

## CHAPTER FOUR

### FINDING AND ANALYSIS

#### **A. Analysis on the Protection of the Rights of the Suspect of the Terrorism Actor in Some International Covenants**

##### **1. The Rights of the Suspect of Terrorism under the Provisions of International Covenant on the Civil and Political Rights (ICCPR)**

Terrorism is generally understood as those acts of violence which spread terror among the civilians and civilian population.<sup>1</sup> It showed that terrorism clearly has a very real and direct impact on human rights, with devastating consequences for the enjoyment of the right to life, liberty and physical integrity of victims. In recent years, the measures were adopted by many states on countering terrorism although at the same time, it implies to the serious violation of human rights.

The security of individual is one of the basic human rights that should be protected, as an individual both victim and terrorism actor. Both victim and the terrorism actor has their own human rights. Some states have involved in torture and other ill-treatment to counter terrorism, especially for the suspect of terrorism actor. This is a crucial challenge facing by every state to respond the threat of terrorism without abandoning the fundamental human rights principles.<sup>2</sup>

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<sup>1</sup> Asqib Jawad, "Terrorism and Human Rights", available at <http://www.hrpub.org/download/20150201/SA5-19602853.pdf>, accessed on Monday, November 21, 2016, at 4.22 pm.

<sup>2</sup> John von Doussa QC, "Reconciling Human Rights and Counter Terrorism- a Crucial Challenge", available at <https://www.humanrights.gov.au/news/speeches/reconciling-human-rights-and-counter-terrorism-crucial-challenge>, accessed on Thursday, November 24, 2016, at 8.00 pm.

Yet the international human rights law is not limited to the number of provisions stated in the treaties, but also includes rights and freedoms that have become parts of customary international law.<sup>3</sup> By becoming parties to international treaties, States shall have obligations and duties under international law to respect, to protect and to fulfill human rights. The duty to respect human rights means that States must refrain from violating human rights through public officials and others action on behalf of the State.

Human rights, however, do not only provide protection for individuals against action by State agents interfering with their rights and freedoms. Human rights law also requires the State to take positive action. The obligation to protect means that, in certain circumstances, the human rights obligations of a States will be fully discharged if individuals are protected by the State, not just against violations of human rights by its agents, but also against acts committed by private persons or entities, including terrorist groups.<sup>4</sup>

States undertake to make every effort to develop and maintain an effective and rule of law-based national criminal justice system that can ensure, in accordance with obligations under international law, that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in support of terrorist acts is brought to justice, on the basis of the principle to

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<sup>3</sup> Office of the Human Rights Nations High Commissioner for Human Rights, available at "<http://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>", accessed on Thursday, November 24, 2016, at 8.09 pm.

<sup>4</sup> United Nations Office on Drugs and Crime, "Human Rights and Criminal Justice Responses to Terrorism" available at [https://www.unodc.org/documents/terrorism/Publications/Module\\_on\\_Human\\_Rights/Module\\_HR\\_and\\_CJ\\_responses\\_to\\_terrorism\\_ebook.pdf](https://www.unodc.org/documents/terrorism/Publications/Module_on_Human_Rights/Module_HR_and_CJ_responses_to_terrorism_ebook.pdf), accessed on Monday, November 28, 2016, at 6.38 pm.

extradite or prosecute, with due respect for human rights and fundamental freedoms”.

States are under the obligation to ensure that all guarantees of due process are respected when persons who are alleged to have committed terrorism-related offences are arrested, charged, detained and prosecuted.<sup>5</sup> Guaranteeing due process rights, including for individuals suspected of terrorist activity, is critical for ensuring that anti-terrorism measures are effective, respect the rule of law and are seen to be fair.

Furthermore, the protection of human rights mentioned “Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.<sup>6</sup> The United Nations Charter recognizes to all human the freedom, justice and peace under the obligation of states.

That foundation obligates the states to take positive action to facilitate the enjoyment of basic human rights, on the effort of countering the suspect of terrorism. In resolution 1456 (2003)<sup>7</sup>, the Security Council declared that "States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in

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<sup>5</sup> United Nations CTITF, “Rights to Free Trial”, available at <https://www.un.org/counterterrorism/ctitf/en/right-fair-trial>, accessed on Monday, November 28, 2016, at 7.01 pm.

<sup>6</sup> Preamble of ICCPR, paragraph 1

<sup>7</sup> Resolution 1456 of 2003 adopted by United Nation of Security Council at its 4688th meeting, on 20 January 2003. Decides to adopt the attached declaration on the issue of combating terrorism.

accordance with international law, in particular international human rights, refugee, and humanitarian law."<sup>8</sup>

Human rights law has sought to strike a fair balance between legitimate national security concerns and the protection of fundamental freedoms. That was reflected in the International Covenant on Civil and Political Rights (ICCPR) as well as in regional instruments.<sup>9</sup> In international human rights law (ICCPR), the main guarantees for freedom of expression are found in Article 19 of the International Covenant on Civil and Political Rights (ICCPR).

Article 19 ICCPR reads:

- “1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (“order public”), or of public health or morals.”

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<sup>8</sup> Office of United Nations High Commissioner for Human Rights, “Terrorism”, available at <http://www2.ohchr.org/english/issues/terrorism/>, accessed on Thursday, December 1, 2016 at 8.56 am.

<sup>9</sup> *Ibid.*

Since the terrorism aims to paralyze the democratic, political order and torture to the human, we are bound to combat it while protecting the basic values of human rights is need.

