

The Islamic Perspective Of The War On Terrorism And Current Indonesian Responses

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INTRODUCTION

The possibility of acts of terrorism occurring cannot be eliminated solely through the use of legal instruments. Although international criminal law increasingly recognises terrorism as a crime², beyond the law a real danger lies in all societies attributing the contemporary use of terrorism solely to the followers of Islam. The identification of Islam with terrorism is misleading, and it threatens to jeopardise the potential for harmonious relationships between societies.

The purpose of this paper is to uncover the way in which Islamic law, which is based on Al-Qur'an and Hadith³, has been misused by a few Islamic radicals who claim they are defending the dignity of Islam. Their use of terrorism to this end has been condemned and rejected by the vast majority of Moslems all over the world. Their actions have not only transgressed international humanitarian norms, they have also transgressed Islamic teaching, the universal principles of life it espouses and its contextualisation in the life of the Prophet Muhammad.

In order to establish the degree to which extremists misrepresent Islam and Islamic law, it is necessary to study the relationship between their misconception of the main concept of Islamic *shari'a*,⁴ especially as it relates to the implementation of Islamic criminal code (*jinayat*), with the emergence of the practice of violence that has its roots in the local cultures of some Islamic societies. It is also necessary to study the common ground between Western scholars and Moslem scholars on the validity of the anti-violence message within Islam and how that may aid resistance against extremist misinterpretation of the Qur'an and Islamic teaching. The argument put forward in this paper is that it is impossible that Islamic

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² Antonio Cassese, "International Criminal Law", in Malcolm D. Evans (ed.), *International Law*, New York: Oxford University Press, 2003. pp. 750-4.

³ Al-Qur'an (The Koran) and Hadith (the sayings of the Prophet Muhammad and their accompanying commentary) are the two foundation stones of Islamic teaching.

teaching approves of the destructive acts of terrorists who have killed thousands of innocent people in the United States, as well as Indonesia and elsewhere.

Finally, this paper examines the joint efforts of the Indonesian population and the Government of Indonesia to eliminate terrorism through societal-based efforts as well as through political and legal policy, especially via Law No. 15/2003 criminalising the act of terrorism, and through the Bali bombers' trial process as well.

At the moment, the phenomenon of terrorism perpetrated by minority groups of extremists in Indonesia does not have any legal approval under *shari'a*. Although the intent to combat terrorism has been evidenced by numerous pieces of legislation from the Indonesian government, it is too early yet to determine their success. These efforts are in line with those of the international community, but there is still no guarantee that the terrorism will be eradicated if perceptions of injustice – the root of terrorism – remain.

MISINTERPRETING ISLAM

The misinterpretation of Islam by some Moslems, including the misunderstanding that Islam supports violence and terrorism, has long been influenced by 'positivistic' or 'legal-formal' analysis. This approach views complex social interactions and problems only through narrowly-defined textual interpretations of *halal*, *haram* and *mubah* rights and obligations. As a consequence, some Moslems fail to distinguish between the essential teachings of Islam and their local or the Arabian culture.

Positivistic Legal 'Dogmatism'

Legalistic-formal readings of Islamic text and law is a key reason for the emergence of an exclusivist understanding of Islam in which claims about the truth and faith of *muamalah*, as well as *akhlak*, have been put forward in such a way as to close the door on free, open, and rational discourse. Dangerously, these claims and this mode of interpreting Islam have inculcated the belief that all peoples outside the Islamic 'us' are the enemy. This perspective is a highly inaccurate reading of Islam and Islamic law. The teaching of Islam acknowledges racial, cultural, national, and religious diversity. Indeed, Moslems are recommended to interact with 'unbelievers'.

⁴ The Shari'ah is the revealed and the canonical laws of the religion of Islam.

An extreme example of this mode of interpreting Islam was the Taliban regime in Afghanistan. The Taliban fiercely discriminated against women in respect to their right to education, isolated themselves from international relations with other countries, especially non-Moslem countries, and used violence and terror against others on the grounds that they were upholding the sovereignty of the country based on *shari'a*; they had no legal justification under Islam, however, for their actions. I would argue that the Taliban were influenced more by local culture than by the universal teachings of Islam. They revealed how Islam and *shari'a* have been adapted by individual communities over the past fourteen centuries.

Extremist interpretations of Islamic teaching are frequently taken by other religions to express the general beliefs of all Moslems. The following statement by the evangelical Christian InterVarsity: International Student Ministries, located in the United States, is an example of this:

In spite of all current propaganda by Moslems to the effect that Islam is a religion of peace, it is not. Those so-called terrorists who flew those planes into the World Trade Centre and the Pentagon, were actually following the teaching of Islam on the following points: (1) retaliate for the deaths of Muslims; (2) strike terror in the hearts of the enemies of Islam; (3) destroy any power that stands in the way of the ascension of Islam to world dominance; (4) to die in a holy war effort in the cause of Islam is the greatest act a Moslem can commit.⁵

Ironically, this interpretation of Islam is exactly that which many Moslems, and especially Indonesian government officials under the new-order regime, fear is the position held by extremist Islamic groups. In this vein, the Indonesian Government has prosecuted former members of the *Darul Islam* (Islamic Country) and the *Tentara Islam Indonesia* (Indonesian Islamic Army) movement as the culprits behind the idea of creating a country based on the Islamic *shari'a*. Evidence is emerging that a similar opinion is also being developed in some quarters of the Indonesian national police, who characterise the terrorists as being motivated by the desire to create a pan-Islamic state.⁶

⁵ "War and Peace in Islam", a 15 December 2001 article on the Christian InterVarsity website by an author described as "an American missionary to the Muslim World". Paper located at http://www.intervarsity.org/ism/article_item.php?article_id=121.

⁶ This information was gained through a briefing by the local police precinct In Tegal.

Such an interpretation of Islam and the Islamic *sharia*, is not only based on a too-narrow understanding of Islam, but it also disregards the fact that many of the groups involved have often used extremist Islam as a shortcut into the political arena. They are politically motivated to use terror, even though such acts are forbidden under normative Islamic law.

In order to clarify exactly how far from accepted Islamic teaching radical groups have departed, it is necessary to first explain the concept of Islamic *shari'a*, the implementation of Islamic law, and the concept of Jihad as opposed to 'war'.

