

Indonesia's New Anti-Terrorism Law: Damned if you Do, Damned if you Don't

Tim Lindsey¹

Comments and suggestions are welcomed. To submit your comments, please email [Tim Lindsey](mailto:Tim.Lindsey@indonesianet.com).

Last week, Indonesian President Megawati Soekarnoputri issued Government Regulation in Lieu of Law No. 1/2002 on the Eradication of Criminal Acts of Terrorism and No. 2/2002 on the Eradication of Criminal Acts of Terrorism in Relation to the Bomb Explosion Incident in Bali, 12 October 2002.

Government Regulations in Lieu of Law (Peraturan Pemerintah Pengganti Undang-Undang) or Perpu derive their authority the 1945 Constitution of the Republic of Indonesia (as amended). Although under Article 20 lawmaking is the exclusive right of the DPR (Dewan Perwakilan Rakyat, People's Representative Assembly) or legislature, Article 22 provides, that "in the event of a compelling emergency", the President may issue a Perpu. The Perpu must, however, be approved by the DPR at its next session, failing which it will lapse.

This is significant because the new regulation is a revised form of the Anti-terrorism Bill that has been debated in the DPR for months, without progress. Human rights activists, pro-reformasi (reform movement) leaders and NGOs opposed the legislation on the grounds that it granted excessive new powers to the discredited security forces. It was feared these might be used to justify reassertion of political control and institutionalised violence of the kind that characterised the military under President Soeharto's New Order (1966-1998). President Megawati has now, however, short-circuited the legislative process - and the debate - by issuing a revised form of the Bill as a Perpu.

The objections raised by opponents of the legislature have resonance in Indonesia because for most of the three decades of Soeharto's rule the armed forces acted against civilians with virtual impunity. This was because of both the institutionalised dysfunction of the legal system and overt government support for their actions. It was also because the New Order built a web of emergency laws that justified the armed forces and intelligence organizations acting in an extra-constitutional way. These laws dated from the killing of suspected leftists by the armed forces and Islamic youth groups from 1965 to 1968, the events which Soeharto manipulated to seize power.

It must also be remembered that Indonesia's current legislature is its first democratic one, chosen in 1999 at the first truly fair and free election in the country's history. That legislature has since delivered extensive reforms reflecting the demands of the reform movement for the introduction of strong guarantees of human and civil rights. This was achieved most notably through the new Chapter XA of the Constitution, which introduced the Universal Declaration of Human Rights, almost in its entirety, into Indonesian law.

Draconian anti-terror laws sponsored by USA that would grant the state enhanced powers of detention, arrest and prosecution therefore seems a regressive step in a democratising state seeking to build the rule of law.

The Bali bombing has therefore placed the government of President Megawati in an invidious position. Strong opposition meant that it could not force the anti-terrorism legislation through a suspicious parliament, already concerned about links between Megawati's governing party, PDI-P (Partai Demokrasi Indonesia-Perjuangan; Indonesian Democratic Party Struggle) and the military. Her moderate, secular government is, however, clearly directly threatened by extremist Islamic groups. She herself has been the target of assassination attempts by Jemaah Islamiyah, now accused of masterminding the Bali bombing. Likewise, her government has been under intense pressure from Western allies, including the United States and Australia - the country that lost the most citizens in the Bali bombing - to be seen to take firm action against terrorism.

In one sense, this foreign pressure was welcome. It gave her government justification for acting firmly against Muslim extremist groups by introducing the Perpu, despite legislative resistance, and by arresting leaders of Jemaah Islamiyah for involvement in the botched plot to kill Megawati and bombings of Christian churches.

Her strategy does, however, carry considerable risk. Despite the intense media attention generated by Islamic extremism in Indonesia, the reality is that politics is already dominated by manoeuvring in anticipation of the elections slated for 2004. Indonesia's ethnic and religious plurality and diversity means that no party can hope to obtain a majority in that election. Megawati's PDI-P itself currently holds only 36% - a clear plurality, but well short of the ability to govern in its own right. This means that the next election will be fought on tightly contested margins. A difference of 1 or 2% will make all the difference in the inevitable post-election horsetrading for a place in the next government. Islamic politicians with mainstream support are therefore now prepared to play the extremist card to attract extra votes.

