

## CHAPTER TWO

### LITERATURE REVIEW

#### A. Terrorism

Terrorism is generally understood as those acts of violence which spread terror among the civilians and civilian population. As far as the legal definition of terrorism is concerned, no comprehensive and exhaustive definition has yet been adopted by the international community. Having consensus upon it, but a number of international treaties and other international and regional instruments have included certain acts which amount to terrorism. In 1994, the General Assembly's Declaration on Measures to Eliminate International Terrorism, set out in its resolution 49/60, and stated that terrorism includes "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes"<sup>1</sup>

According to Article 2 General Assembly's Declaration on Measures to Eliminate International Terrorism defines the definition of terrorism as the unlawfully and intentionally causing, attempting or threatening to cause:<sup>2</sup>

- a. death or serious bodily injury to any person;

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<sup>1</sup> Saqid Jawad, "Terrorism and Human Rights", *Civil Judge Magistrate Journal*, 2015, p. 105.

<sup>2</sup> *Anonymous*, Office of the United Nations High Commissioner for Human Rights Human Rights, Terrorism and Counter-terrorism Fact, <http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>, p. 32, accessed November 30<sup>th</sup>, 2016 on 1.06 p.m.

- b. Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment;
- c. damage to property, places, facilities, or system, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.

Terrorism is an action which absolutely violates law, not only national law but also international law. It is a crime action, a murder and human rights violation.

Oxford Dictionary of Law defines Terrorism as the use or threat of violence for political, religious, or ideological ends. Where the use or threat of such action or violence is made for the purpose of advancing a political, religious or ideological cause.<sup>3</sup>

It is quiet similar to what stated in The Longman Dictionary of Law which defines terrorism as:<sup>4</sup>

The use or threat of action designed to influence the government or to intimidate the public, made for the purpose of advancing a political, religious or ideological cause, where that action involves serious violence againts a person, serious damage to property, endanger a person's life, other than that of the person committing that action, create a serious risk to the health or safety of the public or the section of it, or is designed seriously to interfere with or seriously disrupt an electronic system.

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<sup>3</sup> Jonathan Law, 2015, *Oxford Dictionary of Law*, Eight Edition, United Kingdom, Oxford University Press, p. 617

<sup>4</sup> P.H. Richards and L.b. Curzon, 2011, *The Longman Dictionary of Law*, Eight Edition, United Kingdom, Pearson Education Limited, p. 461

It is clearly states that the terrorism action can endanger a life of person, property, the safety of public or private interest, and cause the risk that can give lost for every elements of life.

The Black Dictionary of Law also defines the meaning of terrorism as the use or threat of violence to intimidate or cause panic as mean of affecting political conduct.<sup>5</sup> In other word, terrorism can be defined as the action which cause panic attack in several aspect including political aspect.

There is no doubt that terrorism is a great violation and threat to human rights. It violates all the provisions of all the international human rights and other instruments. Most importantly it directly deprives a person from the enjoyment of fundamental human rights, for instance right to life, which is the supreme human right as defined in the international convention on civil and political rights and other human rights instruments, freedom, and rule of law.<sup>6</sup> Moreover it destabilizes the states and therefore anarchy and chaos spread in the society. Therefore all the states are obliged to protect these human rights of the individuals from every danger and protect them against the acts of terrorism by taking appropriate measures in this regard.

On the other hand, the action of terrorism as the violation of law is regulated in some national law and international treaties. In Indonesia the

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<sup>5</sup> Bryan A. Garner, 2009, *Black's Law Dictionary*, ninth edition, p. 1611

<sup>6</sup> *Op.Cit*, p. 106

law that deals with terrorism is stated in Law No. 15 Year 2003 and Law No 9 Year 2013. Beside that, according to International Law there are about 19 conventions related to the terrorism and one of them is the 1997 International Convention for Suppression of Terrorist Bombing<sup>7</sup>.

It is clear that every element of state around the world support the combating terrorism effort including Indonesia. By regulating some regulations and laws, it shows that Indonesia concern with the effort to combate the terrorism.

## B. Types of Terrorism

M. Kalliopi K. Koufa<sup>8</sup> differentiates type of terrorism, as follow: <sup>9</sup>

- a. Individual or Group Terrorim;
- b. International State Terrorism;
- c. State Regime or Government Terror;
- d. State Sponsored or State Supported Terrorism;
- e. National Liberation Struggles for self-determination.

An other opinion on the type of terrorism also stated by Ekkart Zimmermann in his journal as follows: <sup>10</sup>

- a. Political Terrorism, devided into some categories:

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<sup>7</sup> *Anonymous*, International Treaties Regarding Terrorism at [www.un.org/en/conterterrorism/legal-instrument.shtml](http://www.un.org/en/conterterrorism/legal-instrument.shtml) accessed on October 15th, 2016 at 08.25 a.m.

