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# The Right to a Fair Trial and Combatting Terrorism: The Case of Indonesia

Amira Paripurna<sup>1</sup>

*After the 9/11 attack, the US government called upon global war on terror (GWOT). Then terrorism has been considered as a threat of global security. It is, therefore, has led both national and international concern under US hegemony. Furthermore, it has affected the proliferation of many national counter-terrorism laws. The terrorist attacks have threatened Indonesia over years. Under the act No.15/2003 jo No.1/Prp/2002 the Indonesian government has successfully conducted prosecutions to the terrorism perpetrators. However, it is identified that there are such violations regarding to international human rights rules and standards. The concern in handling terrorism demands a balance concern between security treatments and human rights. Thus, the challenge's today are how to maintain the rights to a fair trial for every accused, the safeguard against abuse of power and the commitment of international community to human rights, while also preserving the capacity to national and international security concerns. The article 14 of International Covenant on Civil and Political Rights (ICCPR) enshrines a norm of International Human Rights law which protects individual from the unlawful and arbitrary curtailment of other basic rights and freedoms (a fair trial), which the most prominent are the rights to life and liberty of the person. The civil and political rights are categorized as non-derogable rights, it means that any derogation measures inconsistent with the State's other obligations under international human rights law is prohibited. Thus, this paper aims to discuss whether and to what extent the right to a fair trial may be compromised in the name of security? Does the fair trial standard can be sacrificed to prosecute terrorism?*

**Keywords:** *human rights, civil and political rights, fair trial, counter terrorism, security*

## I. Introduction

The issue of terrorism is not a new one within the agenda of human rights protection. The terrorist attacks in its all of forms have killed innocence people, threatened state security and humiliated human dignity. It is, therefore, states held obligation to take such measures to protect the fundamental rights of every person who live under its jurisdiction.

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The measures to counter terrorism contain two aspects. On one side, States obliges to protect their citizen particularly to those who are reluctant to be a victim of terrorist attack and to ensure the national security. On the other side, States have to protect and respect on human rights for every person or groups who accused as a terrorist. Concisely, States have obligation to respect and to guarantee the balancing of human rights protection within these two aspects.

The global war on terror lead by the US government after the 9/11 tragedy has raised both national and international concern of terrorism issues. As a result, under the US government hegemony, there were proliferations of national counter terrorism act. Several policies of counter-terrorism infringe some principles of democracy such as civil liberties, freedom and transparency and accountability of the policy mechanism. Additionally, the policies, regulations and some practices disregard certain fundamental rights and principles that include the international human rights standards and humanitarian law of Geneva Convention and fair trial as a part of the criminal court procedures.

This paper begins with a discussion about the relativity of terrorism and the root causes of terrorism in Indonesia. It is significant to discuss in order to figure out the complexity of terrorism issue, such as the influence of political interest of particular State (US). By understanding the relativity, complexity and the root causes of terrorism, we can evaluate whether or not the Indonesian government has taken appropriate actions to combat terrorism.

Therefore, it focuses, subsequently, in the policy and practice has been taken by Indonesian Government to counter terrorism. It presents the facts find and overview on the practices of human rights abuses mainly the right to a fair trial. Finally and the most importantly, the articles analyzing the extent to which the right to a fair trial on Article 14 of International Covenant on Civil and Political Rights (hereinafter ICCPR)<sup>2</sup> can be sacrificed in term of combating terrorism and protecting national security.

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<sup>2</sup> International Covenant on Civil and Political Rights, UN General Assembly resolution 2200A (XXI), 16 December 1966.

## **II. Terrorism Relativity and Its Root Cause in Indonesia**

Terrorism is commonly understood as a violence act that targets civilian in order to pursue of political and ideological aims. The definition of terrorism, however, is still as the subject of debate. Even, the international community has no reached a single definition on it.<sup>3</sup>

The difficulties to define terrorism are caused by the influence of political interest, the relativity of terrorism and the difficulties on determining an act qualitatively, so it can be considered as terrorism.

