

## CHAPTER TWO

### LITERATURE REVIEW

#### A. Terrorism Actor

Terrorism is hard to ignore. Almost every day television news shows, newspapers, magazines, and websites run and re-run pictures of dramatic and usually bloody acts of violence carried out by ferocious looking terrorists or claimed by militant groups. Although there are many definitions and terms that concern on terrorism act, there were not specific terminologies on terrorism.

Philip Jenkins argued that the offenders of terrorism acted with various motivations or intentions. Terrorism action is different from conventional crimes such as bank robberies. If someone enters a bank with a weapon and demands money, then that is a robbery, pure and simple. In this case, it does not need to know the names of the culprits or their motivations. But in case of terrorism, investigators still seek the motive of the offenders. The motives will influence the level of terrorism.<sup>1</sup>

M. Kalliopi K. Koufa,<sup>2</sup> the U.N. special reporter for the U.N. Commission on Human Rights, has differentiated between five different types of terrorism:<sup>3</sup>

1. Individual or group terrorism
2. International state terrorism
3. State regime or government terror

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<sup>1</sup> Philip Jenkins, 2003, *Images of Terror: What We Can and Can't Know about Terrorism*, Hawthorne, New York: Aldine De Gruyter. p. 6.

<sup>2</sup> Kalliopi K. Koufa, Special Rapporteur, Commission on Human Rights, *Terrorism and Human Rights*, ECOSOC, E/CN.4sub.2/2001/31, 27 June 2001, para. 42, at 12.

<sup>3</sup> Marjorie Cohn, "On Terrorism and National Liberation Struggles", *IIUM Law Journal*, Volume 11, Number 2, (2003). p. 279.

4. State sponsored or state supported terrorism; and
5. National liberation struggles for self-determination.

Defining the word of terrorism, the U.S Code mentions that:<sup>4</sup>“ . . . premeditated, politically motivated violence perpetrated against noncombatant targets by sub national groups or clandestine agents, usually intended to influence an audience . . .”

While, Richard and Curzon defined terrorism as 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 against a person, serious damage to property, endangers a person’s life, other than that of the person committing the action, creates a serious risk to the health or safety of the public or a section, or is designed seriously to interfere with or serious disrupt an electronic system.<sup>5</sup> Curzon also emphasizes that terrorist is a person who has committed an offence under the Terrorism act.<sup>6</sup>

By most definitions, though, it can highlight that terrorism is a specific action which involves political intention and therefore it needs to know the person or group responsible.<sup>7</sup> Terrorist may argue that their basic need are insulted, so

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<sup>4</sup> Title 22 of U.S Code, Section 2656f(d). The term of “non-combatant,” which is referred to but not defined in 22 USC. 2656f(d)(2), is interpreted to mean, in addition to civilians, military personnel (whether or not armed or on duty) who are not deployed in a war zone or a war-like setting.

<sup>5</sup> P.H. Richard and L. B. Curzon, 2011, *The Longman Dictionary of Law*, Eighth Edition, England: Ashford Colour Press Ltd. p. 461.

<sup>6</sup> L. B. Curzon, 2010, *Dictionary of Law*, Sixth Edition, Malaysia: International Law Book Services. p. 416.

<sup>7</sup> Philip Jerkins, *Op. Cit*, p. 7

that they act in self-defense against military power taking their lives, economic power taking their livelihood, political power taking their freedom and cultural power taking their identity away from them. Furthermore, terrorism is an action taken when people assume that the state has violated their rights.<sup>8</sup>

## **B. International Covenant on Civil and Political Rights (ICCPR)**

Human rights are the rights that inherent to all human beings, whatever nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. Human being are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.<sup>9</sup> Generally, human rights are divided into three types: (1) civil and Political rights; (2) economic and cultural rights; (3) people's rights. The term of 'human rights' came into a wider use after World War II, replacing the earlier phrase "natural rights".<sup>10</sup>

After the horrors of World War II, a broad consensus emerged at the worldwide level demanding that the individual human being be placed under the protection of the international community.<sup>11</sup> The UN's initial task after the War

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<sup>8</sup> Johan Galtung, Erika Degortes, Irene Galtung, Malvin Gattinger and Naakow Grant-Hayford, 2015, *Abolishing War Criminalizing War Removing War Causes Removing War as Institution*, Malaysia, IIUM Press, p. 12.

<sup>9</sup> United Nation Human Rights Office of the High Commissioner, "What are Human Rights?", available at <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>, accessed on Wednesday, November 2, 2016, at 7.04 pm.

<sup>10</sup> Mohammad Naqib Ishan Jan, 2009, *Principles of Public International Law a Modern Approach*, Malaysia: IIUM Press. p. 287.

<sup>11</sup> Christian Tomuschat, "Interntaional Covenant on Civil and Political Rights", available at <http://legal.un.org/avl/ha/iccpr/iccpr.html>, accessed on Wednesday, October 2, 2016, at 7.33 pm.

was to formulate a catalogue of human rights and freedoms to be incorporated in international law.

Universal Declaration of Human Rights (hereafter UDHR), the first international catalogue of human rights and fundamental freedoms, was adopted by the UN General Assembly in Paris 1948.<sup>12</sup> Similarly, the UDHR inspired several regional conventions as well like European Convention on Human Rights (ECHR), which entered into force in 1953.