***Shari'a* as an Integrated Value System**

When a radical group equates *shari'a* with violence, they generally do so because for them the term *shari'a* describes only the criminal code. Taking this restricted view only justifies, for example, the practice of condemnation, which covers such punishments as: the death penalty (*qishash*), hand-decapitation, or stoning to death (*rajam*) and other corporal punishments. This understanding is not only erroneous but also contradicts the norms that exist in Indonesian society, in which the existence of a non-religious state has enforced a division between private rights and public affairs. In any case, *shari'a* encompasses more than just criminal codes, there are also many other aspects that are inspired by the *shari'a*.

A comprehensive understanding of *shari'a* sees it as an integrated value system, consisting of universal principles and values, which will provide guidance for a person's faith, thinking and action, individually and collectively. It embraces the spiritual, the economic, the social, the political, and the legal, and originates from the message of Al-Qur'an and the contextual behavior of the Prophet Muhammad (*Hadith*). In short, the term *shari'a* is wider than just a legal, or criminal law, term; it is inappropriate if the tiny portion of the criminal law is seen to be identical with the broad concept of *shari'a*.

The Concept of *Shari'a* in the Qur'an

In the Qur'an the term *shari'a* can be found in three verses and it is mentioned four times. As Abdullah Yusuf Ali pointed out, the scope of *shari'a* is much wider than the law. He said: "Shari'a is the right way of religion, which is wider than the mere formal rites and legal provisions, which mostly came in the Medina period, long after this Mecca verse has

been revealed”.⁷ The fact that *shari'a* is more than a set of rules governing ritual ceremony or criminal law is here made clear. In addition, it pre-dates the Islamic legal developments that emerged in early Medina Islamic society. This viewpoint is bolstered by the fact the Qur'an mentions several times that the law, as *hukmun* (arabic), is a normative ordering, like Sunnah (the sayings of the Prophet Muhammad).

According to Istiyaque Danish:

What distinguishes the *shari'a* from *fiqh* may be ascertained from the fact that while the former is divine in nature the later is a product of human endeavor in that it is the name given to the rules and regulations framed by Islamic jurists in the light of the Qur'an and the Sunnah. The *fiqh* in this sense, may be called the applied *shari'a*, for it enables men to follow it (*shari'a*) practically.⁸

Thus, the concept of *shari'a* is different from law and *fiqh* (jurisprudence), because of that the status of *shari'a* is as revelation (*wahyu*). Law and *fiqh* are man-made decisions and, therefore, cannot be permanently defined.

Islamic Shari'a from the Perspective of Scholars

There are two great Islamic thinkers who define *shari'a* as having a far from violent meaning. One, the classical scholar Ibnu Qoyyim, writes:

The basis of the *shari'a* is wisdom and welfare of the people in this world as well as thereafter. This welfare lies in complete justice, mercy, well-being, and wisdom. Anything that departs from justice to oppression from mercy to harshness, from

⁵ For a wider understanding, please see Abdullah Yusuf Ali, *The Holy Qur'an, Translation and Commentary*. Verse Al-Jasiyah 18. 1960: 1359.

⁶ Sayyid Abdul A'la Maududi, *The Islamic Law and Constitution*. Lahore: Islamic Publication Ltd. 1975. p. 49.

⁸ See Istiyaque Danish, *The Ummah Pan-Islamism and Muslim Nation-States*, New Delhi: Institute of Objective Studies (2001), p 24. In more specific approach, Sayyid Abdul A'la Maududii says: “The main objective of the syariah is to construct human life of the basis of *ma'rafah* (virtues) and to cleanse it of the *munkarat* (vices). The term *mahrufat* denote all the virtues and good qualities that have always been accepted as good by the human conscience. Conversely, Munkarot denotes all the sins and evils that have always been condemned by human nature as evil.” *The Islamic Law and Constitution*, Lahore: Islamic Publication Ltd. (1975), p. 49.

welfare to misery and from wisdom to folly has nothing to do with *shari'a*.
[citation]

From this point of view it is clear that *shari'a* is concerned with upholding justice and prosperity and, because of that, it is impossible for it to condone violence, because violence is far from justice. Meanwhile, another great thinker, Imam Al-Ghazali, defines *shari'a* as the paying of attention to the improvement of human quality of life in line with fundamental rights. Al-Ghazali has defined the objective of *shari'a* in the following words:

... the very objective of the *shari'a* is to promote the welfare of the people, which lies in safeguarding their faith, their life, their intellect, their posterity and their wealth. What else ensures the safeguarding of these five serves public interest and is desirable.⁹

Imam Ghazali had aligned *shari'a* with the universal values of human rights, since the upholding of one's faith and the protection of the right to life, the right to intellectual pursuit, and the right to personal wealth are all the main objectives of the *shari'a*. *Shari'a* is an integrated value system with the goal of helping societies attain good values and morality, which ultimately prevent people from committing acts of destruction, and assists them to lead respectful and prosperous lives within a just society.

This interpretation of *shari'a* appears to have been in place from the earliest days of the spread of Islam. As Gustave Le Bon famously stated in the opening of *The Civilization of the Arabs*:

The readers will find, in my treatment of the Arab's conquest and the reason for their victories that force was never a factor in the spread of the Qur'anic teachings, and that the Arabs left those they had subdued free to exercise their religious beliefs. If it happened that some Christian people embraced Islam and adopted Arabic as their language, it was mainly due to the various kinds of justice on the part of the Arabs victors, with the like of which the non-Moslems were not acquainted. It was

⁹ Istiyaque Danish, *Ibid*, p. 25-26.

also due to the tolerance and leniency of Islam, which was unknown to the other religion.¹⁰

The teaching of Islam, which historically had some interaction with Christianity, has been proven to have respectful qualities. The freedoms of religious life, fair treatment, toleration, and compassion can be argued to have been characteristics of Moslem life. As John L. Esposito, puts it:

For many of the non-Muslim population in Byzantium and Persian Territories already subjugated to foreign rulers, Islamic rule meant an exchange of rulers, the new ones often more flexible and tolerant, rather than a loss of independence. Many of these populations now enjoyed greater local autonomy and often paid lower taxes. Religiously, Islam proved a more tolerant religion, providing greater religious freedom for Jews and indigenous Christians.¹¹

Islamic Shari'a vs Criminal Law

A primary reason for the mis-perception that Islamic *shari'a* is inherently violent lies in the failure to properly interpret the relationship between *shari'a* and the implementation of the Islamic Criminal code. As noted earlier, the most common examples cited by critics of *shari'a* are that it condones the use of the death penalty (*qishash*) for crimes such as killing, *murtad* (anyone who leaves Islam and then commits 'traitorous' acts against it), and rebellion, the severing of the hands of male and female thieves, and the stoning (*rajam*) of men and women who have committed adultery.