Article 9 of ICCPR clearly explained:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officers authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Referring to this article, the procedure for subjected people from the suspect of any crime should be in accordance as mentioned in the article above. When the prosecution is attempted, pre-trial detention must comply with the consensus of International Human Rights Law (IHRL) and International Humanitarian Law (IHL). Most countries easily meet the requirement that the grounds and procedures for pre-trial detention be previously established by law.<sup>10</sup>

Detention is not permitted except to the extent necessary to achieve a purpose relevant to the criminal prosecution, such as avoiding flight, repeating the offense or interference with witnesses. The ICCPR states that pretrial detention must not be the “general rule.”<sup>11</sup> A more problematic norm for prosecuting terrorists is the requirement that pre-trial detainees be brought “without delay” before a judge to determine the lawfulness of their detention, and to order release if the detention is not lawful.<sup>12</sup>

The general consensus of IHRL instrument on security detention was summarized a quarter century ago by the Human Rights Committee, which interpreted the ICCPR as follows:<sup>13</sup>

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<sup>10</sup> ICCPR Article 9 Paragraph 1

<sup>11</sup> ICCPR Article 9 paragraph 3

<sup>12</sup> ICCPR Article 9 Paragraph 4

<sup>13</sup> Douglas Cassel, “Pretrial and Preventive Detention of Suspected Terrorist: Options and Constraints under International Law”, *Journal of Criminal Law and Crimonology*, Volume 98, 2008, p. 832

“so-called preventive detention is used, for reasons of public security..., it must not be arbitrary, and must be based on grounds and procedures established by law... information of the reasons must be given... and court control of the detention must be available ... as well as compensation in the case of a breach ....”

The prohibition on "arbitrary" detention has both a substantive and a procedural dimension. The substantive dimension requires, among other things, that detentions be *proportional* to their security justification.

A first glance, the human rights to life appears to be absolute. Article 6 paragraph 1 of the ICCPR reads that “no one shall be arbitrarily deprived of his life”.<sup>14</sup> However, paragraph 2 appears to accord some flexibility to countries which have not established the death penalty stating that “sentence of death may be imposed only for the most serious crimes...”<sup>15</sup> It is by means, according to the articles that arbitrary of life and given the death penalty except through the final judgment are prohibited by the state to the people including for the accused of terrorism actor.<sup>16</sup>

The rights to freedom from torture and cruel, inhuman or degrading treatment is absolute and non-derogable as laid down in article 7 of ICCPR “No

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<sup>14</sup> Article 6 Paragraph 1 “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

<sup>15</sup> Article 6 Paragraph 2 “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.” The provision on article 6 are non-derogable from article 4 to avoid the state to justify a violation of the rights to life of not being arbitrary.

<sup>16</sup> See Salma Yusuf, “Protecting Human Rights while Countering Terrorism”, available at <http://www.e-ir.info/2012/02/14/protecting-human-rights-while-countering-terrorism/>, Accessed on Thursday, December 1, 2016, at 8.54 pm.

one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>17</sup> This non-derogable aspect which commonly happened, since so many terrorism actors died during their process of investigation. By these provision then it places on every state agent executing counter-terrorism measures a personal responsibility and caution against violating this right.<sup>18</sup>

From the counter terrorism perspective, this right becomes particularly relevant in the context of interrogation techniques used by state officials. However Human Rights Committee (hereafter HRC), remained for the conduct of interrogation of suspected terrorists authority may be given to the security service to use “moderate physical pressure”<sup>19</sup> to obtain information considered crucial to the “protection of life”.<sup>20</sup> Moreover, HRC has declared that the detaining a person as “bargaining chips”<sup>21</sup> in order to promote negotiation constitutes as an abuse of article 7 and 16<sup>22</sup> of the Covenant.<sup>23</sup>

The issue of detention and its conditions has been raised and addressed in connection with the right to freedom from torture and the right to respect for the

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<sup>17</sup> Article 7 “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

<sup>18</sup> *Ibid.*

<sup>19</sup> Human Rights Committee, “Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant”, available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/335F22D5AC5A04FC85256CC50057BE8C>, accessed on Friday, December 2, 2016, at 8.55pm.

<sup>20</sup> CCPR/C/79/Add. 93, paras 19 (1998)

<sup>21</sup> A specific concern of the Committee is that at least some of the persons kept in administrative detention for reasons of State security (and in particular some Lebanese) do not personally threaten State security but are kept as “bargaining chips” in order to promote negotiations with other parties on releasing detained Israeli soldiers or the bodies of deceased soldiers.

<sup>22</sup> Article 16 of ICCPR “Everyone shall have the rights to recognition everywhere as a person before the law”.

<sup>23</sup> Human Rights Committee, Loc. Cit.



inherent dignity of the human person.<sup>24</sup> Given the fact, HRC proclaiming that article 10 of ICCPR is a non-derogable right. This has been irrespective of the fact that article 4 of the ICCPR which do not include article 10 as one of the non-derogable rights.

The right to a fair trial<sup>25</sup> has been seen to be one of the most contentious human rights in counter terrorism operations. Several aspects of the right to fair trial have been explicitly acknowledged among others is the presumption of innocence which is a requirement in accordance with the rule of law and principles of legality: ‘Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected.’<sup>26</sup>

After the events of 11 September 2001,<sup>27</sup> HRC respect for the human rights within the international campaign against terrorism, the Committee expresses its concern regarding the effect of this campaign on the situation of human rights.<sup>28</sup> This reveals the UN’s position on discrimination in the context of

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<sup>24</sup> Article 10 of ICCPR: “1. all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. 2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons; (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”

<sup>25</sup> Article 14 of ICCPR

<sup>26</sup> Salma Yusuf, Op. Cit.

<sup>27</sup> September 11, 2001, 19 militants associated with the Islamic extremist group al-Qaeda hijacked four airliners and carried out suicide attacks against targets in the United States. Two of the planes were flown into the towers of the World Trade Center in New York City, a third plane hit the Pentagon just outside Washington, D.C., and the fourth plane crashed in a field in Pennsylvania. Often referred to as 9/11, the attacks resulted in extensive death and destruction, triggering major U.S. initiatives to combat terrorism and defining the presidency of George W. Bush. Over 3,000 people were killed during the attacks in New York City and Washington, D.C., including more than 400 police officers and firefighters.

