

INDONESIAN REGULATORY SYSTEM: MONITORING AND SUPERVISION OF EXPLOSIVE DEVICE (SUBSTANCE OWNERSHIP AND UTILIZATION)

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Abstract

Indonesia possessed laws and regulation concerning the acquisition, distribution and use of armed weapons and explosive devices. A number of incidents, however, show a faulty monitoring system. Terrorist groups involved in the Surabaya bombing this year has been known to use triaseton triperoxide also known as the mother of Satan (mos), commonly used by ISIS. This fact shows a weakness in the monitoring or supervisory system put in place to control the use of armed weapons and explosive devices. In this article, the author shall discuss, using a normative-empirical juridical approach, to what extent the prevailing national law has been synchronized with the existing international convention regulating the acquisition and use of armed weapons and explosive materials or devices.

Keywords:

terrorisms, distribution of armed weapons and explosive devices, state's responsibility

Abstrak

Indonesia memiliki ketentuan yang mengatur perolehan, distribusi dan penggunaan senjata api dan alat atau bahan-bahan peledak. Beberapa kasus, namun demikian, menunjukkan adanya sistem pengawasan yang buruk. Bom yang meledak di Surabaya tahun ini, misalnya, dirakit dari *triaseton triperoxide* atau *The Mother of Satan* (MoS) dan dikenal juga kerap digunakan ISIS. Kenyataan penggunaan bahan peledak dalam aksi terorisme memunculkan pertanyaan tentang kelemahan pengawasan perolehan dan penggunaan senjata dan alat peledak. Penelitian ini, dengan menggunakan pendekatan yuridis normatif dan empiris, akan menelaah seberapa jauh pengaturan hukum nasional telah memperhatikan konvensi-konvensi internasional yang mengatur penggunaan senjata dan alat peledak.

Kata Kunci:

terorisme, distribusi senjata dan alat peledak, tanggung jawab Negara

Introduction

Indonesia was previously reported in some news related to terrorist activity.¹ The number of terrorist attack, both in a smaller and larger scale of impact, had reached the level of serious emergency. This has raised the awareness of activists, academicians, as well as the Indonesian Government itself to start making action towards this issue.²

The recent bombing case in Indonesia was the Surabaya church suicide bombing. It involved three churches in different area. The bomber was a family of six, a father, a mother, two teenage boys and two little girls. What is left after the bombing is a question of how the family maintained to get the bomb. It is not a normal family thing to engineer and to build a bomb.

From the news, it is known that the bomb in Surabaya bombing was in the form of a pipe bomb, built from *triaseton triperoxide* or mostly known as The Mother of Satan (MoS)³. This material is named as such because of its instability⁴ and high explosive power. This material is also sensitive, only by a bump and/or a heat will risk it to explode. According to Chief of Indonesian National Police, Tito Karnavian, this type of bomb can be associated with ISIS because ISIS is known to use the same bomb type in their attack in Iraq and Syria.⁵

The Surabaya bombing was not the first terrorism attack in Indonesia. Tracing down to the year 2002, a bomb exploded in Bali. The tragedy took toll of hundreds of life. Many victims were not only from Indonesia, but also foreign

¹ Teatrika Handiko Putri, Awal Mula Gerakan Terorisme Indonesia hingga Rentetan Bom Mei 2018, <https://www.idntimes.com/news/indonesia/teatrika/awal-mula-gerakan-terorisme-indonesia-hingga-rentetan-bom-mei/full>, accessed on 30 May, 2018.

² *Id.*

³ Achmad Faizal, Jenis Bom di 3 Gereja Surabaya Sama-sama Bom Pipa, <https://regional.kompas.com/read/2018/05/14/12455231/kapolri-jenis-bom-di-3-gereja-surabaya-sama-sama-bom-pipa>, accessed on 30 May, 2018.

⁴ Rodger A. Bates, Tracking Lone Wolf Terrorists, *The Journal of Public and Professional Sociology*, Vol. 8, 2016, hlm. 9.