The US war on Iraq is a clear example of how political interest has influenced the understanding of terrorism. There are some points of views regarding the war. US had legitimized its attack was necessary. Iraq was deemed as a terrorist state or rogue state because the country possessed mass destruction weapon. However, other states considered US as a state terrorist since its invasion to Iraq have no adequate reasons. As Pfaff (2005) stated "a State that violates universal principles call into questions its own national identity, diminishing public support for security sacrifices in the name of that identity, alienating alliances based in part on common values and blurring the distinction in international public opinion between terrorist violence and defensive "state terror"<sup>4</sup>. Moreover, the global war on terror called upon US government after the 9/11 incident regard as a neoliberal project that creates new spaces of capital expansion.<sup>5</sup>

The statement that like "one man's terrorist is another man's freedom fighter" describes that terrorism contains relative aspects. The relativity of terrorism much more apparent when terrorism is intentionally chosen as a continuous strategy of war in a particular time. Consequently, a limit to terrorism as a crime became vague<sup>6</sup>. In line with this, William D. Purdue

<sup>3</sup> The GA declaration on its Resolution 49/60, define as "criminal acts intended or calculated to provoke a state of terror in the general public, a group of person or particular persons for political purposes" and that such acts "are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic religious or other nature that may be invoked to justify them. Then Security Council on its Resolution No.1566/2004 referred to criminal acts, including against civilians, committed with the intent to cause of death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a Government or international organization to do or to abstain from doing any act.

<sup>4</sup> A.Brsyk, S.Gerson, *Insecurity and Human Rights* (Berkeley : University of California Press,2007) p.178.

<sup>5</sup> Arianto Sangaji, *From Jazz To Terror: The Mainstream Media Representation of The War on Terror* (Toronto: Unpublished Manuscript, 2010).

<sup>6</sup> TB.Ronny Rahman Nitibaskara, *Cakrawala Baru Kriminologi Terhadap Pemahaman Kejahatan Transnasional Kasus Terorisme di Indonesia*. Makalah:Seminar :Pengaruh Globalisasi terhadap Hukum Pidana dan Kriminologi Menghadapi Kejahatan Transnasional", Maret,2008.

(1989) said, "The term terrorism however is politically laden term, that suggest that your sides cause and tactic legitimates, while the other sides not. There has never been a war where each side did not try delegitimize the other. And the use word "terrorism" is one method of delegitimation, often use by side that has the military advantage."<sup>7</sup>

The concern of political Islam, especially fundamentalist Islam, has arisen since the attack of World Trade Center in September 2001. In the case of Indonesia, the Bali bombing in October 2002 has initially increased a special attention to Islamic groups. In this regard, Jemaah Islamiyah is a particular Islamic group has been blamed for a series of bloody attacks since 2002. The group has been considered to have a link to Al-Qaeda, a worldwide terrorist network. All of those terrorist discourses some that represent a narrow understanding of terrorism that has been brought by US campaign under the banner 'Global War on Terrorism' (GWOT). Under its hegemony, US can rule the world to determine who and what terrorist is. Therefore, in the context of terrorism in Indonesia in which the Islamic group as the only suspected of terrorists and the radicalism Islam as its root causes shows our understanding about terrorism must be questioned.

The term of radical Islam is debatable. It is used interchangeably fundamentalist, Islamist, or militant. Eventhough, there is no single consensus of what does the radical Islam mean, but such term commonly refers to those who encourage with the idea of an Islamic State or caliphate or the promulgation of the Syaria as the source of all laws, with or without outright violence.<sup>8</sup> The radicalism Islam also depicted as being antithetical to democracy. Thus, in the context of Indonesia—a country hosts the largest Muslim population in the world; there is an encouragement to adopt harsher anti-terror laws. While, what today labeled radical Islamism in Indonesia is essentially the product of the long phase of authoritarian capitalist development under new order rule.<sup>9</sup> Therefore, we cannot simply to say that terrorism as pathologies within the religious doctrine or religious zealot.

States responses to terrorism, therefore, need to have a systematic analysis. The mistaken to judge what are the roots of terrorism will mislead the State strategies in dealing with terrorism. A willingness to employ violent strategies which have a strong retributive element and which

<sup>7</sup> See supra note 5.

<sup>8</sup> Vedi R.Hadiz, *Towards a Sociological Understanding of Islamic Radicalism in Indonesia*, *Journal of Contemporary Asia* Vol 38 (4) (2008), p.638.

<sup>9</sup> *Ibid*,p.639.

incur high numbers of civilian casualties is not confined to the current crop of terrorism.<sup>10</sup> The countries that have done best against terrorism are those that have kept their priorities, retained a sense of proportion, questioned and addressed the cause of terrorism, and adhered steadfastly to constitutionalism and the rule of law (Kirby, 2001).<sup>11</sup>

### **III. Indonesian Policy and Practices on Countering Terrorism**

In this part the discussion concerning Indonesian policy and practices on countering terrorism limited only in the reaction of Indonesian government toward the series of bloody bombing that occurred such places since 2002.