In fact the principles of law enforcement under *shari'a* are far more complex. It argues for just and accurate substantive law and for a justice system in which the examination of evidence and the questioning of witnesses are done with due process. In the case of capital punishment, the option of paying a fine is possible, providing the victim's family is willing to give its pardon; a court decision can be vetoed, so long as the family of the victim is willing to forgive and ask for blood money. Violence is not inevitable under the

¹⁰ Gustave Le Bon, *The Civilization of the Arabs*, Paris: Firminididot (1884).

¹¹ Professor of religion and international politics at Georgetown University See John L. Esposito, *The Islamic Threat; Myth or Reality (3rd Ed)*, New York: Oxford University Press (1999).

enforcement of Islamic law and, further than that, it is not at all integral to *shari'a* taken as a complete system of belief.¹²

The consistent realisation of *shari'a* must follow the Qur'an as it relates to all aspects of life, and the Qur'an consists of more than 6666 verses. Jalaluddin As-Suyuthi, in his work *Al-Itqon*, said that the law about public as well as private affairs is governed by approximately 500 verses (8%) of the Qur'an. These are the laws concerning Halal, Haram, Sunnah, makruh and what is permitted (*kebolehan*). No more than 1% of the Qur'an's verses concern the sanctioning of corporal punishment, which, of course, can only be handed down by official judges and law-enforcers. In the context of implementing public law, the Qur'an also stipulates the need for legitimate power invested in the state. This can be seen from the verses such as, "In truth, Allah has instructed you to enforce the law wisely and fairly".¹³

It must be recognised, however, that many states and societies in countries where Islam is the dominant religion also believe that the threat of capital punishment has a deterrent effect, quite aside from any status it may have in the Qur'an. An example of this can be seen in Abdurrahman J. Doi's comparative study on the use of punishment in Islamic countries, in which he argued Islamic countries that have a death penalty were able to reduce homicide rates compared with countries without capital punishment.¹⁴

JIHAD DOES NOT MEAN TERROR

Over the last decade, extremists prepared to use terrorism have been drawn from the Islamic countries in the middle-east, central-Asia, and South-East Asia, including Indonesia. Not only has there been a gradual geographic spread in the origins of terrorists, there has also been a move toward extremists, usually young adults, using terror techniques that involve their suicide. Bernard Lewis describes this evolution in the following way:

- (1) The nationalist terrorists of the 1960- 70-s generally took care not to die along with their victims, but arranged to carry out their attack from a safe distance, if they had the misfortune to be captured,
- (2) The Iranian boy soldiers in the 1980-1988-s war

¹² See Jawahir Thontowi, *Pesan Perdamaian Islam* (Islamic Peace Message), Yogyakarta: Madyan Press (2001), p 132.

¹³ In order to know much better about the number of verses related to the word *shari'ah*, please see Muhammad Fuad Abdul Baqi's *AL-MU'Jamul Mufahrosh*, Arabic Edition (1981).

¹⁴ Abdurrahman J. Doi, *Non-Muslims Under Syarriah*, London: Taha Publisher (1983).

against Iraq, (3) Religious organisations like HAMAS—Hizbullah, who from 1982 began to carry out a number of suicide missions in Lebanon and Israel, (4) 1980—1990s, in Turkey, Egypt, India, and Sri Lanka suicide bombing continued to be developed and carried out by both Muslims and Hindus, (5) A remarkable innovation was the use of female suicide bombers by Kurdish Terrorists 1996-1999, and Palestinians from January 2002.¹⁵

These developments are reflected in Indonesia, where there has been a dramatic increase in the number of terrorist bombings in the post-Suharto era. No less than thirty eight times have terrorist bombings occurred, with the police generally failing to capture the perpetrators. It was not until one month after the Bali bombing of 12 October 2002 that a joint special taskforce, involving the Indonesian police, the FBI (USA) and the Australian Federal Police, succeeded in arresting bombers Imam Samudra, Ali Imran, and others.

These developments in terrorism have been accompanied by the increasing use of Jihad as justification by the perpetrators. They see this as ideologically correct; they see Jihad as imposing on them legal, moral and political obligations to act as they have. Is their understanding of Jihad a correct interpretation of its meaning under Islamic law?

I would argue that Islamic extremist terrorists have misinterpreted Jihad, and in doing so have poisoned and destroy the image and dignity of Islam as a religion of peace. Jihad is not the proper term with which to describe the acts of these terrorists, the more appropriate term would be *dazjal*. *Dazjal* describes someone whose faith, mind, and conscience can no longer tell the difference between right or wrong, benefit or destruction, all they wish is to satisfy their animosity. Terrorists are modern day *dazjal*. They are mistaken on several grounds if they think that their acts of violence are equal to Jihad; this is a point on which there is considerable common agreement between Western and Islamic scholars.

Jihad means ‘war’ in only the narrowest sense

Islamic terrorists mistakenly define Jihad in terms only of war. Karen Armstrong, a Middle East historian and theologian from the UK, in putting forward an opposing point of view, argues that the exact meaning of Jihad is ‘effort’ or ‘to strive’.¹⁶ That is, under Islam, to

¹⁵ See Bernard Lewis. *The Crisis of Islam: Holy War and Unholy Terror*. New York: The Modern Library (2003), p155-156.

¹⁶ See Karen Armstrong, *Islam: A Short History*, New York: Modern Library (2000).

carry out Jihad is to make an effort to struggle with, in the first instance, one's self. Prophet Muhammad explained that the greatest Jihad is the one a person carries out against the negative aspects of his own soul – his 'lower soul'. What is meant by 'lower soul' here are selfish desires and ambitions.