However, UDHR was eventually supplemented by two more detailed covenants: the International Covenant on Civil and Political Rights (hereafter ICCPR) and the International Covenant on Economic, Social and Cultural Rights (hereafter ICESCR).<sup>13</sup> These two instruments, which were adopted in 1966 and came into force in 1976, are multilateral treaties that have been ratified by the majority of UN member states, including Indonesia.<sup>14</sup>

Although, these two covenants have different concept on human rights. As mentioned in the articles 3 to 21 of the UDHR, the articles are concerned with the recognition of the right of all peoples to the enjoyment and protection of their 'civil and political rights'. Under Optional Protocol I to the International Covenant on Civil and Political Rights parties may declare that they recognize the competence of the Human Rights Committee (HRC) to receive communications from individuals subject to their jurisdiction who claim to be victims of a

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<sup>12</sup> Lawcards, 2012-2013, *Human Rights Law*, Great Britain: Routledge. p. 5.

<sup>13</sup> *Ibid.* p. 5.

<sup>14</sup> Mohammad Naqib Ishan Jan, *Op. Cit*, p. 304.

violation by that party of any of the rights set out in the Covenant.<sup>15</sup> The committee consists of 18 members chosen from the states parties to the Covenant. ICCPR will be considered as the guiding treaty in establishing international human rights law.<sup>16</sup>

Civil and political rights can be categorized in numerous ways. They may be categorized as follows<sup>17</sup> (1) rights of physical and spiritual autonomy,<sup>18</sup> (2) rights of fair treatment;<sup>19</sup> and (3) rights to participate meaningfully in the political process.<sup>20</sup> Furthermore, ICCPR ensures the protection of civil and political rights. The Covenant includes two over-arching non-discrimination rights: Article 2 guarantees to all individuals, within a State party's territory and subject to its jurisdiction, that the rights enshrined in the ICCPR will be respected and ensured without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status; and article 3 guarantees the equal right of men and women to enjoy all the civil and political rights contained in the Covenant.

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<sup>15</sup> I A Shearer, 1994, *Starke's International Law*, Eleventh Edition, Malaysia: Butterworths Publisher. p.334.

<sup>16</sup> A Manual, 2007, *Countering Terrorism, Protecting Human Rights*, Poland: Agencja Karo. p. 45.

<sup>17</sup> Sarah Joseph, 2010, *International Human Rights Law Six Decades after the UDHR and Beyond*, Great Britain: Ashgate. p. 90

<sup>18</sup>It would include the rights to life and freedom from torture and other ill-treatment, freedom of movement, and the rights to privacy. Spiritual autonomy is ensured by rights such as freedom of religion, beliefs and thought.

<sup>19</sup> Encompasses fairness in a narrow procedural sense, such as the rights to a fair trial, and in a broader sense, such as a general rights of equal protection of the law and freedom from discrimination.

<sup>20</sup> Obviously encompasses the rights to vote and to stand for election, but also includes rights which are essential to a healthy political process, such as the freedoms of assembly and association. For example, freedom of expression can fall into all three categories.

The rights enshrined in the ICCPR include: the right to life (article 6); freedom from torture (article 7); the right to liberty and security of person (article 9); the rights of detainees (article 10); the right to a fair trial (article 14); the right to privacy (article 17); freedom of religion (article 18); freedom of expression (article 19); the right to political participation (article 25); equality before the law (article 26); and the protection of minorities (article 27). Moreover, if any of the rights or freedoms recognized within the ICCPR are violated a person must have access to an effective remedy (article 2(3) (a)).<sup>21</sup>

### **C. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)**

The convention against torture is the most comprehensive international treaty dealing with torture.<sup>22</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (typically called Convention against Torture or UNCAT) was adopted by the General Assembly of the United Nations on 10 December 1984. The Convention entered into force on 26 June 1987 after it had been ratified by 20 States.<sup>23</sup> Article 1 of the United Nations

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<sup>21</sup> Health and Human Rights, “International Covenant on Civil and Political Rights”, available at <http://www.aclu.org/faq-covenant-civil-political-rights-iccpr>, accessed on Thursday, November 3, 2016, at 4.05 pm.

<sup>22</sup> Association for the Prevention of Torture, “UN Convention against Torture”, available at <http://www.apt.ch/en/convention-against-torture/>, accessed on Tuesday, November 8, 2016, at 8.08 pm.

<sup>23</sup> Hans Danelius, “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”, available at <http://legal.un.org/avl/ha/catcidtp/catcidtp.html>, accessed on Tuesday, November 8, 2016, at 8.15 pm.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is the internationally agreed legal definition of torture:

"Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

The Convention against Torture also obliges states parties to take effective measures to combat torture. States undertake to train law enforcement, medical personnel, and any other persons who may be involved in the custody, interrogation or treatment of detained individuals, about the prohibition of torture and ill-treatment. Interrogation rules and custody arrangements are to be kept under review to aid in preventing any acts of torture and ill-treatment.<sup>24</sup>

Nevertheless, in common with the other principle UN human rights treaties and unlike all the other 'terrorism' treaties based on the *'aut dedere aut judicare'* approach, the UNCAT establishes a monitoring body, the Committee against Torture (CAT), to which States are required to submit reports on a

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<sup>24</sup> Physicians for Human Rights Tools & Resources, "United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984", available at <http://phrtoolkits.org/toolkits/istanbul-protocol-model-medical-curriculum/module-1-international-legal-standards-overview/torture/the-united-nations-convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment-1984/>, accessed on Tuesday, November 8, 2016, at 9.22 pm.

periodic basis and which can consider individual and inter-state communications provided that the relevant consents have been given.<sup>25</sup>

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<sup>25</sup> Rachel Murray, Elina Steinerte and Antenor Hallo de Wolf, 2011, *The Optional Protocol to The UN Convention against Torture*, United State: Oxford University Press. p. 4-5.