<sup>28</sup> ..... in Sweden, in particular for persons of foreign extraction. The Committee is concerned at cases of expulsion of asylum-seekers suspected of terrorism to their countries of origin. Despite guarantees that their human rights would be respected, those countries could pose risks to the

terrorism, the HRC prohibits any discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>29</sup>

## **2. The Rights of the Suspect of Terrorism under the Provisions of Covenant against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

Terrorism aims to spread and increase fear within civil society in order to achieve certain political goals. Terrorist attacks are therefore usually targeted at civilians and threaten the security and life of the civilian population.<sup>30</sup> It is considered to be the duty of the state to protect its citizens from such threats, and the protection of the fundamental human rights, such as the right to life, liberty and security of person, is placed at the centre of counter-terrorism. The use of torture as an interrogation technique is just one prominent example of human rights abuses in the war on terror, next to others such as detention without charge or trial.

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personal safety and lives of the persons expelled, especially in the absence of sufficiently serious efforts to monitor the implementation of those guarantees (two visits by the embassy in three months, the first only some five weeks after the return and under the supervision of the detaining authorities) (arts. 6 and 7 of the Covenant). The Committee also stresses the risk of violations of fundamental rights of persons of foreign extraction (freedom of expression and privacy), in particular through more frequent recourse to telephone tapping and because of an atmosphere of latent suspicion towards them (arts. 13, 17 and 19 of the Covenant).

<sup>29</sup> Article 26 of ICCPR

<sup>30</sup> K. Boot, 2008, *The Human Faces of Terror: Reflections in a Cracked Looking-Glass*, Critical Studies on Terrorism 1(1), p.65

The Committee against Torture (CAT) has also been very clear on its position on the right to freedom from torture reinforcing the attitude of the HRC. “....State party to the Convention....is<sup>31</sup> precluded from rising before the Committee exceptional circumstances on justification for and prohibited by article 1 of the Convention. This is plainly expressed in article 2 of the Convention.<sup>32</sup> Furthermore, article 2 of CAT states that the use of torture is prohibited under all circumstances and that ‘there is no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture’.<sup>33</sup> In this context, by the articles above the life under terrorist threats is no exception and torture is equally prohibited in the fight against terrorism.<sup>34</sup> Although terrorists lose some of their rights as a consequence of committing a crime, this does not mean they lose all of their rights.<sup>35</sup>

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<sup>31</sup> 1. For the purposes of this Convention, the term "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. 2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

<sup>32</sup> Salma Yusuf, Op. Cit.

<sup>33</sup> Article 2 of CAT: 1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. 3. An order from a superior officer or a public authority may not be invoked as a justification of torture

<sup>34</sup> Astrid Holzinger, “Can the Use of Torture in the War on Terror be Justified?”, available at <http://www.e-ir.info/2013/04/26/36540/>, accessed on Monday, December 5, 2016 at 3.15 pm.

<sup>35</sup> Your Rights “The Basic Rights of Prisoner” available at: <http://www.yourrights.org.uk/yourrights/the-rights-of-prisoners/the-basic-rights-of-prisoners.html>, accessed on Monday, December 5, 2016, at 3.16 pm.

The protection of suspect of terrorist from the torture deals with several articles in the Convention. Every state by its constitutions recognize the prevention of any acts of cruel, torture, inhuman or degrading treatment in the territory. Article 16 of CAT:

“1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment”.

Furthermore, the Convention also prohibits the torture to the person may be involved during in the custody, interrogation or treatment of any individual. Article 10 of CAT clearly stated that:

“1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.”

Based on the above article, means that Parties are required to train and educate their law enforcement personnel, civilian or military personnel, medical personnel, public officials, and other persons involved in the custody, interrogation, or treatment of any individual subjected to any form of arrest, detention, or imprisonment, regarding the prohibition against torture.

As mentioned in the article 11 of CAT, “Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.” The article is applicable to any offenses, that supervised by the state is obliged during the interrogation related to the method, rules, instruction in order to prevent all act of torture.

## **B. The Application of the Protection of the Suspect of Terrorism in Some Countries**

### **1. Indonesian Case**

Firstly, all Indonesian national interests constitute all things related to the national goals. As mentioned in Preamble of 1945 constitution paragraph 4 “Furthermore, in order to form a Government of the State of Indonesia which shall protect the entire Indonesian nation and the entire Indonesian native land, and in order to advance general welfare, to develop the intellectual life of the

nation, and to partake in implementing world order based upon independence, eternal peace and social justice...”<sup>36</sup>. From the national interest that can be formulated in the effort of countering-terrorism, the Indonesian government focus on the protection of national security to achieve peace in the nation.

The national security also relates to national defense as the main strategy or the way to prevent the effort of any people or group in making instability of state. Prevention and counter terrorism need extraordinary measure due to the act of terrorism categories as extraordinary crime and transnational organized crime<sup>37</sup>. Moreover, the legal action taken by the Indonesian government including both preventive and responsive effort. While, Indonesia took several actions on countering terrorism, as follows:

The first is, reactivated of *Desk Antiteror* TNI. The reactivations of Desk Anti Teror of National Army in 2005 starting from Regional Military Command (Kodam), District Military Command (Kodim) and Military Command (Koramil) aims to support the National Police on combating terrorism. The second is, establishment of *Datasemen Khusus (Densus 88)* on 26 August 2004 with the purposes to maximize countering terrorism. Densus 88 is part of National Police provides to protect the security from any terrorism act. The third action, provides

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<sup>36</sup> Preamble of 1945 Constitution Paragraph 4, “Furthermore, in order to form a Government of the State of Indonesia which shall protect the entire Indonesian nation and the entire Indonesian native land, and in order to advance general welfare, to develop the intellectual life of the nation, and to partake in implementing world order based upon independence, eternal peace and social justice, Indonesia's National Independence shall be enshrined in the Constitution of the State of the Republic of Indonesia, established within the structure of the State of the Republic of Indonesia with the sovereignty of the people based upon Belief in The One and Only God, just and civilized Humanity, the Unity of Indonesia, and Democracy guided by the inner wisdom of Deliberations amongst Representatives, and by creating social Justice for the entire people of Indonesia.”