After the 9/11 attack, Indonesia has been positioned as the frontline in the campaign against terrorism. It relates to the stand of South East Asia as the second line of global war on terror, which lead by the US.

Indonesian government immediately took serious reactions after the first Bali Bombing on October 12, 2002 that killed 202 people and injured more than 209 people.<sup>12</sup> As soon as the occurrence of that attack, Government stated it as a sort of terrorism and declared for take action on it soon. Less than a week after the bloody bombing, the government issued the Government Regulation Substituting a Law (Peraturan Pemerintah Pengganti Undangundang/Perpu) No 1 Year 2002 on Elimination of Terrorism Crime and Government Regulation Substituting a Law No. 2 Year 2002 on Implementation of the Government Regulation Substituting a Law No.1 Year 2002. On 2003, the government regulation was authorized as Combating Terrorism Act through Law No. 15 Year 2003.

The Government Regulation were issued base on the particular reasons that the recent laws considered inadequate and incomprehensive to response terrorism acts. Furthermore, terrorism regards as a threat to national and international peace and security. Additionally, the regulation to combat terrorism aimed to uphold the national interest contained in the preamble of Indonesian Constitution.

<sup>10</sup> Natasha Hamilton-Hart, *Terrorism in South East Asia :Expert, Analysis, Myopia, Fantasy*, *The Pacific Review*, Vol. 18 (3)(2005), p.320.

<sup>11</sup> *Supra* note 3, p.184.

<sup>12</sup> Mufti Makarim, *Enforced Disappearances, Summary and Extrajudicial Killings Inside Indonesia's Counter Terrorism Laws, Policies and Practises* (Jakarta: South East Asia hearing of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights, 2006). Available online at [www.ejp.icj.org/IMG/KONTRASSubmission.pdf](http://www.ejp.icj.org/IMG/KONTRASSubmission.pdf) (last visited 16 August 2010).

The Indonesian government has shown strong commitment to take measures on suppression of terrorism. Indonesian policy on countering terrorism has been reflected on the Law Number 15 Year 2003 on Combating Terrorism Acts.

Some provisions under this law deviate from the general rule of Indonesian Criminal Law and Indonesian Criminal Law Procedure. Individuals suspected of posing a threat to the state may be detained for the interest of police investigation and prosecution for up to 6 months.<sup>13</sup> The law makes no direct reference to the Indonesian Armed Forces (TNI), however some provisions provide chance for TNI to involve and to support the work of police in investigating terrorism act. It can be seen from the provision specifically provides that "intelligence reports" may be used to initiate a formal investigation. "Intelligence reports" are the product of agencies run by the armed forces and the police<sup>14</sup>

According to article 6 terrorist defines as persons who deliberately use violence or the threat of violence, to create an atmosphere of terror or to spread out fear among public or create victims on a mass scale by depriving persons of their liberty or their life, or inflict damage or destruction on strategic, vital objects of the living environment or public facilities or international facilities. This broad definition encompasses ordinary crimes such as criminal damage or common assault. Furthermore, the terrorism act relate to the aviation crime as well.<sup>15</sup>

Then, the policy was followed by setting up the elite police counter terrorism team, known as Detachment 88 (Densus 88). It formed during the administration of President Megawati Sukarnoputri in 2003. The squad is a part of Indonesian national Police which is supported by the US and Australian Government.

On combating threats to security, Indonesia has investigated a number of terrorism cases and has brought them to the courts. Police captured and arrested those who are responsible for terrorist acts, and some of them have been prosecuted. A high profile investigation to identify and arrest the perpetrators of the Bali attack has been carried out by Detachment 88. As a result, the death penalty execution toward the Bali Bombing I perpetrators (Amrozi, Muklas and Imam Samudra) had successfully performed. The top's alleged accomplice, Malaysian master bomb maker Dr. Azahari bin Husin was killed in a November 2005 shootout with Detachment 88 in

<sup>13</sup> See article 25 of Government Regulations Substituting a Law.

<sup>14</sup> Refers to Article 26 of Government Regulation Substituting Law No.1 Year 2002.

<sup>15</sup> See Article 8 a-r Government Regulation Substituting a Law.

the terrorism operation. In 2009 and 2010, Detachment 88 captured several more terrorist suspects, among others the most wanted terrorists, namely Noordin Mohammed Top and Dulmatin who were shot dead by Detachment 88.