<sup>8</sup> M. Kallopi K. Koufa is the United Nation Rapporteur for the U.N Commission Human Rights

<sup>9</sup> Marjorie Cohn, "On Terrorism and National Liberation Struggles", *IIUM Law Journal*, Volume 11, Number 2, 2002, p. 279

<sup>10</sup> Ekkart Zimmerman, "Form and Causes of Terrorism: What Do We Know?" at [http://paperroom.ipisa.org/app/webroot/papers/paper\\_892.pdf](http://paperroom.ipisa.org/app/webroot/papers/paper_892.pdf) accessed on October 16<sup>th</sup>, 2016 at 10.12 a.m.

a) Sub-state Terrorism, it also divided into some categories:

- Ideological Terrorism;
- Etho-nationalist Terrorism;
- Regio-political Terrorism;
- Single-issue Terrorism;

b) Stated-supported Terrorism;

c) Regime or State Terrorism;

d) International Terrorism.

b. Criminal Terrorism;

c. Pathological Terrorism.

According to what have been written by Omar A Lizardo and Albert J.Bergezen on their journal, they divided the kinds of terrorism into 3 categories such as:<sup>11</sup>

- a. First, the terror in the core. It means that the terrorism action can be assumed as one of the three ideological forms such as: an ethnic separatist grab, radical leftist organization such as the Japanese Red Army, or an anarchic-nihilist variant of core origin or core target terror;
- b. Second, the struggling against oppression. This kind of terrorist can be categorized as the group of terrorist which arise in

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<sup>11</sup> Omar A Lizardo and Albert J.Bergezen, "Type of Terrorism by World System Location", *Humboldt Journal of Social Relation*, Volume 27, Number 2, 2006, p. 163.

periphery and semiperiphery and attempt to attack the government;

- c. Third, the transnational turn. This kind of terrorism can be categorized as terrorism action that projected from one area of the world system core/periphery structural division of labour to another.

### C. Human Rights

It is possible to argue that human rights is the fundamental right rights to certain specific freedoms, and it correlates obligation to consider the associated duties that must also be centred around what other can do to safeguard and expand these freedoms.<sup>12</sup> The International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Right (ICCPR) said that all human rights drive from the inherent dignity of human person.<sup>13</sup> So, by using the statement above, it can be concluded that the human rights is owned by every human being for protecting the dignity of human being themselves.

Human rights are generally defined as those rights which a person possesses by his simple characteristic of being a human. Moreover, these are those rights which are available to a person and protect his interests, freedom, dignity and other rights against the interference and excesses of

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<sup>12</sup> Amartya Sen, "Human Rights and Capabilities", *Journal of Human Development, Volume 6, Number 2, 2016*, p. 152.

<sup>13</sup> Cristopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights", *The European Journal of International Law, Vol. 19, Number 4, 2002*, p. 656

states and their agents. Major human rights corpus included civil, political, cultural, economic, and social rights, and is universal in nature because these are available to all human beings. In other words, human rights are inherent to all human beings, irrespective of nationality, race, sex or any other distinction.

Human Right is the fundamental rights that is given to every human being that is given directly by the God. It cannot be distrubed by anyone. It is independently owned by person without doing the obligation.

Black's Law Dictionary defined the Human Rights as the freedom, immunities, and benefits that all human beings should be able to claim as a matter of rights in the society in which they live.<sup>14</sup> By using the this definition, it may be understood that human rights can be claimed by every human being as an important matter to their live.

According to what has been explained by Bernadette Rainey on his book Human Rights Law that Kant as the philosopher define human rights as the rights that have morals imperatives known as "categorical imperative". It means that human has an inherent dignity that cannot be violated.<sup>15</sup>

On the other hand, the term of human rights are defined as the rights or moral claims that are regarded fundamentally to every human being such as freedom of movement, freedom from torture, and freedom of expression

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<sup>14</sup> Bryan A. Garner, 2009, *op.cit*, p. 809

<sup>15</sup> Bernadette Rainey, 2012, *Human Rights Law*, United Kingdom, Oxford University Press, p. 2

or the fulfillment of the basic need as food, shelter and clothing.<sup>16</sup> So, it can be concluded that the fundamental thing in human rights is the fulfillment of the rights of from every human being.

Although every individual has the fundamental human rights, every individuals must also respect each other's human rights. It is naturally regulated to avoid the chaos of the society because of the similar rights that owned by the individuals.<sup>17</sup>

The statement above explained that every formulation of society must respect the other's rights including the state and citizens. In other words, the human rights of citizen must be protected and respected by the state. Moreover, the state must formulate the regulation to ensure the protection of human rights and ensure the implementation of the regulation itself.

refreshing to what explained by Howard Davis on his book Human Rights Law the idea of human rights mean the need to accord proper respect to the dignity of all individual human beings. State and government, in particular, must ensure that individual dignity is respected in their laws and practices.<sup>18</sup> It proves that the state and government must ensure that the human rights of the citizens are respected and protected.