⁵ Tribun-Bali, 'Mother Of Satan', Jenis Bom Yang Digunakan Teroris di Surabaya, Sangat Berbahaya, <http://bali.tribunnews.com/2018/05/14/mother-of-satan-jenis-bom-yang-digunakan-teroris-di-surabaya-sangat-berbahaya>, accessed on 30 May, 2018.

citizen.⁶ The bomb that was used in the first Bali Bombing was a TNT (*trinitrotoluena*) and RDX (Royal Demolition Explosive) bomb weighing around 50 to 150 kg.⁷

Following Bali Bombing tragedy, Indonesia experienced several terrorism activities involving bomb, which are listed as follows:

- JW Marriot Hotel bombing, Mega Kuningan Area Jakarta, on August 5th, 2003;
- Australian Embassy for Indonesia bombing, in Jakarta, on September 9th, 2004;
- Second Bali bombing on October 1st, 2005;
- JW Marriot Hotel and Ritz Carlton Hotel Jakarta, July 17th, 2009;
- Adz Dzikra Mosque Cirebon, on April 15th, 2011;
- Sarinah bombing, Jakarta, on January 14th, 2016;
- Kampung Melayu, Jakarta, on May 24th, 2017; and
- Surabaya and Sidoarjo bombing, on May 13th, 2018 (the most recent).

This has raised awareness on how Indonesia experienced a lot of suicide bombing that escalating the atmosphere of terror nationwide. The bombers in those suicide-bombing attack seemed to be ordinary individuals, a pedestrian, a family, people would not expect them as bombers. But, they were able to possess a set of high explosive devices.⁸

Regarding bomb possession, Indonesia has a regulatory system related to weaponry and defense, e.g., Law Number 8 Year 1948 about registration of firearm ownership as later revoked by Law Number 12/DRT/1951. This law mentions a definition of explosive devices but mostly it only regulates firearms. There is no concrete regulation regarding procurement and specification of weaponry. Furthermore, even the report written up on the use of firearms and

⁶ Yuyun Sunesti, The 2002 Bali Bombing and the New Public Sphere: The Portrayal of Terrorism in Indonesian Online Discussion Forums, *Al-Jami'ah: Journal of Islamic Studies*, Vol. 52, 2014, hlm. 232.

⁷ Bernas.id, Kronologi Kejadian Fenomenal Bom Bali Tahun 2002, <https://www.bernas.id/62091-kronologi-kejadian-fenomenal-bom-bali-tahun-2002.html>, accessed on 30 May, 2018.

⁸ The issue at hand also relates to the development of improvised explosive devices. See: James Revill, *Improvised Explosive Devices: The Paradigmatic Weapon of New Wars*, Palgrave Macmillan, Brighton, 2016, hlm. 84.

explosives for military and civil purposes did not examine specific number of explosives owned by civilians, and is only limited to firearms.⁹ As such, it is questionable on how these regulatories are implemented or whether there is absence of law that leads to many terrorism problems considering many suicide bombings cases that have happened in Indonesia.

The absence of law is further exhibited in the international law level by the fact that Indonesia has yet to ratify the 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection, and as such, is not bound under the obligation to take necessary and effective measures to prohibit and prevent unmarked explosives in its territory. Nevertheless, Indonesia is bound by the ASEAN Convention on Counter Terrorism 2007 and also the International Convention for the Suppression of Terrorist Bombings 1997, which indirectly, may result in an obligation to monitor and prevent misuse of explosive materials in its territory.

Bilateral cooperation should be encouraged since the knowledge of procurement and specification of weaponry can be transferred effortlessly through the state borders. This has been proven from several of Indonesian-ISIS loyalist that is able to distribute the teachings of making an explosive device, whereby cooperation is also one of the key points noted by the ASEAN Convention on Counter Terrorism.

With ensuing terrorism issues that has occurred in recent years, security towards individual's right to life has become a major concerns in every countries. Definitely, states have the obligation to ensure the human rights of their own people by taking positive measure to protect them against terrorist acts. Thus, state responsibility regarding the prevention of explosive device should be analyzed as well. Consequently, the authors propose the following research questions as a basis for the analysis on the aforesaid matter:

⁹ Kolonel Wahyu Wibowo, S.H., *Pengkajian Hukum tentang Penggunaan Senjata Api dan Bahan Peledak untuk Kepentingan Militer dan Sipil*, Badan Pembinaan Hukum Nasional, <https://www.bphn.go.id/data/documents/pkj-2011-7.pdf> accessed on 30 May 2018

1. To what extent does the Indonesian government bear responsibility for ownership of explosive materials by civilians in its territory?
2. How is the prevention and supervision on the ownership of explosive materials by the Indonesian government be carried out in practice?