The series of terrorism operation show the government tough policy concerning to this issue. Behind this tough policy, however, the Indonesian government is considered to be under the US pressure. The US has pressured the Indonesian government to arrest key terrorist suspect and label the radical Islamic group Jemaah Islamiyah a terrorist organization under Indonesian Law.<sup>16</sup>

The arrest and the detention toward terrorist suspect throughout 2010 came so fast as a downpour. There were six terrorism operations conducted by Detachment 88 in the period of February-August. Within the series of anti- terrorism operations, Detachment 88 successfully captured and even killed the suspected terrorist. On February 22, the Detachment 88 captured 14 suspects networks in Aceh, they was believed to have been planning impending attack. Within two weeks, on March 9, Detachment 88 engaged in firefight in an Internet Café at Indonesian Capital, Jakarta and killed Dulmatin.<sup>17</sup> Dulmatin was suspected as a masterminded of blasts that struck two nightclubs in Bali island (known as Bali Bombing I). By April 12, the police arrested six suspects, they were suspected to have been planning an attack to Presidential Place (Cikeas).<sup>18</sup> A month later, in May 12, located in Cawang, Cikampak (West Java) sixteenth suspects were captured, and two killed. They include suspects in Aceh terrorist network, bombing in Australian Embassy and J.W Marriot Hotel and other bom blasts in such places in Indonesia. By June 23, in Klaten (Mid Java), one suspect killed and three arrested. Most recently, in August 9, Abu Bakar Baasyir arrested on accusations that he had links to militants plotting a terrorism series attacks on the Indonesian authorities and foreigners.

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16 Human Rights Watch Briefing Paper for the 59th Session of the United Nations Commission on Human Rights, *In the Name of Counterterrorism: Human Rights Abuses Worldwide* (New York: Human Rights Watch, March, 2003), p.17. Available at [www.hrw.org/courses/documents/HRW10CountrySurveyofConcernsaboutHumanRightsandCTCMeasures.pdf](http://www.hrw.org/courses/documents/HRW10CountrySurveyofConcernsaboutHumanRightsandCTCMeasures.pdf) (last visited 16 August 2010).

17 See [http://www.tempointeraktif.com/hg/politik/2010/03/11/brk\\_20100311-231937.id.html](http://www.tempointeraktif.com/hg/politik/2010/03/11/brk_20100311-231937.id.html), (last visited 16 August 2010).

18 See <http://www.tribunnews.com/2010/04/11/inilah-kronologis-penangkapan-teroris-di-medan>, (last visited 16 August 2010).

The measures have been taken by the Detachment 88 to combat terrorism resulted disturbing practices and often infringing the rights of terrorist suspect. The administrative detention for prolonged periods without charge or opportunity for adequate judicial review, the detention without notification of family of the date and place of detention, the excessive use of force and the extra judicial killing performed by Detachment 88 are the most subject of critique. Moreover, the accountability in conducting prosecution is in questions as well.

Overall, the series of terrorism operation have been identified there are such violations regarding to International Human Rights Law and its standards. On the other words in the name of protecting national security, the way in bringing suspected terrorists in trial tend to conducted "blindly" and frequently irrespective to the rule of law. Henceforth such violations regarding to international human rights law and its standards are discussed below in the next part of this paper.

## **V. The Right to a Fair Trial and Criteria of Valid Derogation from ICCPR**

### **A. The Right to a Fair Trial**

Terrorism represents a situation in which government often claim threaten the life of a nation, even viewed as a major threat to security. The means used by States to ensure order in their territory and protect their people against such threat often affects the rule of law. In such situation when terrorist occurs States may declare a state of emergency. In practice however, States tend to refrain from officially proclaiming a state of emergency but rather implement some kind of legislation, which very often includes the broadening of police functions, granting law enforcement agencies additional powers to search, arrest and detain while weakening safeguards against abuse of those of powers.<sup>19</sup> All in all, in facing the threat of terrorism, States often provides their law enforcement agencies with wider powers and authority.

As described above Indonesia is an example where the government provides the law agencies with wider powers and authority<sup>20</sup> and disregards the law enforcement agencies misconduct. Indonesian government

<sup>19</sup> Anneke Ross, *Understanding Policing: A Resource for Human Rights Activist* ( Amsterdam : Amnesty Internasional, 2006), p.75.