Apart from this spiritual meaning, struggle in the physical sense is also considered as being part of Jihad, but the parameters of this physical struggle are narrowly defined. They certainly do not include acts of aggression against innocent people. As noted by Teresa Watanabe, Islamic sacred texts may include exhortations to fight, but they also lay out detailed rules of engagement. Terrorists have broken these rules. The Islamic tradition expressly prohibits the killing of non-combatants, women, children, and the aged, as well as hermits and even trees. It forbids suicide; it even requires notice being given before an attack is carried out.¹⁷

Another Western scholar who expounds a similar view is Prof. David F. Forte from the Cleveland-Marshall College of Law, who writes:

Today, radicals like Bin Laden replicate that ancient sect that threatened to destroy Islamic civilization and its inception. ... They engage in tactics that are far beyond what is acceptable in the Islamic moral tradition. They insult the vast multitudes of Moslems who abhor such actions.¹⁸

In the Qur'an it says, "You may fight in the cause of God against those who attack you, but do not aggress. God does not love the aggressors."¹⁹ So, the Qur'an is clear that war may take place in only certain circumstances. These include: self-defence; to evict those who have evicted you, and to protect other believers when asked (depending on the status of treaties). War has to be publicly declared – notice has to be given – and it is to stop when the aggression against one's community has ceased. In terms of the rules of engagement, the Qur'an prohibits the violation of civilian rights, public facilities and nature.

¹⁷ See Teresa Watanabe, *The Influence of Islam*. Located on the Internet at Seattensnsource.com/html/nstionworld/134355213_islam.html.

¹⁸ David F. Forte, *Radical Islam vs Islam*. Originally published September 2001 for the Ashbrook Centre for Public Affairs Ashland University, Ohio, online at <http://www.ashbrook.org/publicat/oped/forte/01/islam.html>.

¹⁹ See also The Qur'an Al-Baqarah 244. You shall fight in the cause of God, and Know that God is Hearer, Knower.

When the above facts are considered it is clear that terrorists are not engaging in war as ordained under the Qur'an, nor are they able to refer to Jihad as justification for aggression.

Jihad for Self-defence

Self-defence can also justify Jihad, but this has only limited application. A clear examination of the relevant Qur'anic passages in which God request Muslims to fight, we find they state that war should be a means to drive away aggression and tyranny. The Qur'an relates that permission is granted to those who are being persecuted, since injustice has befallen them, and so God will support them. They can be seen as having been evicted from their homes unjustly, for no reason others than saying, "Our Lord is God". If it were not for God's support of self-defence then monasteries, churches, synagogues, and masjids – where the name of God is commemorated frequently – would have been destroyed.²⁰

Under Islam, the purpose and goals of fighting should also be clear, so that non-combatants are not targeted in time of war. Also, in the case where an amicable settlement has failed to be reached, war is permitted. In practice, however, the legal status of war is that of an unwanted obligation which must be carried out with a strict observance of human rights and moral values and entered into only as a last resort.

Islamic teaching and the prophet tradition emphasise that war is not to be entered into lightly and that peaceful deeds are preferred. Harun Yahya describes the approach of the Prophet Muhammad in the following words:

In none of these wars, however, were the Muslims the inciting party. Furthermore, Prophet Muhammad established a secure and peaceful social environment for Muslims and pagans alike by signing a peace agreement (Hudaybiya) which conceded to the pagans most of their requests. The party who violated the terms of the agreement and started a new war was again the pagans. However, with rapid conversions into Islam, the Islamic armies attained great power against the pagan Arabs and Prophet Muhammad conquered Mecca without bloodshed and in spirit of tolerance. If he willed, he could have taken revenge on pagan Leaders in the city.

²⁰ See these verses in the Qur'an 22 ; 39-to 40. 22;78. 2;190. 4;74-75-76. 28;83. " Why should you not fight in the cause of God when weakmen-women, and children are imploring, "Our Lord, deliver us from this community whose people are oppressive, and Be you our Lord and Master ". (4;75).

Yet, he did not do harm to any one of them, forgave them and treated them with the utmost tolerance.²¹

As this suggests, there is no foundation to the claim that terrorism can be justified under Jihad as an appropriate religious struggle or as an act of self-defence.

IV. VIOLENCE, TERRORISM AND LOCAL TRADITIONS

Violent government and social practices have been occurring for some time in Indonesia. However, the practice of terrorism, such as bombing, is a relatively new and rare phenomenon among Indonesians. I would argue that the arrival of this new form of violence has its roots in the culture as well as in the massive social transformation that has itself produced considerable political violence.

1. Violence in Local Tradition

Local or culturally-based factors in the growth of terrorism include the desire of some groups and people to bolster their sense of power. They are also the manifestation of the desire to maintain the dignity of the family name, tribe, religion and nation. Some terrorists argue that they are obliged to fight against what they perceive to be the domination and the injustice inflicted on their societies. Their circumstances dictate that they resort to terrorism rather than fighting in an open war.

This amalgam of beliefs has produced, in some cases, local cultures where violence and terrorism are deemed acceptable and are only later attempted to be justified on religious grounds. Long-running violent practices among societies such as those in South Sulawesi and Madura are related to motives such as restoring family as well as personal self-esteem. The term *carok* in Madura refers to a kind of duel between the one who has suffered from humiliation in respect of family or wealth and the person who inflicted those humiliations. This model of retribution may trigger a never-ending cycle of vengeance through the generations.²²

¹⁷ See, Harun Yahya, *The Pacifism of Islam*. Please see also the Qur'an verses al-Baqarah 39-40, 190. al-Mumtahanah 8-9. al-Maidah 64.

²² Taken from the author's own fieldwork. Note: the offenders themselves often will not distinguish between local cultural practice and Islamic law.