<sup>37</sup> Terrorism categorized as Transnational Organized Crime it is mention on International Convention for the Suppress of Terrorist Bombing and International Conention for the Suppression of the Financing of Terrorism.

bilateral agreements with any other countries related to the effort of countering terrorism in line with the national security. The fourth one, improves the international treaties to prevent and counter terrorism, through multilateral from United Nation, bilateral, regional which purposes to enhance the quality, law enforcement, exchange of information, sending the expert any other effort. The fifth action is, an enactment of Law No. 17 of 2011 on National Intelligence which have the role on early detection and warn in accordance with the threat to the national security.<sup>38</sup>

The sixth one was, expressing for four main purposes taken by the Indonesia government related to counter-terrorism by Marti Natalegawa<sup>39</sup> on September 2011 in front of UN. Marti Natalegawa further states that:<sup>40</sup>

- a. Increase the support at National and Regional level priory to run the global level.
- b. Prevent the root of problems which cause to the supporting and motivating of terrorism.
- c. Decrease the root causes of terrorism by preventing the factors that encourage terrorism and mutually cooperate with one another in order to combat terrorism.

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<sup>38</sup> In the effort of countering terrorism by the establishment of National Intelligence is to counter and combate terrorism act which cause to the threat of national security.

<sup>39</sup> Marti Natalegawa is former of foreing ministry of Republic of Indonesia.

<sup>40</sup> Silvia Haryani, 2010, Kerjasama Kontra Terorisme Indonesia-Australia: Perbandinan antar Masa Pemerintahan Megawati Soekarno Putri dan Susilo Bambang Yudhoyono, "*Jurnal Masyarakat Kebudayaan dan Politik*", Vol. 2, No. 4, November 2010.

- d. Upholding the law and human rights and democracy on track to increase efforts at the global, regional and national as well as by maintaining peace, social justice and the common good.

The seventh action, provided the mutual agreement with the government of Germany conducted by PBNU (Centre Board of Nahdlatul Ulama) through International Seminar on Countering Terrorism. The eighth one, established *Badan Nasional Penanggulangan Terorisme (BNPT)*<sup>41</sup> by Presidential Regulation No. 46 of 2010 signed by Susilo Bambang Yudhoyono<sup>42</sup> on 16 July 2010. Lastly, Indonesia conducted regional agreement among ASEAN countries on Countering-terrorism with assigned ASEAN Convention on Counter Terrorism in 12<sup>th</sup> High Conference of ASEAN in Cebu, Philippines, on 13 January 2007.<sup>43</sup>

Behind all of the efforts taken by the government of Indonesia, the counter terrorism must be in appropriate with the fundamental of human rights, Indonesian 1945 Constitutions in some provisions provided the legal protection of human rights. In accordance with the protection of terrorist actor, article 27 (1) explains that “All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions.” Article 28 A of Constitution also mentions on “rights of life”. It is stated that “Every person shall have the right to live and to defend his/her life and existence.”

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<sup>41</sup> BNPT is special institution of non-ministry, the task on formulating national policies or programs, coordinate among government agencies and to establish a task force or special task force with related to the relevant policies in the field of terrorism. BNPT placed under the president which coordinated by (Menko Polhukam).

<sup>42</sup> Susilo Bambang Yudhoyono is former of the sixth President of Republic of Indonesia

<sup>43</sup> This effort taken because the government of Indonesia realized that terrorism is one of the most serious crimes in ASEAN and it becomes the obstacle to the peace, security, improvement and welfare in ASEAN.



Article 28 D (1) also emphasizes that “Every person shall have the right to the recognition, guarantee, protection and legal certainty of just laws as well as equal treatment before the law.”

Article 28 (G) of the constitution also asserts that“(1) Every person shall have the right to protect him/herself, his/her family, honor, dignity and property under his/her control, and shall have the right to feel secure and be protected from the threat of fear to do, or not to do something which constitutes a human right.”“(2) Every person shall have the right to be free from torture or treatment degrading human dignity and shall have the right to obtain political asylum from another country.”

Article 28 I of the constitution adds that “(1) The right to life, the right not to be tortured, the right of freedom of thought and conscience, the right to have a religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted under retroactive law are human rights which may not be prejudiced under any circumstances whatsoever”.“(2) Every person shall have the right to be free from discriminatory treatment on any basis whatsoever and shall have the right to obtain protection against any such discriminatory treatment.”

Based on the articles, rights including those deemed terrorist suspects are guaranteed by law. The concept of Human Rights (HAM) determines that the right protected specificity is also something that cannot be contested. If not handled according to legal procedures, the war on terror will raise new terrorism issue of human rights.

According to Saharuddin Saming of the National Commission of Human Rights (Komnas HAM), conducting the act by violating the law is not justified, moreover by violating the human rights. Article 104 of Law No. 39 of 1999 states that human rights violations are arbitrary killings or outside the court decision (arbitrary / extra judicial killing), torture, forced disappearances, while the sound of that article is that “anyone who is arrested, detained and prosecuted because suspected of doing something criminal offense has the right to be presumed innocent until proven guilty legally in a court proceeding and given all the necessary legal guarantees for the defense”.<sup>44</sup>

Furthermore, the first policy response from the government to counter terrorism by the enactment of Presidential Instruction (Inpres) No. 4 of 2002 on Terrorism, which is reinforced by the Regulation in-Lieu-of Law (Perpu) No. 1 and 2 of 2002 on Combating Terrorism which was set into law by Law No. 15 of 2003. Based on the regulations, Indonesia conducts the effort on combating terrorism based on the criminal law and national police. In the mid of the January 2016 terrorist attacked Sarinah store in Jakarta. After the Sarinah bombing, the government is initiated to revise the Anti-Terrorism Act by lengthening detention period for terrorist from one week to three month.