<sup>20</sup> See Article 25-28 of Government Regulation Substituting a Law.

has succeeded in conveying to the most of public that without tough policing they will not be able to provide a feeling of security. However, the tough policy enacted and executed by State often infringes the right to a fair trial of the suspected or the accused of terrorism.

The right to a fair trial is a norm of international human rights law aimed to safeguard the individuals from unlawful and arbitrary curtailment and deprivation of basic rights and freedom, such as the right to life and liberty of the person. Article 14 of the ICCPR<sup>21</sup> is the covenant's article dealing with fair trial.<sup>22</sup> This article does not include in the list of non-derogable rights<sup>23</sup>. The question then arises whether the right to a fair trial may depart from the State obligations to respect, protect and fulfill in relation to international human rights instruments, since the ICCPR does not specify which aspect of the fair trial can be leaved out. Thus, the problem comes from what the criteria of valid derogations from ICCPR because it is not always clear to what extent, how and to what level the derogation can be carried out by the State.

### **B. The Criteria of Valid Derogations from ICCPR**

Some articles within International Human Rights treaties contain derogation and limitation clauses, allowing rights they embody to be limited under certain circumstances.<sup>24</sup> Some rights are absolute in which States can never derogate from them and they may never be limited in such way. Absolute rights include the right to be free from torture and ill-treatment; the right not to be enslaved; the right to freedom of thought and conscience.<sup>25</sup>

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21 Indonesian government has ratified the ICPPR through Law No.12 Year 2005.

22 Fair trial rights are usually classified into three parts, firstly, basic rules comprises of the right to be equal before the court; the right to a fair and public hearing by a competent, independent and impartial tribunal established by law; and the right to be presumed innocent (refer to paragraph 1 and 2 of article 14). Secondly, minimum guarantees consist of the right to be informed of the charge, The right to prepare defence and to communicate with counsel, The right to be tried without undue delay, The right to be present during trial, to defend and to legal assistance, The right to call and examine witnesses, The right to the free assistance of an interpreter, The privilege against self-incrimination (refer to paragraph 3 of article 14). Thirdly, other provisions encompass such rights the right to appeal, the special guarantees for juvenile persons, the right to compensation for wrongful conviction, the right against second trial for the same offence.

23 The list of non-derogable rights are from ICCPR, namely art. 6 (right to life), art. 7 (prohibition on torture, cruel, inhuman or degrading treatment or punishment), art 8 (prohibition on slavery and servitude), art.11 (prohibition on imprisonment for contractual obligation), art. 15 (prohibition on retrospective criminal punishment), art. 16 (right to recognition as a person before the law) and art. 18 (right to freedom of thought, conscience and religion)

24 *Supra* note 18, p.73.

25 *Ibid*, p 74.

In the counter terrorism context it may be necessary to interfere those rights that permit restrictions or to derogate from derogable rights. For example, a surveillance operation will interfere with the right to private life of suspects and possibly of other individuals with whom terrorist suspects have come into contact; the arrest of a terrorist suspect will, by definition, interfere with the individual's right to liberty; the proscription of a terrorist organization will impact on its members' freedom to associate with each other.

The right to life is non-derogable but it rights is not absolute one. There are such circumstances under the State's Agent may use of lethal force and the use of force.<sup>26</sup> However, the right not to be arbitrarily killed is absolute. Similarly, the right to liberty of person is not an absolute right since the treaty requirements allow for lawful deprivation of liberty but arbitrarily arrested and/or detained is absolute.

Derogations under exceptional circumstances allow a state to temporarily depart some human rights. The system of derogation clause consists in article 4 (1) of the ICCPR, which allow States to declare state of emergency and may derogate from their obligations under the ICCPR. The ability to derogate under Article 4 (1) of the Covenant is triggered only in a time of "public emergency and threaten the life of the nation". In its General Comment No.29 of 2001<sup>27</sup> the Human Rights Committee (hereinafter HRC) has characterized such an emergency as being of an exceptional nature. Not every disturbance or every catastrophe qualifies as such.<sup>28</sup> Whether or not terrorist acts or threats establish such a state of emergency must therefore be assessed case by case.<sup>29</sup>

The derogation therefore needs to adhere strictly to the principle of proportionality. If there are any limitations on rights, they must be shown

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<sup>26</sup> The code of conduct for law enforcement officials require in article 3, police to use force only when strictly necessary and to the extent required for the purpose. In the explanatory to this article, it is stated that the firearms should not be used except when a suspected offenders offers armed resistance or otherwise jeopardizes the lives of others and less extremes measures would be ineffective. See also Principle 9&26 of the Basic Principles on the use of Force and Firearms by law Enforcements Officials

<sup>27</sup> General Comment No. 29, CCPR/C/21/Rev.1/Add.11 (2001).