A similarly violent practice called *ngayau* (beheading a criminal who has violated tribal law) can also be found among the Dayak tribe. This can be done individually or collectively. The communal violence between the Maduranese and Dayaknese from 1996 until 2000 in Sampit was, it can be argued, instigated by the excessive humiliation inflicted by Maduranese (because of their social, economic and political success) upon the Dayaknese which gave rise to a perceived obligation to fight against this humiliation in an effort to restore their collective dignity.²³

In South Sulawesi, the practice of restoring one's pride is called *siri* (shame-honour). This practice also expresses the obligation felt by those who had been humiliated to restore personal as well as family dignity by murdering those who had inflicted the humiliation (*appaka-siri*). The most common motive for such practice is where a couple elope, having failed to get protection from the village Imam.²⁴

Violent practices motivated by the desire to defend self-pride or family dignity have become the local tradition among many Indonesian societies. For the most part, however, the impact of these practices have been limited by the range of weapons used, mainly machetes, arrows, dagger (known as a *keris*, *badiik*, *rencong* or *clurit* in various parts of Indonesia). Traditional practices such as these have been in place for generations and are even accepted to a certain degree by justice officials.

Terrorism as an outside influence

As opposed to the violent traditional practices described above, the type of violence shown in acts such the Bali bombing committed by the now-convicted Imam Samudra, Ali Imron and Faturahman Khozi, is relatively new and was adapted from outside Indonesia.

Between 1962 and 2002 sixty four bombing incidents took place in Indonesia. This figure, however, masks the fact that the rate of bombing dramatically increased in 1998, with eighty two per cent of bombings taking place in Java¹⁸. Further, the expert analysis of the 12 October 2002 Bali bombing and the 5 August 2003 explosion at the Marriott hotel indicated

²³ See Jawahir Thontowi, *Penyelesaian Konflik dalam Perspektif Islam* (The Islamic Perspective on Conflict Resolution). Yogyakarta, National Seminar, 6 June 2001.

²⁴ Taken from the author's own fieldwork. In use of murder motivated by elopement, some family victims believed that the punishment is justified under Islamic teaching.

the use of sophisticated devices with complex chemical substances.²⁵ This represents a significant departure from traditionally accepted modes of violence in Indonesia.

At least six elements have been identified that enable us to suggest the practice of bombing terror is the mixed result between local Indonesian traditions and 'imported' cultures or methods.

First, a number of the perpetrators arrested in Indonesia were ex-Moslem fighters who had spent time in Afghanistan, Chechnya, Bosnia, and Mindanao/Moro at various stages between 1981 and 1995. Their experience increased their capacity to use and produce weapons such as bombs. Studies on tribes in Afghanistan and North-west Pakistan conducted by Matheson, in Baluchistan, and Keiser, in Kohistan, conclude that there exists a tradition in those areas of weaponry and ammunition creation.²⁶ The suspicion is that these lessons were passed on to Islamic activists during their time in Afghanistan.

Second, the Indonesian bombers appear to have had a highly developed organizational network based on the cell system, which meant they were able to reside in places with no history of rebellion. The bombers were arrested in Lamongan (East-Java), Semarang and Sukoharjo (Central Java), which have been comparatively free of violence when compared with West Java, Aceh, and South Sulawesi. In spite of where they resided, the convicted bombers, as well as other suspected terrorists, appear to have had some involvement in violent activity in Poso, Ambon, and other regions, and they were also involved in bombings in Malang, Jakarta, and Medan.

Third, the way the Indonesian bombers utilised terror was very different from the way international terrorists, operating in the Middle East as well as Western countries, have operated. In the case of international terrorists, usually the group behind a bombing attack claims responsibility. This is done in order to acquire an improved negotiation position in order to fulfill longer-term objectives. No claim of responsibility, however, was issued from Imam Samudra, Dulmatin, Al Ghozi, Hambali, and Dr. Azhari. There was no clear statement of negotiating objectives.

Fourth, every detail on how the bombs were assembled was documented by the bombers. By comparison, in the world of organised crime as well as in the world of the professional

²⁵ See www.sekitarkita.com/oktol/tabbom.htm which lists the cases of terrorist bombing from 1962 to 2002.

²⁶ See Sylvia A Matheson, *The Tigers of Baluchistan. A Woman's Five Years with The Bugty Tribe*, London: Arthure Barker Limited (1967); R. Lincoln Keiser, *Friend By Day, Enemy By Night: organized vengeance in a Kohistani community*. Fort Worth: Holt, Rinehart & Winston (1991).

terrorist, documentation of this kind is extremely rare. It would appear the Indonesian bombers were willing to take risks, but also were relatively unprofessional.

Fifth, Indonesian public opinion in the aftermath of the Bali incident indicates that the bombers represent only a small minority who dream about creating a country based on the Islamic *shari'a*. By resorting to violence they have now alienated themselves against their fellow Indonesian Moslems, who have condemned them for tarnishing the good image of Islam.

Finally, the Indonesian bombers may have had some connection with transnational organised crime, possibly through weapon smuggling, as well as money laundering and drug trafficking. This would be in line with the connections between international terrorists and criminal syndicates in the Asian golden triangle, as well as Afghanistan and South America.²⁷

Taken all together these six elements highlight how the recent bombings in Indonesia represent a fusion of the local and the international. The above discussion also emphasises how small a bearing Islamic teaching has on the motivations and actions of these terrorists. This argument is extended further in the following sections where the reaction of Moslems, both globally and in Indonesia, to terrorist acts such as these are considered.

MOSLEM RESPONSES TO TERRORISM

Strong reaction by the Moslems worldwide to recent terrorist acts was shown not only by the sending of condolences following September 11 in New York and the 12 October 2002 tragedy in Bali, it can also be seen in the efforts of the Indonesian government, and the governments of other Moslem countries, to give concrete support to the international community's fight against terror.

Not less than fifty eight countries with Moslems representing the majority of their citizens supported the United Nations Security Council resolution regarding the tragedies of 11 September 2001 in New York and 12 October 2002 in Bali. They have all condemned the attack and support bilateral or multilateral cooperation in eliminating terrorism.

²⁷ The six characteristics of Indonesian terrorism identified here are based on more extensive research set out in working papers, One Perpu and RUU Anti Terorisme Bagi Umat Islam (Martial Law and Draft of Anti Terrorism Law) November 2nd, 2002. These issues were also explored by the author in articles written in the local media Kedaulatan Rakyat between December 2002 to January 2003.