The best example of this is, of course, the Vice-President, Hamzah Haz. Chosen by the legislature and not by the President, he has supported Jemaah Islamiyah and has even been instrumental in having its members released from detention in the past. He has also openly accused the CIA and the United States of carrying out the Bali bombing. By taking steps against Islamic extremism, Megawati pushes her conflict with the Vice-President further and risks losing some Muslim votes to smaller Muslim parties. Ironically, it now seems she may also lose votes from liberals, who are worried about the totalitarian tendencies of the new Perpu.

On the other hand, if Megawati's government succeeds in arresting terrorists and having them tried and convicted, she will be able to justify issuing the Perpu and closing down Jemaah Islamiyah. She will have removed a threat to her own safety and will have the political momentum to move against other extremist Islamic groups. Vice-President Haz will be discredited. Ordinary Indonesians, fearful of the extremist Islamic terror now proved to be threatening them and equally fearful of the ever-present possibility of military intervention, will move towards a moderate secular government that has shown it is prepared to act. This will all be to Megawati's advantage.

On the other hand, if she cannot arrest and convict the perpetrators of the bombing, her government will be seen to be powerless against fundamentalist Islam and the allegations of critics, who claim it was a CIA plot and not Indonesian at all, will appear to be vindicated. This will strengthen Vice-President Haz, weaken Megawati and push Indonesia towards chaos. In these circumstances, Megawati's decision to introduce tough anti-terrorism laws seems the only politically sensible course she could take.

So what are, in fact, the new powers granted by the Perpus?

Key Aspects of the Perpu No.1/2002

Perpu No1/2002 defines 'terrorism', as "any violent act that could create terror or insecurity among the public, violate the public's freedom, cause the death of other people or cause the destruction of vital or strategic objects" (Articles 6 and 7). This broad definition is, however, then broken down into specific acts ranging from minor issues such as "issuing of bogus threats" to more obvious major offences such as "using a nuclear weapon to create terror" (Article 8-19). There are also a range of related offences linked to judicial procedure, for example, witness intimidation or perverting the course of justice (Articles 20-24).

The key operative provisions of Perpu No1/2002 are, however, those which allow suspected terrorists to be arrested for seven days and detained for six months for questioning and prosecution (Chapter V). Clearly, this constitutes the grant of broad new powers to the state that reformers feared, although it should be noted that under the existing Code of Criminal Procedure (Kuhap), it was already possible to detain suspects for up to 90 days, with judicial approval.

The powers of investigators are also extended. They now may examine personal mail and tap telephone conversations and other communication for a period of up to one year (Article 31).

Significantly, intelligence reports may also be used now as legal evidence (Article 26). Of all of the provisions in the Perpu, this is perhaps the most unusual and the most worrying from a civil rights point of view. Clearly the notion that contrived intelligence reports could result in a conviction regardless of the material they are based on opens huge opportunities for exploitation by unscrupulous police. This is particularly of concern given the unimpressive record of Indonesian intelligence to date.

Police, prosecutors and judges also have the power to block bank accounts belonging to suspected terrorists or those funding terrorist activities (Article 29). Again, this could easily be used to persecute enemies of state, although equally, it is clearly necessary to restrain the financing of terror.

The sanctions for terrorism are severe and include the death penalty or life imprisonment (Article 14) and, for corporations, deregistration and fines of up to Rp1 trillion (Article 18). Interestingly, the Perpu also imposes an obligation on the state to pay compensation and restitution to victims of terrorist acts (Chapter VI). The implications of this are broad. Will they, for example, apply to foreigners injured in the bomb blasts?

Perpu No2/2000 and Retrospectivity

The conflict between the human rights focus of law reforms post-Soeharto and the new Perpus are most obvious from the provision in Perpu No. 2/2002 that allows Perpu No. 1/2002 to be applied retrospectively to the bombers in Bali (Article 1). This conflicts directly with Article 28I (1) of Chapter XA of the amended Constitution, which expressly prohibits prosecution under retrospective laws as a breach of human rights.

It is therefore likely that Perpu No. 2/2002 will be struck down by the legislature when it meets, although No 1/2002 will probably survive if Megawati can, in fact, demonstrate some Islamic extremist involvement in the blast.

¹ Associate Professor and Director, Asian Law Centre, The University of Melbourne (t.lindsey@unimelb.edu.au) Recent publications include 'Indonesia: Law & Society' Federation Press, Sydney, 1999 and 'Indonesia: Bankruptcy, Law Reform and the Commercial Court', Desert Pea, Sydney, 2000.