The research will be conducted based on normative-empirical legal method, which is also qualitative in nature since it will describe regulations in using statute approach. The empirical method is used to obtain information from sources through interview and this is also qualitative since there will be no numbers or statistics will be obtained. The research will involve secondary legal materials such as books, journals, and articles written by legal scholars, but most importantly it will also look for primary legal materials which include laws, regulations, court orders or decisions. Furthermore, in addition to literature reviews, the research will also utilize an interview with a member of the Indonesian Naval Forces, as an expert in the state security field.

Analysis

State Responsibility under International Law

The state responsibility theory becomes relevant in this discussion because Indonesia, as a state, is bound to certain responsibilities and obligations under international law. One of the rules that are most commonly referred to when discussing about the matter of state responsibility would be the “Draft Articles on Responsibility of States for Internationally Wrongful Acts” (hereinafter referred as the “Draft Articles on State Responsibility”). These draft articles only cover matters relating to state’s internationally wrongful act, emphasizing on the international element therein. However, since the ownership of an explosive device may cause transboundary harm that affected regions beyond Indonesia, therefore the regulations prevail.

When talking about the state responsibility doctrine, Article 2 of the Draft Articles on State Responsibility states that there are two elements of an internationally wrongful act, that is when a state’s conduct or omission is attributable to the state, and constitutes a breach of an international obligation of

that State. Further, Article 9 of the Draft Articles on State Responsibility states as follows:

“The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority.”

This would mean that shall Indonesia fail to exercise its authority in the prevention and supervision of ownership of explosive device amongst civilians, it may be subjected to a breach of international obligation as regulated under the Draft Articles on State Responsibility. The term “international obligation” in itself may cover an obligation between only two states (based on a bilateral relationship) as mentioned in many international law cases *inter alia Phosphates in Morocco*¹⁰, *Corfu Channel*¹¹ and the *Gabcikovo Nagymaros Project*¹². However, it may also be extended to a multilateral relationship based on numerous states such as mentioned by the ICJ in the *Barcelona Traction* case as follows:

“an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*”.¹³

Nevertheless, the possibility of invoking state responsibility for supervising and preventing ownership of explosive materials amongst civilians will lie upon

¹⁰ Permanent Court of International Justice Judgment, Phosphates in Morocco, 1938, Series A/B, No. 74, hlm. 10, hlm. 28; Permanent Court of International Justice Judgment, Case of The S.S. “Wimbledon”, The Government of His Britannic Majesty; of the French Republic; of His Majesty the King of Italy; of His Majesty the Emperor of Japan - the Government of the German Empire, 1923, Series A, No. 1, hlm. 15, hlm. 30; Permanent Court of International Justice Judgment, Factory at Chorzów, the Government of Germany – the Government of the Polish Republic, No. 8, 1927, P.C.I.J., Series A, No. 9, hlm. 21.

¹¹ International Court of Justice Judgment, Corfu Channel, Merits, the Government of the United Kingdom of Great Britain and Northern Ireland – the Government of the People’s Republic of Albania, I.C.J. Reports 1949, hlm. 4, hlm. 23.

¹² International Court of Justice Judgment, Case Concerning the Gabcikovo-Nagymaros Project, Hungary – Slovakia, hlm. 38, para. 47.

¹³ Barcelona Traction (see footnote 25 above), p. 32, para. 33 as mentioned in the Commentary of the Draft Articles on Responsibility of States for Internationally Wrongful Acts

the core issue in this case, namely whether or not the international obligation for such matter exists *per se*. The discourse can take at least two point of views, namely international obligation arising from international conventions as the definite binding source of international law, or obligations resulting from other sources of international law namely customary international law, general principles and teaching of a highly qualified publicists, and this will be discussed in the next subsection.

Current Obligation under the Prevailing Laws

The Indonesian government obligation with regard to the matter is two-fold, namely based on the obligation presented under the international law regime through international conventions and customs, as well as based on its own domestic law.

Obligation under international conventions and customs

Legal obligation arising from mutual agreement of state is regulated under the Vienna Convention on the Law of Treaties, which termed the state as a “Contracting State [. . .] which has consented to be bound by the treaty, whether or not the treaty has entered into force.”¹⁴ The obligation stated in the Vienna Convention on the Law of Treaties is complemented by other principles in international law, such as *pacta sunt servanda* and *bona fide*.¹⁵ Essentially, obligations under a treaty must be fulfilled in good faith by states, and this serves as one of the most fundamental rule that apply to all subjects of international law.¹⁶ Furthermore, once bound to a treaty, a State shall abide by the treaty’s purpose and it shall never justify inconsistency with its own internal law.¹⁷

On that note, Indonesia is under the obligation to abide by the provisions under the ASEAN Convention on Counter Terrorism 2007, since it is part of the

¹⁴ Vienna Convention on the Law of Treaties, Article 2.1.d, May 23, 1969.