The April 2002 Islamic International Conference in Kuala Lumpur, which was attended by fifty two Moslem countries, came to the following conclusions:

- That Islam denounces and rejects all forms of intimidation of the innocent or harm to their properties or places of worship;
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- That the Conference calls for the mobilising of efforts at all levels to combat terrorism and the Conference countries will play an active role in this;
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- The OIC Foreign Minister called in the final Communiqué for the issuance of a declaration that condemns all types of terrorism, including state terrorism, irrespective of its motives or its victims;
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- The OIC rejected any attempt to link Islam or Moslems to terrorism as terrorism has no association with any religion, civilization or nationality;
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- The OIC also argued that the war against terrorism will not succeed if the environment that breeds terrorism, including foreign occupation, injustice and exclusion, remains.
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- The OIC argued that it was important to define the concept of terrorism and to differentiate between terrorism and the struggle of nations to obtain independence.
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- The OIC called for Moslem countries to study the causes of terrorism linked to poverty, injustice and repression. The failure of the Moslem countries to uproot the causes of terrorism will lead to more feelings of bitterness and disappointment.²⁸
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In addition to these statements, several noted Moslem Leaders in Indonesia such as K.H. Abdurrahman Wahid, Nurcholis Madjid, M. Syafei Ma'arif, K.H. Muzadi, M. Amien Rais, Azumardi Azra, and other prominent figures, publicly agreed that:

²⁴ The Organization of the Islamic Conference declarations can be found at <http://www.oic-oci.org/>.

- The existence of some radical Moslem groups without doubt had been confirmed, but that they were just a small minority; they were not part of the political system or the Indonesian national culture. Because it threatens the existence of Moslems both worldwide and in Indonesia, together with Indonesian leaders and law-enforcers, the group of leaders committed itself to fighting terrorism.
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- Any act of terrorism by an individual or group is against the law (*Haram*) because such action is in contrast to the teaching of Qur'an and Haist. Therefore, the death penalty given by the extraordinary court in the case of the Bali bombing is just. The death penalty was appropriate because their action was vicious and itself deadly. Hopefully, capital punishment will deter any potential terrorists from striking again.
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- The Islamic *shari'a* condemns the use of terrorism for threatening human lives and civilization, in respect of both Moslem and non-Moslem societies. From the perspective of the Qur'an, Islam is a religion that is opposed to any violent, destructive, harmful, and murderous actions that lack justification.
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- Indonesian Moslems hope that Western society, especially the mass media and the Government of United States of America, will not use double standards in dealing with terrorism by only seeing Islamic peoples as the suspected perpetrators of terror, because that would generate hostility in Indonesia, the world's most populous Moslem country, and it would encourage other disappointed militant Moslems to continue their resistance by the means of terrorism.
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- Indonesian Moslems are generally moderate and open-minded. Because of that, it is naïve for anyone to regard Islam as being identical to terrorism.²⁹
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By examining these two collections of statements from Moslem leaders, it is clear that there is an absence of support for terrorists among the political leadership of most countries in which Islam is the dominant religion.

²⁹ See extensive reporting by Majalh TEMPO 40/XXXII December 2nd-8th, 2002. P.40-46. See also www.gatra.com, GATRA No.1/IX/23 November 2002. Amunisi Dalam Pipa (Amonisie in the pipe) P.26-29. Also TEMPO No.38/XXXI/18-24 November 2002

CURRENT INDONESIAN RESPONSES

The creation and implementation of anti-terrorism policies and laws in Indonesia has not occurred without some conflict. There have been numerous accusations from a variety of quarters, including Moslem organisations, that the anti-terrorism moves were carried out at the request of the US government, especially the passing of Government Laws No 1 and 2, 2001. The reality, however, is that the introduction of such laws was inevitable in light of the threatening situation.

Initiatives of Moslem Religious Leaders

In the aftermath of the Bali bombing, besides the sympathetic actions of government officers, especially the Indonesian police, an important event took place. Noted religious leaders from MUI, Muhamadiyah, NU, WALUBI, PGI, and others made a visit to the crime scene. The importance of this visit was heightened in light of the accusations made against Islam and Moslems since the tragedy of September 11 2001, and in light of the adverse treatment some Moslems received in countries like USA, England and Australia.

This visit to Bali had a significant impact in Indonesia. First of all, the presence of this range of religious leaders indicated the degree of unity with which they were opposed to terrorism. Together they declared that the perpetrators of the bombing were not related with their religion, that a 'villain' from whatever religion would remain a 'villain' and it had nothing to do with his or her religion. Secondly, through their presence they may well have stopped or reduced religious-related social conflict in the area. As the unrest in Ambon and Poso has shown, there is always some danger that violence that is political and social in nature will use religion as an excuse. Finally, their collective visit helped minimise the validity of any Western accusations that the bombers reflected the beliefs of most Moslems.

It has to be admitted, however, that the feelings of Indonesian Moslems toward the West, and the United States in particular, remains conflicted. An example of this could be seen after the Bali bombing at the October 2002 *Badan Koordinasi Pesantren Seluruh Indonesia* (the coordination board of the Indonesian Islamic College) conference in Bogor

which was attended by 185 *kyai* and *Ustadi-ustadi* from all parts of Indonesia. During the question and answer session, some questioners delivered their analysis that the arrests of Moslems that were involved in the bombing terror in Bali 12 October 2002 were actually part of a provocative anti-Islam campaign. They called for resistance against the anti-terrorism measures taken by the Indonesian government on the basis that they strengthened the United States, and that US foreign policy is always related to the Israel. They also claimed that Israel accuses HAMAS and its leaders of acts of terrorism, while the Israelis themselves act in the same way when they retaliate, and the US government fails to act against this state terrorism. This emphasises how the US-Israel relationship is an issue that continues to be a source of concern for many Indonesian Moslems.

Current Government Policy

There had been considerable uneasiness and uncertainty in Indonesia prior to the Bali bombing concerning the manner in which law-enforcement agencies were tackling the issue of counter-terrorism. The key issues were whether the Indonesian Government and its agencies were acting in a way that contradicted democratic and human rights principles. Such arguments were suspended when the tragedy of 12 October 2002 struck the international community, as evidenced by the acceptance of the way the Indonesian police (POLRI) worked together on the investigation with those from countries such as Australia, the US, and England. There remain, however, several debates over the legal and political actions of the Indonesian Government in relation to counter-terrorism:

1. The Government law (Perpu) No. 1 and 2, 2001, which was approved by the Indonesian Parliament at a much later stage as Law No.15/2003, was claimed to be premature and unlawful because it did not have any clear legal foundation in national as well as international law. Also, the drafting process only involved the President and the Minister of Justice, there had been insufficient debate allowed during its passage through the House of Representatives.
- 2.
3. It would have been possible to carry out counter-terrorism activities under existing legislation, namely, the KUHP (Criminal Code Procedures) and the aeroplane terrorism law.
- 4.

