimes of aggression that were according to international law can be implemented a retroactive principle. Coalition of Civil Society Safety proposed a judicial review on anti-terrorism law (both Law No. 15 and Law No. 16) to Constitution Court. In July 2004, Constitution Court cancelled Law No. 16 and this law could not implement in Indonesia with a reason that a retroactive principle could not apply in terrorist crime of Bali Blast on 12 October 2002. This decision, according to law practitioner Amir Syamsuddin, considered terrorist actor rights and ignored victim rights of terrorism (Syamsuddin 2004).

Conclusion

Human rights enforcement has faced challenges after September 11 Attack. The high tension of promoting human rights as a basis of democratization by the UN, NGOs and states after the end of the Cold War is shifted by “war on terrorism”. A state’s reputation is not measured by how far the state implements human rights, but how far the state participates in the “international war on terrorism”. The reputation of state is determined by the successful detection of terrorist group, albeit this activity emphasizes on the intelligence operation and gives more power to military and police that in several cases ignores the individual freedom of citizens. As if human rights does not become the dominant moral vocabulary in foreign affairs.

When it comes to Indonesia, during the Megawati Administration the involvement of Indonesia in the war on terrorism had raised several controversial issues domestically since the US declared the “global war on terrorism” after September 11 Attack. The raising of public debate related to war on terrorism is a consequence of democratization process in Indonesia in which people has freedom to speak, articulates their interests in the decision making process, and becomes a determining actor in the general election. As a result, in formulating decision and policy regarding war on terrorism, Megawati Administration considered public opinion that tended to criticize government’s policy. However, public opinion was not the only determinant factor that influences Indonesian government policy on terrorism. In the situation that Indonesia still depends heavily on the other countries, especially the US and the Western countries, to support economic recovery and to maintain national integrity, international pressure was also considered by the government relating to “war on terror”. The accommodation between domestic pressure and international pressure made the government take a floating decision in the international war on terrorism.

Indonesia is in the transition to democracy, a changing process from non-democratic regime to a democratic regime. The transition started from the collapse of an authoritarian regime under Soeharto and this is followed by the institutionalization of political rules in a democratic system. Giving broaden authority to the armed forces (TNI, Polri, and intelligent) in the name of “war on terrorism” can threat transition to democracy and enforcement of civilian supremacy. Moreover, political situation in the transition process is uncertain and unpredictable. If Indonesia faces a ‘chaos situation’, for instance, military probably will take power and it is possible that the transition process will create a new authoritarian regime. That why the best scenario in Indonesia to fight against terrorism is how to make democracy be consolidated in this country.

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