The 1945 Constitution, Law No. 39 of 1999 on Human Rights and Law No. 8 of 1981 on the Criminal Procedure provides protection from arbitrary or extra-legal treatment or punishment, including inhumane treatment, torture, and arbitrary arrest, detention without charge or trial and extra-judicial killing by the

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<sup>44</sup> Enrille C. A. Dehoop, *Perlindungan Hak Tersangka/Terdakwa Terorisme dalam Sistem Peradilan Pidana Indonesia*, “*Jurnal Unsrat*”, Vol. 1 No. 1, April-Juni, 2013. P.34.

state.<sup>45</sup> Other compatible rights to the accused and suspect mention on Chapter IV of the Law on Criminal Procedure. A procedure called “*pra-peradilan*” may be available to exercise the rights to *habeas corpus*. A suspect, his family or his attorney-in-fact may request a district court to examine the legality or illegality of an arrest or detention.

Article 28 (G) of the 1945 constitution states that “(1) Every person shall have the right to protect him/herself, his/her family, honor, dignity and property under his/her control, and shall have the right to feel secure and be protected from the threat of fear to do, or not to do something which constitutes a human right.” “(2) Every person shall have the right to be free from torture or treatment degrading human dignity and shall have the right to obtain political asylum from another country.”

Article 28 I of the 1945 cOnstitution states that “(1) The right to life, the right not to be tortured, the right of freedom of thought and conscience, the right to have a religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted under retroactive law are human rights which may not be prejudiced under any circumstances whatsoever”. “(2) Every person shall have the right to be free from discriminatory treatment on any basis whatsoever and shall have the right to obtain protection against any such discriminatory treatment.”

Human Rights Law also mentions that article 4 “The right to life, the right to not to be tortured, the right to freedom of the individual, to freedom of thought

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<sup>45</sup> Article 28 (G) and 28 (1) Indonesian 1945 Constitution. Article 4, 33, 34 and 66 of Law No. 39 of 1999. Article 77-83 of Law No. 8 of 1981 on Criminal Procedure.

and conscience, the right not to be enslaved, the right to be acknowledged as an individual before the law, and the right not to be prosecuted retroactively under the law are human rights that cannot be diminished under any circumstances whatsoever. Furthermore, in article 33 (1) everyone has the right to freedom from torture, or cruel, inhuman and degrading punishment or treatment. (2) Everyone has the right to freedom from abduction and assassination. Article 34 mention that no one shall be subject to arbitrary arrest, detention, torture or exile. Article 77-83 of Criminal Procedure Act also stated that of Criminal Procedure Act also states on the procedure of pre-trial as the rights to the suspected person.

## **2. Germany Case**

In the field of domestic counterterrorist policy, Germany needs for a more aggressive kind of human intelligence gathering. German counter-terrorism strategy is based on using general criminal law statutes in conjunction with preventive measures to avoid dangers. The distinction between repressive and preventive measures is given great importance. Germany has preferred to use the ordinary criminal law, such as the statutes on homicide, offences against public order, and offences against personal liberty to indict and punish terrorists for individual terrorist offences.<sup>46</sup>

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<sup>46</sup> Section 1, “Summary of Domestic Legislation”, available at <https://www.nottingham.ac.uk/hrlc/documents/publications/cthr/countryprofilegermany.doc.>, accessed on Monday, December 5, 2016 at 5.20 pm.

Section 129a of Germany Criminal Code says:<sup>47</sup>

Interdicts membership, participation or formation of any organization the objectives, or activity of which, are aimed at murder, manslaughter, hostage taking, inflicting serious physical or psychological injury, computer sabotage, arson, crimes involving firearms, certain serious environmental crimes or other serious criminal offences.

However this is only applicable if the purpose of the criminal offence is to seriously intimidate the population, to force an authority or international organization to act under duress by use of violence or the threat of violence, or to eliminate the basic political, constitutional, economic or social structures of a state or international organization or interfere with them in such a way that the effects of the interference may cause considerable damage to the state or international organization.<sup>48</sup>

Section 129b:<sup>49</sup>

Section 129 and section129a shall apply to organizations abroad. If the offence relates to an organization outside the member states of the European Union, this shall not apply unless the offence was committed by way of an activity exercised within the Federal Republic of Germany or if the offender or the victim is a German or is found within Germany. In cases which fall under the 2nd sentence above the offence shall only be prosecuted on authorization by the Federal Ministry of Justice.

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<sup>47</sup> Germany Criminal Code, Section 129a

<sup>48</sup> Section 1, Op. Cit.

<sup>49</sup> Germany Criminal Code, Section 129b

Authorization may be granted for an individual case or in general for the prosecution of future offences relating to a specific organization. When deciding whether to give authorization, the Federal Ministry of Justice shall take into account whether the aims of the organization are directed against the fundamental values of a state order which respects human dignity or against the peaceful coexistence of nations and which appear reprehensible when weighing all the circumstances of the case.

Based on the Section 129 a and b of the Germany Criminal Code, the Germany government has authorities to prosecute the founding, membership, support and recruiting members or supporters for, criminal or terrorist organizations abroad (and outside the European Union), where there is a domestic connecting factor, as set out in the law. Domestic connecting factors include the involvement of a German national, either as a perpetrator or as a victim, the suspect's activity is in Germany, or a victim or perpetrator is in fact in Germany.<sup>50</sup>

Historically, Germany has many experiences with terrorism which has been predominantly by domestic groups. Since the 1970s, Germany has demonstrated both the willingness and capability to combat terrorism by making some regulation. In the recent issues of terrorism in Germany, there were followed by controversial issue since the suspect of terrorism who detained was indicated to be violated physically and mentally.

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<sup>50</sup> Section 1, Op. Cit.