<sup>28</sup> UNHCHR, Human Rights, Terrorism and Counter Terrorism, (New York: UN, 2009) p.28. Available online at [www.ohchr.org/Documents/Publications/Fachsheets32EN.pdf](http://www.ohchr.org/Documents/Publications/Fachsheets32EN.pdf) (last visited 29 August 2010).

<sup>29</sup> *Ibid.*, p. 28. Compare to the ECHR on derogation provision, the ECtHR has stated of four criteria to judge "a time of public emergency which threaten the life of nation". First, it should be a crisis or emergency that is actual or imminent. Second it must be exceptional so that "normal" measures are inadequate. Third, the emergency must threaten the continuance of the organized life of community. Fourth, it must affect the population of State taking measures.

to be necessary and proportionate. The test of proportionality and necessarily is the key to ensuring that a restriction on human rights is permissible. A proportionate approach requires that any measure taken must impair the right as little as possible; must be carefully designed to meet the objective; must not be based on unfair, arbitrary or irrational considerations.<sup>30</sup>

Furthermore, based on the principle of consistency that stated the prohibition of derogation measures 'inconsistent with [a State party's] other obligation under international law.'<sup>31</sup> It means that a State can only derogate from provisions of the ICCPR insofar as the derogation measure are consistent with all other obligations incumbent on the state under international law. International humanitarian law and human rights treaties from which no derogation is permitted are of particular relevance.<sup>32</sup>In addition and more important, relates on the right to fair trial, The HRC declared that certain aspects (fundamental principles) of the right to a fair trial under Article 14 including the presumption of innocence cannot be the subject of derogation at all times.<sup>33</sup>

Thus in the view of the series of bloody bombing in Indonesia, it was and is possible to take effective action against terrorism. It must be acknowledged that the series of bombing "terror" struck at the fundamental human rights of every person. The most fundamental rights mainly the right to life of the individual victims were deprived. However, every measure taken by States must be proportionate, even in the name to protect national security. The right to a fair trial must be respected since the derogation toward this right is prohibited in all time.

## **VI. Conclusion: The Necessity for a Balance Between Human Rights and National Security**

Indonesian policy and practice concerning counter terrorism adopted repressive and overridden it from preventive approach. I realize that legal approach is necessary steps to be taken, however it suppose not to be the only approach. As the relativity and complexity that comprise in terrorism

<sup>30</sup> UNODC, *International Law Aspects of Countering Terrorism* (New York: UN, 2009) .p.99. Available online at [www.unodc.org/tldb/pdf/09-81183\\_Ebook.pdf](http://www.unodc.org/tldb/pdf/09-81183_Ebook.pdf) (last visited 29 August 2010).

<sup>31</sup> Evelynne Schmid, *The Right to a Fair in Times of Terrorism: A Method to Identify The Non Derogable Aspect of Article 14 of The International Covenant on Civil and Political Rights*, *Gottin-gen Journal of International Law*, Vol 1 (2009),p.30.

<sup>32</sup> Supra note 26,para 9.

<sup>33</sup> Supra note 26,paras. 6 and 16.

issue particularly social, economy and politic of globalization, the legal approach is not sufficient to overreach of its root cause. The relativity of terrorism challenges us to take action cautiously since how would we know for sure who is truly a terrorist?

It is, therefore, the use of excessive force and violence, even the willingness to sacrifice fair trial standards to prosecute terrorism must be hindered. Moreover, without the protection of basic fair-trial rights innocent citizens, incidentally swept up in an investigation, could be left with neither legal rights nor recourse. In addition, from an Indonesian Constitutional perspective, it is essential to preserve not only cherished civil liberties but also the fundamental role of the judiciary in defining the limits of executive power.

In order to defend the State from such terrorist threat, State needs to have reliable information, comprehensive understanding of structural causes and the global context, effective options for the control of violence, and international support. It is also necessary to respect to human rights since it contributes to informed and proportional policymaking, democratic legitimacy, social cohesion and international cooperation.<sup>34</sup>

All in all, in combating terrorism the due process of law should be respected, the human rights of victims should be upheld and the right to a fair trial in any time should be prevailed.

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<sup>34</sup> Supra note 3, p. 184.

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