¹⁵ Gonzalo Sanchez de Tagle, The Objective International Responsibility of States in the Inter-American Human Rights System, Mexican Law Review, Vol. VII, hlm. 121.

¹⁶ I. I. Lukashuk, The Principle Pacta Sunt Servanda and the Nature of Obligation Under International Law, American Journal of International Law Vol. 83 No. 3, 1989, hlm. 513.

¹⁷ Gonzalo Sanchez de Tagle, op.cit., hlm. 121.

Association of Southeast Asian Nations. Under the Convention, States shall cooperate *inter alia* to prevent parties who finance, plan, facilitate, or commit terrorist acts from using their respective territories for those purposes against the other Parties and/or the citizens of the other Parties.¹⁸ ASEAN States also have the obligation to prevent and suppress the financing of terrorist acts,¹⁹ however no further details is provided on the topic of preventing the creation or existence of unsupervised explosives.

Indonesia has also acceded to the International Convention for the Suppression of Terrorist Bombings. This Convention was ratified through Law Number 5 of 2006 on the Ratification of International Convention for the Suppression of Terrorist Bombings 1997, and as such, Indonesia is bound by the provisions therein.

In addition to the treaty obligations which seem insufficient to directly address the matter, Indonesia is also bound by the responsibility under other sources of international law, most relevant to this discussion is the customary international law²⁰ and *jus cogens*²¹ provisions in relation to human rights. States have three basic obligations when it comes to human rights, namely the obligation to respect, protect, and fulfill,²² whereby failure to perform any of these obligations would constitute as a human rights violation. The duty to respect means that states would have to refrain from interfering with the process of enjoyment of any human right,²³ while the duty to protect essentially requires the state to adopt measures to prevent violations of human rights by third parties²⁴. The duty to fulfill on the other hand, requires a more proactive and resource

¹⁸ ASEAN Convention on Counter Terrorism, Article VI (1) (b), January 13, 2007.

¹⁹ ASEAN Convention on Counter Terrorism 2007, Article VI (1) (c).

²⁰ Ben Saul, Research Handbook on International Law and Terrorism, Edward Elgar Publishing, Cheltenham, 2014, hlm. 38.

²¹ Thomas Kleinlein, Jus Cogens Re-examined: Value Formalism in International Law, The European Journal of International Law Vol. 28, 2017, hlm. 307.

²² Olivier de Schutter, International Human Rights Law: Cases, Materials, Commentary 2nd Edition Cambridge University Press: Cambridge, 2014, hlm. 290.

²³ Gabor Rona, Lauren Aarons, State Responsibility to Respect, Protect and Fulfill Human Rights Obligations in Cyberspace, 8 Journal of National Security Law & Policy. 503. 510, 2016.

²⁴ Federico Lenzerini, Terrorism, Conflicts and the Responsibility to Protect Cultural Heritage, Italian Journal of International Affairs, Vol. 51, 2016, hlm. 80.

intensive measures to be adopted to ensure full realization of a certain human right.²⁵ In this case, Indonesia then has the obligation to protect, that is to prevent third party civilians to violate the innocent lives of the Indonesian citizens by misusing explosive devices for terrorism purposes.

Last but not least, the omission to prevent casualties resulted from civilian ownership of explosive devices may also constitute as an *jus cogens* violations. *Jus cogens* norms, which can be defined literally as “compelling law” and can also be referred as “peremptory norm”, is contained in the provisions of the Vienna Convention on the Law of Treaties as follows:

“A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”²⁶

Many have argued that the right to life is a fundamental and vital human right from which no derogation is permitted.²⁷ In other words, the right to life forms an *jus cogens* norms, and as such it should be the utmost concern of a state to prevent violations in that respect. One of the measures taken can be in the form of adopting appropriate laws and regulations, and as such the current progress of the Indonesian government can be analyzed based on the existing laws and regulations on the matter.

Obligation under Indonesian Law

Indonesia has tried to amend the situation by enacting the newest Law Number 5 Year 2018 on the Amendment to Law Number 15 of 2003 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 Year 2001 on the Eradication of the Action of Criminal Terrorism to be the Law (hereinafter

²⁵ *Id.*

²⁶ Vienna Convention on the Law of Treaties, Article 53.