Furthermore, to ensure the security of the country from the attack of terrorism the government of Germany enacted law on combating terrorism. This came into force on 1 January 2002 (hereafter Anti-Terrorism Act (Terrorismusbekämpfungsgesetz)).<sup>51</sup> Criminal prosecution of terrorist or criminal organizations acting in Germany is dependent upon whether there are sufficient grounds to deem that their activities are punishable according to section 129a of the German Criminal Code. The section which imposes criminal liability upon persons who establish an organization which has objectives and activities to commit a number of specified and serious crimes.

Anti-Terrorism Act in Germany was indicated as a direct response to the terrorist attacks of WTC in the New York City 9 September 2001 (hereafter 9/11 attack). It was focused on preventive measures, expanding the powers of the Federal Criminal Police Office (*Bundeskriminalamt*) and the Federal Office for Protection of the Constitution (*Bundesamt für Verfassungsschutz*) in the field of information gathering and sharing, and modifying provisions concerning foreigners and associations. The provisions had been limited to duration of 5 years—extendable only after review. Following the review, which was carried out in 2006, the Anti-Terrorism Supplement 2007 (Terrorismusbekämpfungsergänzungs-gesetz) was passed to prolong and amend the provisions in the Anti-Terrorism Act 2002. One of the most important

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<sup>51</sup> Secretary of State for Foreign and Commonwealth Affairs, “Counter-Terrorism Legislation and Practice: A Survey of Selected Countries”, available at <https://image.guim.co.uk/sys-files/Politics/documents/2005/10/12/foreignterrorlaw1.pdf>, accessed on Monday, December 5, 2016, at 8.46 pm.

amendments is the new competences for the internal intelligence agency (the Federal Office for Protection of the Constitution).<sup>52</sup>

The German government has taken an extensive domestic measure against terrorism since 9/11 through making law, law enforcement, financial, and security realms. The first step taken was to identify weaknesses in the laws that allow some of terrorists to live and plot in Germany largely unnoticed. After 9/11, Germany adopted two major anti-terrorism packages. The first approved in November 2001, targeted loopholes in Germany law that permitted terrorist to live and raise money in Germany. Significant changes included (1) The immunity of religious groups and charities from investigation or surveillance by authorities was revoked, as where there special privileges under right of assembly; (2) terrorist could now be prosecuted in Germany, even if they belonged to foreign terrorist organizations acting only abroad; (3) the ability of terrorist to enter and reside in Germany was curtailed; and (4) border and air traffic security were strengthened.<sup>53</sup>

The second package was aimed at improving the effectiveness and communication of intelligence and law enforcement agencies at the federal and state levels. Some \$1.8 billion was made immediately available for new counterterrorism measures. In fiscal years 2002 and 2003, the budget for relevant security and intelligence authorities was increased by about \$580 million. The new laws provided the German intelligence and law enforcement agencies greater

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<sup>52</sup> Section 1, Op. Cit.

<sup>53</sup> CSR Report for Congress, "Germany's Role in Fighting Terrorism: Implication for U.S. Policy", available at <https://fas.org/irp/crs/RL32710.pdf>, accessed on Tuesday, December 6, 2016 at 9.36 am.



latitude to gather and evaluate information, as well as to communicate and share information with each other and with law enforcement authorities at the state level. The most important intelligence authorities in Germany are the Federal Intelligence Service (BND),<sup>54</sup> the Federal Bureau for the Protection of the Constitution (BfV),<sup>55</sup> and the Military Counterintelligence Service (MAD).<sup>56</sup> The most important security authorities are the Federal Bureau of Criminal Investigation (BKA)<sup>57</sup> and the Federal Border Guard (BGS).

Additional measures are being implemented by Germany. A new aviation security law is under consideration which would allow the military to shoot down threatening hijacked aircraft. A new immigration law makes it easier to deport suspected foreigners and makes naturalization more difficult. In early July 2004, federal and state Ministers of the Interior implemented some key organizational changes: 1) a central database will now collect and store all available information regarding Muslim radicals suspected of terrorism; 2) a joint Coordination Center consisting of the BKA, BND, BfV and MAD will seek to cooperate more closely to prevent terrorist attacks; and 3) German federal states will be integrated into the coordination center.

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<sup>54</sup> BND is limited to gathering intelligence abroad.

<sup>55</sup> The BfV gathers domestic intelligence. Within the BfV the following terrorism-related analysis-boards have been established: "Arab Mujaheden Training Camps," "Travel Movements," and "Recruitment"

<sup>56</sup> The MAD is charged with gathering intelligence to assure readiness of the German military.

<sup>57</sup> Within the BKA the following terrorism-related information-boards have been established: "Financial Investigations", "Human Trafficking and Drug Crime", "Narco Terrorism", "Arab Mujaheden Networks"

In Germany, torture under the Basic Law is prohibited under Article 2 (rights to physical integrity),<sup>58</sup> in conjunction with Article 14 (prohibition on coercive interrogation methods)<sup>59</sup> and Art 1 (right to human dignity)<sup>60</sup> of the GG. In September 2014, the German Minister for Interior implemented a ban on ISIS to counter its propaganda in Germany, both in public demonstrations and over the Internet. The ban seeks to undermine the group's large media campaign, which spreads jihadist propaganda to potential terrorist recruits around the world.<sup>61</sup> In June 2015, the German Cabinet passed new counterterrorism legislation drawn from Merkel's initial plan. The new law made it illegal to travel outside of Germany with the intent to receive terrorist training. It also created a national identity card, and put passport restrictions on foreign fighters. In accordance with the new legislation, authorities may revoke the identity cards of individuals suspected of constituting a threat, and replace their cards with one that says "not valid for travel outside of Germany."

The June 2015 counterterrorism legislation also implemented the September 2014 U.N. "foreign fighters" resolution, by which any individual who leaves Germany to participate in "acts of violent subversion" will be liable to prosecution upon return. Regarding surveillance measures, Merkel is committed

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<sup>58</sup> Article 2 of Basic Law of Germany, Article 2 [Personal freedoms] (1) Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law. (2) Every person shall have the right to life and physical integrity. Freedom of the person shall be inviolable. These rights may be interfered with only pursuant to a law.