5. Some substantial articles in the Perpu No.1 and 2, 2001 (Law No.15/2003) are in contradiction with the principles of the criminal code (*Hukum Pidana*) and human rights.

6.

To pick up several points from these arguments. First, concerning the issue of the criminal code, the inclusion of a retroactive principle in the anti-terrorism legislation contradicts the legality principle. Another key element of the legislation, the ability to make ‘preemptive’ arrests without any conclusive evidence, is against the presumption of innocence principle.³⁰

Second, information from intelligence sources, after being approved by a court of law, can be used as initial evidence in a police investigation. This clearly violates the KUHP and at the same time breaches the established jurisdiction of the Indonesian police force.³¹

Third, the law gives full authority to the President to act as the coordinator of the anti-terrorism task force. Article 45 of the law is seen as an executive intervention into what should be judicial authority, and there is a danger of an abuse of power.³²

Because of these internal weaknesses of Law No. 15/2003, one day after the legislation of the law on February 2003 the Indonesian Minister of Justice, Yusril Ihza Mahendra, proposed that there would need to be some amendments. This issue was picked up by the Law Faculty of Universitas Islam Indonesia and discussed in a national workshop in April 2003. The conclusions reached by the workshop are as follows.

In general, a better philosophical foundation is needed to underpin the legislation, and it was suggested that this might be achieved by phrasing the law as being aimed at achieving ‘Everlasting Peace and Social Justice’, as, clearly, the criminal act of terrorism transgresses core justice and human rights.

In relation to specific articles, Article 1 is too general and obscure, and needs to be reformulated so as to emphasise that explosive materials includes all kinds of chemical

³⁰ See Jawahir Thontowi. *Kajian UU Terorisme Dalam Perspektif Hukum Internasional*. Delivered at a National Workshop conducted by the collaborative Muslim Contribution Towards the Amendment of Law No.15/2003. Yogyakarta. April 21st–23rd, 2003

³¹ See Muzakir. *Kajian UU Terorisme Dalam Perspektif Hukum Pidana*. Delivered at national Workshop. Delivered at a National Workshop conducted by the collaborative Muslim Contribution Towards the Amendment of Law No.15/2003. Yogyakarta. April 21st–23rd, 2003

³² See SF-Marbun. *Kajian UU Terorisme Dan Perspektif Administrasi Negara*. Delivered at national Workshop. Delivered at national Workshop. Delivered at a National Workshop conducted by the collaborative Muslim Contribution Towards the Amendment of Law No.15/2003. Yogyakarta. April 21st–23rd, 2003

substances that can be used in bombs, landmines, hand grenades, or any other explosive items.

Article 7 should be deleted and the new article inserted that declares terrorism is a deliberate action against the law through the use of violence and the threat of violence which endangers a person's body, life, living, and freedom, causing fear among the public, as well as the deaths of innocent members of the public in massive numbers, and is carried out during a period when war has not been formally declared.

Article 8 should be deleted because the substance of the article has been already stipulated by Article 479 KUHP of Law No.44/1976 on Aviation Crime. Similarly, Article 9 should be deleted as it is covered under Law No.12/Drt/1951 on Firearms.

As an important amendment, the substance of Article 26 must be changed; the use of intelligence data can only be for the sake of investigation (non-pro justicia), it should not be used as formal evidence.

Article 45, which grants the President the power for formulating necessary policies in eliminating terrorism, should be deleted because of the potential that exists for it to be abused in a way that would result in the other articles in the legislation ceasing properly to function.³³

Overall, the bulk of the articles in the anti-terrorism legislation as it has been transformed from Government Law (*perpu*) into Law (UU), are acceptable. The functional value of the law will be in the way it provides legal assurance for most preventative actions and in the way it will help educate society. However, as the above brief discussion shows, there are some articles that must be altered or deleted, primarily because the existence of such articles (especially Article 45) will make open and independent judicial processes impossible. The consequence of keeping articles such as Article 45 ultimately will be the failure to provide fair trials, and instead what will happen is the violation of human rights.

THE IMPLICATION OF LAW NO.15/2003 FOR MOSLEM SOCIETY

³³ A complete Draft of Amandement for the Law 15/2003 made by committee team of the Faculty of Law UII. Yogyakarta. May 6th,2003

Anti-terrorism efforts have had implications for Moslems around the world. Even in Australia there have been examples of an excessive use of force. In Thornlie, West Australia, Fadli Jaya Basri was arrested and his house was ransacked by the team from the ASIO (Australia Security and Intelligence Organisation), and Australian Federal Police (AFP). Similarly, Taufiq Ali was interrogated by the federal police after the door of his house was demolished. A similar incident happened to Sutyra in Melbourne. The claim has been made in Indonesia that these arrests were made because the people were suspected due to their Arab-like clothing and the fact they live in areas which have a concentration of Moslems.³⁴ This is indicative of how anti-terrorism activity and anti-Islamic sentiment in Western countries can too easily become merged.

Within Indonesia there is a fear that the sort of human rights violations that occurred so many times under Suharto's New-Order regime have returned, even amid the new found spirit of democracy. The most problematic incidents have involved the arrests of activists, some who had been to Afghanistan, from a number of mosques. The number of these arrests increased after the 5 August 2003 attack on the Marriott Hotel. The Moslems arrested happened to wear Arab-like clothing, and their wives generally wore veils to cover their faces. There have been more than thirteen arrests, as reported to the Legal Aid Institute (Lembaga Bantuan Hukum). The police were accused by the families of those arrested of abduction because the activists, according the testimony from their wives, all disappeared without any news or warning, and in some cases it was only after twenty three days that the police passed on any information to the families as to what had occurred.