²⁷ See for example: Jordan J. Paust, “The Right to Life in Human Rights Law and the Law of War”, *Saskatchewan Law Review*, Vol. 65, 2002, hlm. 412-413.

referred as the New Eradication on Criminal Terrorism Law). The New Eradication on Criminal Terrorism Law was designed with considerations addressing terrorism as a serious crime towards state's ideology and security for that terrorism requires a systemic, holistic, approach of eradication. This law also stated a fact that there are evidences of involvement of Indonesians and Non-Indonesians both individuals and groups in activities lead to terrorism. Hence, such legal basis is needed to guarantee protections and legal certainty.

It can be found the definition of 'explosive device' which stated, "*all explosive materials, all types of munitions, bombs, incendiary bombs, mines, hand grenades, or all explosives from chemicals or other materials used to cause explosions.*"²⁸ And as such, homemade explosive materials falls under the ambit of this Law. The Law further provides criminal sanctions for explosive importers and sellers, to be at most 20 (twenty) and 7 (seven) years respectively.²⁹

Furthermore, prevailing law for explosive devices is as constituted in Indonesian National Chief Police Regulation Number 17 Year 2017 on the Permit, Safeguards Supervision, and Control of Commercial Explosive Devices (Hereinafter referred as National Chief Police Regulation). Systematically, the definition of explosive devices according to the New Eradication of Criminal Terrorism Law is complementary with the definition of explosive devices in an above mentioned regulation. The National Chief Police Regulation stated the definition of 'explosive device' as, "*Materials or substance which takes form in solid, liquid, gas or mixtures of materials that in a condition it is exposed to heat, collision, or friction will transform into a gas form and such transformation only takes very short time along with a highly effect of heat and pressure.*"³⁰ This definition gives

²⁸ Undang-Undang Nomor 5 Tahun 2018, Perubahan Atas Undang-Undang Nomor 15 Tahun 2003 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2002 Tentang Pemberantasan Tindak Pidana Terorisme Menjadi Undang-Undang, Article 1 Paragraph 5.

²⁹ Undang-Undang Nomor 5 Tahun 2018, Perubahan Atas Undang-Undang Nomor 15 Tahun 2003 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2002 Tentang Pemberantasan Tindak Pidana Terorisme Menjadi Undang-Undang, Article 10A Paragraph 1 and 2.

³⁰ Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 17 Tahun 2017, Perizinan Pengawasan dan Pengendalian Bahan Peledak Komersial, Article 1 Paragraph 4.

more specific criteria of explosive and relatively wider category for it can be including all instruments and not just limited to munitions and bombs. 'Commercial explosive device' is defined as "*explosive devices utilized for the purpose of national development and production process, industry, mining, and/or construction.*"³¹ Moreover, the regulation also provides the definition of term related to explosive devices such as: fireworks; detonators; dynamite; and ammonium nitrate compound (NH₄NO₃).

Explosive device itself is an industry. There are 9 (nine) licensed explosive manufacturing enterprises (national), PT. Dahana, PT. Pindad, PT. Multi Nitrotama Kimia, PT Armindo Prima, PT. Trivita Perkasa, PT. Tridaya Esta, PT. Asa Karya Multipratama, PT Aeka Gas Indonesia dan PT. Maxis.³² PT. Dahana, as one of national explosive devices and materials manufacturing company, is a state's own enterprise in a form of *Perusahaan Perseroan (persero)*.³³ PT. Dahana provides explosive manufacturing devices including commercial explosives as well as defense related explosive devices. Not only producing explosive devices in their manufacturing site facility in Subang, PT. Dahana also provides production facilities directly at the clients' operational area by using the On-Site Plant (OSP) technology.³⁴ PT. Pindad is also a *persero* which produce commercial and military explosive devices, but PT. Pindad also does business in other military supplies such as ammunitions and weaponries.³⁵ PT. Multi Nitrotama Kimia (MNK) has over 20 years of proven track record in producing Ammonium Nitrate (AN) and they produce detonators too.³⁶

As a business and an industry, explosive devices subjects to supply demand. Later it will be discussed based on a source from Indonesian Naval

³¹ Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 17 Tahun 2017, Perizinan Pengawasan dan Pengendalian Bahan Peledak Komersial, Article 1 Paragraph 5.

³² Tempo.co, Kemenhan Evaluasi Sembilan Perusahaan Bahan Peledak, <https://nasional.tempo.co/read/340666/kemenhan-evaluasi-sembilan-perusahaan-bahan-peledak/full&view=ok> accessed on 22nd January 2019.