<sup>59</sup> Article 14 of Germany Basic Law.

<sup>60</sup> Article 1 [Human dignity – Human rights – Legally binding force of basic rights] (1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. (2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world. (3) The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law.

<sup>61</sup> Counter Extremism Project, Op. Cit.

to a “minimum” retention of Internet and phone data, and plans to implement the approaching EU-drafted data retention directive. In August 2016, Interior Minister Thomas de Maiziere proposed a new law that would revoke the citizenship of dual national Germans fighting with extremist groups abroad.

### **C. The Problem Facing of the Rights of the Suspect of Terrorism Actor in Some Countries**

#### **1. Siyono Case**

In some legal action carried out by the police (Densus88), there is always a problem of legitimacy and abuse of authority or human rights violations even though police department has had internal rules governing the procedures that incorporate human rights principles. However, existing bodies such as the Indonesian National Human Rights Commission (hereafter Komnas HAM)<sup>62</sup> and the National Police Commission (hereafter Kopolnas), which are able to receive and investigate complaints from the public, are still not empowered to refer these cases directly to the Public Prosecutor’s Office or to the police’s internal disciplinary body. Amnesty International continues to document human rights violations by the police, including unlawful killings, torture and other ill-treatment and the unnecessary and excessive use of force, with little accountability.

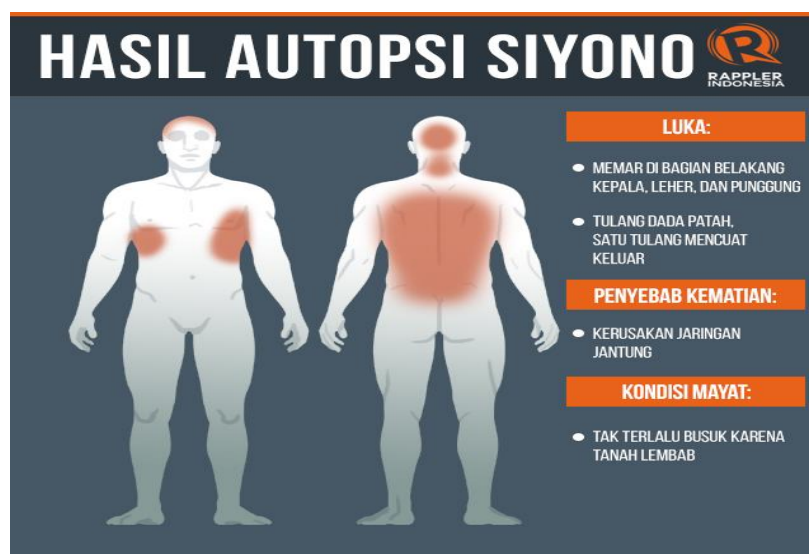
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<sup>62</sup> The National Commission of Human Rights was established during the Soeharto administration with Presidential Regulation No. 50 of 1993 and was put under the control of the president. Law No. 39 of 1999 regarding Human Rights provides the new basis for the National Human Rights Commission. The main roles of the Commission are to educate the government and the public on human rights, establish a network of human rights defenders, and receive complaints on human rights violations.

In March 2016, Komnas HAM reported that at least 121 individuals detained during counter-terror operations have died in custody since 2007<sup>63</sup>. In one illustrative case, Siyono, an alleged terrorism suspect died while in the custody of the elite police counter-terrorism unit Detachment 88 (Densus 88) on 11 March 2016. In a rare admission, General Badrodin Haiti, the then Chief of Indonesian National Police, confirmed that members of the Detachment 88 unit kicked Siyono in the chest, breaking his six ribs, and causing his heart to fail<sup>64</sup>.

Figure 4.1

The results of the autopsy of Siyono



Source:[http://www.rappler.com/indonesia/129083-penyebab-](http://www.rappler.com/indonesia/129083-penyebab-kematian-siyono-terungkap)

[kematian-siyono-terungkap.](http://www.rappler.com/indonesia/129083-penyebab-kematian-siyono-terungkap)

<sup>63</sup> ASA, “Amnesty International Public Statement”, available at <https://www.amnesty.org/download/Documents/ASA2143902016ENGLISH.pdf>, accessed on Wednesday, December 5, 2016 at 9.30 am.

<sup>64</sup> Human Rights Resource Centre of The Republic of Indonesia, “Update of the Rule of the Law for Human Rights in ASEAN: The Path to Integration” available at <http://hrrca.org/wp-content/uploads/2015/09/04.-Indonesia1.pdf>, accessed on Wednesday, December 8, 2016 at 9.58 am.

Nevertheless two members of Detachment 88 were only imposed administrative penalties for their actions, demoted and transferred to another police unit by an internal police mechanism.<sup>65</sup> No criminal investigations were undertaken highlighting the climate of impunity. Amnesty International calls for prompt, impartial independent and efficient criminal investigations into all reports of human rights violations involving criminal offences, including torture, allegedly perpetrated by the police, including Detachment 88.

The chronology of the case was started on Tuesday, March 8, 2016 when Siyono was arrested by three people who indicated as a members of Densus 88, special detachment unit 88 as Special troops established by Police officer on 2003. After two days ranshacking conducted by the police officer (densus 88) there was information that siyono passed away, eventually on 12 March 2016 at 10 am.

Indonesia is a state party to several international human rights treaties, among them treaties relevant to the work of the police, including the International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Under these treaties, Indonesia is legally bound to respect and protect the right to life and refrain from torture and other ill-treatment in all circumstances. Other rights, including to freedom of expression and peaceful assembly, must be respected and protected, and may only be restricted in narrowly-defined circumstances.

Indonesia is also obliged to investigate human rights violations such as torture and unlawful killings promptly independently, impartially and effectively.