Indonesia also did the effort to ensure the human rights are respected and protected. It is formulated on Indonesian Human Rights Law on Law No. 39 Year 1999. According to Article 1 Point (1) on Indonesian Human

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<sup>16</sup> Stave Foster, 2012, *Human Rights and Civil Liberties*, United Kingdom, Oxford University Press, p. 8

<sup>17</sup> *Ibid*

<sup>18</sup> Howard Davis, 2009, *Human Rights Law*, second edition, United Kingdom, Pearson Education Limited, p. 4



Rights Law defines the human rights as a set of rights attached to nature and human existence as a creature of God Almighty and it is His grace that must be respected, upheld and protected by the state, law, government, and everyone for the respect and protection of human dignity.

Indonesia also ratified the International Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment on October 23rd, 1985. It shows that by ratifying the convention, Indonesian legal system is free from the torture action.

The Indonesian regulation has regulated the protection the human rights for every human being. Then, Indonesia must ensure the practice and implementation for the human rights protection itself.

#### D. Human Rights Protection in the Constitution and Laws

In Indonesia ,human rights protection is guaranteed in the constitution and laws. In the Indonesian 1945 Constitution human rights are regulated as stated in Chapter 9 and article 28A that every person shall have the right to live and to defend his/her life and existence.<sup>19</sup>

The other article of the Indonesian 1945 Constitution regulates about the similar regulation on human rights deals with the rights of life and the protection of the life. The Article 28G Paragraph 2 said that:<sup>20</sup>

“Every person shall have the right to protection of his/herself, family, honor, dignity, and property, and shall have the right to feel

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<sup>19</sup> Indonesian 1945 Constitution, Chapter 9, Article 28A

<sup>20</sup> *Ibid*

secure against and receive protection from the threat of fear to do or not do something that is a human right.”

The article above explain that every person has right to get protection of themselves, their family or even their honor and also ttheir property and the state must give the guarantee for the right of protection itself.

Then, the regulation regarding the protection of every people to be free from torture action regulated in article 28G Paragraph (2) which states that:<sup>21</sup>

“Every person shall have the right to be free from torture or inhumane and degrading treatment, and shall have the right to obtain political asylum from another country.”

On the other hand, Indonesian Laws also regulates about the protection on human rights in detail. Indonesia is one of the countries which ratified the Universal Declaration of Human Rights. After ratifying the declaration, Indonesia formulated the law regarding human rights. It is Law No. 39 of 1999 about Human Rights. On this Laws, there are some articles which regulate the right on the protection of life and the respect for the life of human being, such as Article 4, Article 9 Paragraph (1), Article 29 Paragraph (1), Article 69 Paragraph (1), Article 71, Article 71 and Article 100 on Laws No. 39 Year 1999 on Human Right.<sup>22</sup>

On October 28<sup>th</sup> 1998, Indonesia also ratified Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this Convention, there are some articles that regulate about the

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<sup>21</sup> *Ibid*

<sup>22</sup> Indonesian Human Right Law Number 39 of 1999

regulation human rights such as Article 1 Paragraph (1), Article 1 Paragraph (2), Article 6 Paragraph (1), Article 7, Article 9 Paragraph (1), (2), (3), (4), and (5), Article 10 Paragraph (1), Article 14 Paragraph (1) and (2) and Article 26. These article regulate about the protection of human rights that every human being has right free from torture action.<sup>23</sup>

After ratifying this convention, Indonesia formulated Law No. 5 Year 1998 about Ratification the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. By formulating this law, it shows that Indonesian Government has concern on the protection of the right of every people on torture. Indonesia's effort to abolish torture action on giving punishment can be shown by formulating this law.

Moreover, Indonesia also as the state which ratified the International Covenant on Civil and Political Rights (ICCPR). In this convention there are some articles that regulate about the protection of human rights, the protection for life for every human being and the protection for every human dignity. The articles are Article 19, Article 9 Paragraph (1), (3) and (4), Article 6 Paragraph (1) and (2), Article 7, Article 4, Article 16, Article 10, Article 14, Article 26 and also stated on the first paragraph in this convention. After ratifying ICCPR, Indonesia formed the Law No. 12 of 2005 about the Ratification the International Covenant on Civil and

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<sup>23</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 Accessed on <http://www.unhcr.org/protection/migration/49e479d10/convention-against-torture-other-cruel-inhuman-degrading-treatment-punishment.html> accessed on December 2<sup>nd</sup>, 2016 at 9.00 p.m.

Political Rights (ICCPR) to ensure the protection of human rights for every human being and ensure human dignity.