³³ Persero is a type of state's own enterprise (BUMN/Badan Usaha Milik Negara) in which it holds capital consists of minimum 51% of shares owned by the State.

³⁴ Dahana, Explosive Manufacturing, <http://www.dahana.id/business-line/explosive-manufacturing/>, accessed on 25th January 2019.

³⁵ PT Pindad (Persero) <https://www.pindad.com/home#>, accessed on 25th January 2019.

³⁶ PT Multi Nitrotama Kimia, <http://mnk.co.id/>, accessed on 25th January 2019.

Force³⁷ that within its supply chain, a leak may occur and resulted to the accessibility of civilians to get explosive materials illegally. However, explosive devices industry is strictly regulated through the National Chief Police Regulation. This regulation provides provisions describing explosive devices enterprises including manufacturer, importer, distributor, and end user. This also includes service businesses such as, demolition service, warehouse services, and transportation services.³⁸

Explosive devices industry must follow several requirements. These requirements are as follows:³⁹

- Must be a legal entity;
- Must obtain permits for procurements, supplies, and distributions of commercial explosive devices from the Ministry of Defense;
- Must obtain permits for limited industry from the Ministry of Industry;
- Must obtain commercial permit for limited importers from the Ministry of Trading;
- Must have Importer identity number;
- Must have Taxpayer Registration Number;
- Must have Company Registration Certificate;
- Must employ experts in commercial explosive device;
- Must have an address or manufacturing sites or warehouses; and
- Must have security system.

It has to be noted that Presidential Decision Number 5 Year 1998 as well as Ministry of Defense and Security Decision Number SKEP/974/VI/1998 distinguished explosive into 2 (two):

- Industrial (Commercial) explosive devices, and
- Military explosive devices.

The aforementioned National Chief Police Regulation is limited to regulate commercial explosive devices. Commercial explosive devices, generally, can be classified into several categorisation, there are:⁴⁰

³⁷ The Indonesian National Armed Forces (Tentara Nasional Indonesia) plays an important role in counter-terrorism measures in Indonesia. See further for example Reni Windiani, *Peran Indonesia Dalam Memerangi Terorisme*, Jurnal Ilmu Sosial Vol. 16, 2017, hlm. 140.

³⁸ *Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 17 Tahun 2017*, Article 4 par (a)(b)(c)(d) and article 5 par (a)(b)(c)(d).

³⁹ *Peraturan Kepala Kepolisian Negara Republik Indonesia Nomor 17 Tahun 2017*, Article 6 para (1).

- Rapid and detonating explosives;
- Slow and deflagrating explosives;
- High explosives;
- Low explosives;
- Based its compound, it can be classified into Black Powder (it has low explosive characteristic);
- Dynamite (it has high explosive characteristic)
- Permissible explosive, usually used for underground mining (coals);
- Blasting agent, its a mixtures of not-catogarised-as explosive materials such as ANFO, ALANFO, slurry/watergel/emulsion, heavy ANFO.

Commercial explosive devices are usually used in mining industry and has commercial characteristics. Military explosive devices are used for military purposes. Military purposes include practices and operations. More technical aspects of explosive devices both commercial and military are regulated through Ministry of Defense Regulation Number 5 Year 2016 (hereinafter referred as Ministry of Defense Regulation).

Indonesia also put into provisions aspects on supervision and protection of explosive devices through Law Number 16 Year 2012 regarding Defense Industry (hereinafter referred as Defense Industry Law). This law was design with the background of the needs of defense-related tools and instruments and its procurement. The state still lack in capability to procure the need of defense instruments, therefore, state is still importing instruments from other countries. To pursue the independency of producing military instruments and increasing productivity in general it is needed to have a visionary management system which still based on good governance principles. This law also mentioned about The Defense Industry Policy Committee (Komite Kebijakan Industri Pertahanan/KKIP hereinafter referred as KKIP). Defense industry is maintained under Indonesian Government and in coordination with KKIP. KKIP also design production planning for defense industry.