One of those arrested/abducted, Hafids, a management consultant in Jakarta, recalled in an interview that, when he was about to be arrested, he was approached by some men wearing plain-clothes, presumably policemen. He was then asked to step in a vehicle, whereupon he had his eyes blindfolded. No warrant was shown for his arrest. He was taken to an unknown location and interrogated for several days before being released on the basis that he had not had any involvement in any terrorist activities. According to the coordinator from the team seeking to protect the rights of those who have been arbitrarily arrested, Mahendradata, they had sixteen reports of missing persons who have allegedly been detained by the police. Some of those reports were made two days after the disappearance, while other reports were

³⁴ See Memburu Hantu Jamaah Islam (Jamaah Islam Haunted). TEMPO Magazine No.30/XXXI/04-10 November 2002.

not made until a delay of two weeks. The team is now taking legal action against the police.

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Lawyers defending the, now convicted, Bali bomber, Amrozi, have also experienced some adverse physical treatment from plain clothes police, with some lawyers claiming that they have been slapped or hit in the face. This represents not only an attempt to influence the fair and independent judicial process, but the officers also clearly neglected their duty by condoning violence.

Even though Law No.15/2003 has been passed and used against Imam Samudra, and Amrozi, its effectiveness is still being questioned. There continue to be threats of bombings, and in the case of the 5 August 2003 Marriott Hotel bombing, such threats have become a reality. In the aftermath of that bombing, some high-ranking officials in the military have begun to express their opinion on how best to deal with the situation. TNI General Endriantono Sutarto, Minister of Defense Matori Abdul Jalil, and the former head of Kopkamtib (Operational Command for the Restoration of Security and Order a now defunct internal security agency), Sudomo, have argued it is necessary to have a national security law, like the Internal Security Act in Malaysia. Their argument is that Law 15 on terrorism alone is inadequate. One of the characteristics of the Malaysian ISA, however, is that it allows for preventative detention. Through this system, it is claimed, security and order among the citizenry can be secured – that the lack of good preventive measures is one of the weaknesses of Law No.15/2003.

This proposal has been wholly rejected by human rights activists. Those who disagree include: the Vice Chairman of the National Commission for Human Rights, Shallahudin Wahid, Bambang Widjayanto, Herman Siregar, former Minister of Justice, Muladi, and Munarman. According to the coordinating Minister for Political and Security Affairs (*Menko Polkam*), Bambang Yodoyono, Indonesia has no plan of legalizing a law identical to the Internal Security Act that has been implemented in Malaysia and Singapore as a new measure in preventing terrorism. There will be no question of the Indonesian Government simply imitating the Malaysian and the Singaporean examples.

Human rights activists reject any proposed legislation along the lines of the ISA because of the opportunities it provides for human rights violations by the government. The fear is that such a law could bring about a deterioration of Indonesia's fragile democracy and human rights system and a return to the activities of the Suharto New Order regime. Under the ISA

²⁶ See [www. GATRA.com](http://www.GATRA.com). "Penangkapan Tanpa Pemberitahuan. "PENCULIKAN" (Detention

approach there could also be a return to the old anti-subversives law. As it is, the ‘middle way’ represented by Law No.15, and clearly supported by Bambang Yodoyono, Indonesian Security Minister, is quite politically strategic on this level. Law No.15/2003 is now an established, legitimate piece of legislation which is open to later, incremental, amendment that could make it more preventive, and thus repressive.

As the above discussion suggests, there remains a considerable level of concern as to the human rights status of Law No.15/2003. Following the decision by the district court in Bali to sentence Imam Samudra and Amrozi to death, it is now a case of seeing whether or not that has acted as a deterrent, and whether the trade-off between human rights and security has proven to be effective.

CONCLUSION

From the explanation above, it is clear that some small groups of Islamic extremists have resorted to the use of terrorism, and that there is some accuracy to Lewis’ comment that most Moslems are not fundamentalist, and most fundamentalists are not terrorists, but that most present day terrorists are Moslem.³⁶

This paper, however, argued that the beliefs of Islamic terrorists are in direct violation of the principles and universal values, as well as legal norms, according to the Qur’an and Hadith. They have misunderstood the teachings of Islam, and then applied those incorrect understandings in response to their perceptions of an unjust world-order. Their equation of Islamic *shari’a* with criminal code punishments (such as the death penalty, hand-decapitation, and stoning) as well as their misinterpretation of Jihad indicates not only that they are not representing the basic principles of Islam, but that their views are not held by the majority of Moslems.

This paper also indicated that there was significant overlap in the arguments of Western scholars such as Amstrong, Esposito, Lebon, and Lewis and those of Moslem scholars like Mandudi, Ibnu Qoyyim, and Al-Ghozali. Their comprehensive, systematic analysis of Islam

Without Notice to Family). See also KOMPAS.cyber Media

³⁶ Bernard Lewis. Op-Cit P:37. Similar view is also advanced by Azyamardi Azra in Jakarta post December 11th,2001. He say it is now the right time for Indonesia Moslem leaders, the great majority of them moderate, to sincerely admit that there is a serious problem of radicalism among certain Muslim groups. See also in Islam and Terrorism. Dari Minyak hingga Hegemoni Amerika. Yogyakarta. UNCOK Press. 2003

as an anti-violent, peace-supporting religion is critically at odds with that interpretation of Islam that has been used by extremists in order attain short term political goals.

Even though there has been much debate between the government and Indonesian Moslems over the anti-terrorism measures embodied in Law No.15/2003, the fact police have successfully captured and brought to court a number of the Bali bombers shows that the legislation has some benefits; its costs lie in the potential for human right violations in the course of its implementation. The arbitrary arrests of Moslem activists, and the abuse directed at the Bali bombers' lawyers, show that there is some potential for the Indonesian Government to breach the rights of its citizens as it applies its counter-terrorism legislation. This emphasises the need for further revision of Law No.15/2003 in a way that ensures terrorism is prevented, yet also protects the human rights of Indonesian Moslems. Finally, as opposed to the argument of some of the political elite that an Internal Security Act is required, this paper put forward a number of potential amendments to Law No. 15/2003, based on the work in this area of Universitas Islam Indonesia, that would maintain its effectiveness as an anti-terrorism instrument while ensuring Indonesian citizens are not persecuted.