Defense industry is a national industry consists of state-own enterprises and private enterprises which are set by the Government to, partially and/or as a

⁴⁰ See *Peraturan Menteri Pertahanan Republik Indonesia Nomor 5 Tahun 2016, Pembinaan dan Pengembangan Industri Bahan Peledak*.

whole, produce defense and security instruments, maintenance services to fulfill state's strategic needs in the field of defense and security which is located in Indonesian territory. In the defense industry, as regulated through the Defense Industry Law, authority and its rights and obligations are constituted through this law. Not only constituting authorities but also providing criminal sanctions, e.g., Article. 67 which stated that, "*Everyone shall not produce security and defense tools and instruments without permission from ministries that's administrating defense sector.*" Behavior stated in Article 67 then sharpened by Article 72 Par. (1) which provide sanctions in a form of 5 (five) years imprisonment and ten billion rupiah fine.

Therefore, explosive devices in Indonesia are regulated systematically through these laws:

- The New Eradication on Criminal Terrorism Law
- The Defense Industry Law
- The Ministry of Defense Regulation
- The National Chief Police Regulation
- The Ministry of Defense and Security Decision Number SKEP/974/VI/1998

These laws put provisions on commercial and military explosive devices thoroughly from types and categorization of the devices, accessories, until the industry itself including services and security. However, the production and distribution of Improvised Explosive Device (IED) is still a problem in term of its regulation. IED is a problem when it is design to create destruction, in a criminal sense. UN International Ammunition Technical Guidelines states that "An IED is an explosive device placed or fabricated in an improvised manner incorporating destructive, lethal, noxious, pyrotechnic or incendiary chemical & fragments and designed to destroy, disfigure, distract or harass. They may incorporate military stores but are normally devised wholly from non military components."⁴¹ Because they are improvised, IEDs can come in many forms, ranging from a small pipe

⁴¹ JL Srinivasan, General Features And Types Of Ieds, [https://www.unog.ch/80256EDD006B8954/\(httpAssets\)/6F0C0D9B3C7F45EDC12582B7003771BB/\\$file/2018_APIII_General+Features+and+Type+of+IED_India.pdf](https://www.unog.ch/80256EDD006B8954/(httpAssets)/6F0C0D9B3C7F45EDC12582B7003771BB/$file/2018_APIII_General+Features+and+Type+of+IED_India.pdf) accessed on 28 January 2019.

bomb to a sophisticated device capable of causing massive damage and loss of life.⁴² The term IED came into common usage during the Iraq War that began in 2003.⁴³

Type of bombs that were used in several bombings in Indonesia vary, including military class of explosives and IED. The Bali Bombings used a TNT (*trinitrotoluena*) and RDX (Royal Demolition Explosive) bomb weighing around 50 to 150 kg.⁴⁴ The Surabaya Church Bombings used pipe bombs, built from *triseton triperoxide* or mostly known as The Mother of Satan (MoS)⁴⁵ Pipe bomb is categorized into IED. In general, there are several kinds of IED that was used in several bombings in Indonesia, named based on its characteristics, they are:⁴⁶

- Pipe bomb, it uses closed pipe filled with explosives materials;
- Waist bomb, it is worn on the perpetrator's waist;
- Pan bomb, similar with pipe bomb, but instead of pipes, it uses pans;
- Luggage bomb, the bomb is put inside luggage;
- Book bomb, the bomb is put inside a book. It was used for the bomb threat addressed Gories Mere when he was a Chief of Administrator at National Drugs Agency.

Since IED may take form in any daily life instruments, the supervision of IED is facing a challenge. The regulatory system in Indonesia does not touch the supervision and prevention of IEDs. The regulatory system only regulates indirectly of tools that, may or may not be part of the IED design, such as, the detonator. Detonators are regulated and monitored by the government. However, when the detonator is used on an IED, it is in disguise and hard to recognize. The government, yet, through the usage of detonators and other licensed materials in an IED, can still conduct investigations thoroughly.

⁴² IED Attack Improvised Explosive Devices”
https://www.dhs.gov/xlibrary/assets/prep_ied_fact_sheet.pdf accessed on 28 January 2019.

⁴³ *Id.*

⁴⁴ <https://www.bernas.id/62091-kronologi-kejadian-fenomenal-bom-bali-tahun-2002.html>, supra no 7.

⁴⁵ <https://regional.kompas.com/read/2018/05/14/12455231/kapolri-jenis-bom-di-3-gereja-surabaya-sama-sama-bom-pipa>.

⁴⁶ Lazuardhi Utama, 6 Jenis Bom Bunuh Diri Dipakai Teroris, Ada 'Ibunya Setan',
<https://www.viva.co.id/digital/digilife/1036016-6-jenis-bom-bunuh-diri-dipakai-teroris-ada-ibunya-setan>, accessed on 28 January 2019.

Having a systemic regulation does not mean the implementation is always conducted accordingly. Therefore, it is needed to also analyze the situation in practice from the viewpoint of practitioners. Prevention and supervision in practice is holding a pivotal role in finding out why the bombings were kept on reoccurring despite all the existing regulations.

Prevention and Supervision in Practice

In practice, explosive devices are used and even industrialized by many people for commercial purposes. Although its impacts can be detrimental, it has existed from the first millennium BC. From prolonging food consumption for fishing as well as demolishing a building, the explosive devices are present to apprehend the methods to become attainable than before it was existing.

However, laws are present to prohibit the utilization of such devices as it can cause harm should one was utilized for violence. Many countries have established the regulatory frameworks for the control of explosive devices. In Indonesia, only a number of subjects have access for the devices as well as the distribution. Such control can only be apprehended practically.

According to the correspondent from Indonesian Naval Force, the use of explosive devices for fishing is constantly monitored by the government through community approach in coastal areas, such as community knowledge sharing. In result, the number of explosive devices for fishing is reduced annually. The military itself already provided a system in purchasing, maintaining, and storing of their munitions, including explosive devices. The procedure of purchasing, maintaining, and storing of munitions and explosive devices is already conducted accordingly.

Moreover, border control is also established to prevent the distribution of explosive devices illegally. Since Indonesia topography is mainly surrounded by seas, coordinated patrols with neighboring countries are often utilized as one of the methods. However, it was admitted that conspiracy is possible to be found that may occur to a leak of system. This can be led to an illegal distribution of munitions and explosive devices and their materials. Defense industry in

Indonesia is not a small scale business and it involves international enterprises as well as national enterprises. Terrorists are able to obtain explosive materials undetected. The topography of Indonesia that is an archipelago surrounded by seas, where Indonesia also share land borders with neighboring countries is also giving a possibility of smuggling and any illegal import-export of explosive devices. Terrorists that were investigated were known to be affiliated with international terrorist/radical group such as ISIS, JAD. Somewhere in this affiliation is including transfer of knowledge as well as transfer of technology.

Indonesia has been rapidly establishing sufficient legal framework in eradicating terrorism. Before the Bali Bombing 1, Indonesia had no umbrella law for terrorism other than The Penal Code. Indonesia then established the Law of Criminal Terrorism Eradication and implemented it onto the previously happened Bali Bombing, although it was against the non-retroactive principle in Criminal Law. Since then, the regulatory system for terrorism in general and explosive devices in particular has been strengthened.

Nevertheless, this prevention is only strictly limited to the category of explosive devices that are not classified as Improvised Explosive Device (IED). The difficulties lies within the ingredient since IEDs are using home-made ingredients that are available in civilian commodities, such as fertilizer and hydrogen peroxide.⁴⁷

Conclusion

Indonesia is under the obligation to abide by the provisions under the ASEAN Convention on Counter Terrorism 2007, since it is part of the Association of Southeast Asian Nations. Indonesia has also acceded to the International Convention for the Suppression of Terrorist Bombings. This Convention was ratified through Law Number 5 of 2006 on the Ratification of International Convention for the Suppression of Terrorist Bombings 1997, and as such, Indonesia is bound by the provisions therein. Indonesia is also bound by the

⁴⁷ Homeland Security, News and Terrorism, Communicating in a Crisis, the National Academies Advisors to the Nation on Science, Engineering and Medicine, <https://www.osce.org/atu/39912?download=true> accessed on 28 January 2019

responsibility under other sources of international law, most relevant to this discussion is the customary international law and *jus cogens* provisions in relation to human rights. Attempts taken to undergo these provisions are establishing laws related to preventions and repressions of misuse of explosive devices both military and non-military. Indonesian Armed Forces is also continuously protecting the state borders in order to control the distributions of explosive devices. However, leaks in this system still occurred proven in several terrorism events that involved imported explosive devices and IED.

As a recommendation, the border security needs to be examined and to be strengthened to prevent international penetration in terrorism activities. This requires a systemic and holistic approach due to the topography of Indonesia. The examination and evaluation is also needed to be done towards The Office of Demographic Affair, in term of creating a reliable database of citizens who are suspicious to be affiliated with radical groups. Then, in general, the Ministry of Defense, Ministry of Law and Human Rights, National Intelligence Agency and other related departments need to formulate strategies in preventions of illegal distributions of electronic devices including military and commercial explosive devices as well as IED.

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