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<sup>65</sup> *Ibid.*

Where sufficient, admissible evidence is obtained, Indonesia must prosecute suspected perpetrators in proceedings which meet international standards of fairness. Victims must be provided with reparations in accordance with international standards.

President Joko Widodo came to power in 2014 with strong focus on human rights and commitment to undertake reforms of the criminal justice system. Ongoing human rights violations highlight a systematic failure by Indonesian authorities to effectively address existing weaknesses in police accountability systems or to ensure that police respects and protects human rights rather than violates them. Therefore, Amnesty International urges the Indonesian authorities to prioritize the establishment of strong police accountability mechanisms which would counter deeply ingrained impunity throughout Indonesia's law enforcement agencies and help win the trust of local communities.<sup>66</sup>

The problem is also because Indonesia has signed major human rights instruments<sup>67</sup> and has ratified these instruments. Ratification must be followed by incorporating the convention's stipulation into relevant national laws and policies.

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<sup>66</sup> ASA, Op. Cit.

<sup>67</sup> The nine major human rights instruments signed by Indonesia and their implementing laws are follows: 1. The Convention on the Elimination of all Forms of Racial Discrimination (in force 4 January 1969), 2. International Covenant on Civil and Political Rights/ICCPR (in force 23 March 1976), 3. International Covenant on Economic, Social and Cultural Rights/ICESCR (in force 23 March 1976), 4. Convention on Elimination of all Form of Discrimination against Women/CEDAW (in force 3 Seotember 1981), 5. Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (in force 26 June 1987), 6. Convention on the Rights of Child (in force 2 September 1990), 7. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (in force 1 July 2003), 8. Convention on the Rights of Persons with Disabilities (in force 3 May 2008), 8. International Convention for the Protection of All Persons from Enforced Disappearance (in force 23 December 2010).

However the main challenge in Indonesia is the lack of implementing laws and policies for these instruments.

The problem is two-fold. Firstly, there is a lack of effective control mechanism on the police (Densus 88) in exercising its authority in combating terrorism. In case of Siyono, the police has committed violation to the suspect which ignored the principles of due process of law. Secondly, there is no a clear accountability of the police (Densus 88) in using the authority on combating terrorism, if the Densus 88 commit violation of human rights of suspect, what is the mechanism to punish the actors. The Densus 88 seems protected by their institution.

## **2. Jaber al-Bakr Case**

On October 10, 2016, after a two-day manhunt, Germany police in the city of Leipzig captured Syrian refugees (originally comes from Damascus province)<sup>68</sup> 22 years and suspected members of ISIS, Jaber Albakr. Authorities reportedly found several hundred grams of explosives<sup>69</sup> used TATP Paris in November 2015 and March 2016 attacks in the Brussels apartment Albakr have stayed in. Authorities believed that Albakr had planned a massive attack in Germany.

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<sup>68</sup> Caroline Mortimer, "Syrian Terror Suspect Jabr al-Bakr Found Dead in his Cell in Germany after being Arrested over Bomb Plot", available at <http://www.independent.co.uk/news/world/europe/terror-suspect-jaber-albakr-found-dead-in-cell-leipzig-germany-bomb-plot-syria-a7358546.html>, accessed on Tuesday, December 5, 2016, at 9.40 pm.

<sup>69</sup> From different literature Police believe Jaber al-Bakr, also a Syrian, was planning a bomb attack and had links to so-called Islamic State. He was planning a similar attack to those carried out in France and Belgium in November 2015 and March 2016. They failed to arrest him on Saturday and found 1.5kg of explosives in his flat in the eastern city of Chemnitz.

Saxony state police chief, Joerg Michaelis, said that it is reasonable to assume that the explosive belt was almost ready, or had been prepared already.

Figure 4.2

The Picture of Jaber al-Bakr



Picture of: Jaber al-Bakr, Sources BBC News, “Syrian Terror Suspect Jaber al-Bakr Found Dead in Cell in Germany”, available at <http://www.bbc.com/news/world-europe-37638631>, accessed on Tuesday, December 5, 2016, at 9.32 pm.

The suspect, Jaber al-Bakr, took his own life at the jail in Leipzig, where he had been taken after being detained early Monday, according to Jörg Herold, the spokesman for the Justice Ministry in Saxony, the German state where the events unfolded. Mr. Herold said he could not confirm news media accounts, which cited unnamed justice sources, as saying the Syrian had hanged himself. A senior intelligence official who insisted on anonymity to discuss a sensitive national security case said that hour before the suicide became known that Mr.



Bakr had been refusing to cooperate with investigators who suspected that he was in contact with the Islamic State.

The Syrian, who came to Germany as a refugee in February 2015 and was granted asylum five months later, escaped capture when a heavily armed special police unit raided his apartment in Chemnitz, about an hour's drive south of Leipzig, late Friday night.

However, from the death of al-Bakr as stated by Thomas de Maizière, the German interior minister, has been criticized for not joining in the praise for the Syrians, apparently because details of their story were not clear or consistent. The special police who failed to capture Mr. Bakr in Chemnitz has also been scrutinized in a case that is sure to spark calls for better coordination among the various authorities responsible for police and justice work in Germany's 16 states and at the national level. Mr. de Maizière said on Wednesday that Mr. Bakr's data had been checked against those held by security services, "but there was no hit."<sup>70</sup>

Rolf Jacob<sup>71</sup> said that checks on Bakr's cell by prison guards had been reduced from 15-minute to 30-minute intervals, after a psychologist who had no experience working with terror suspects Jacob said that there were no acute signs Bakr intended to kill himself. He had been on hunger strike since his arrest.

After the death of al-Bakr, interesting statement given that Germany authorities are struggling to explain how a terror suspect accused of planning to blow up a Berlin airport was able to kill himself in his prison cell. Further

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<sup>70</sup> Alison Smale, "Syrian Refugee in German Terror Case Kills Himself in Jail", available at <http://www.nytimes.com/2016/10/13/world/europe/syrian-terror-suspect-germany-suicide.html>, accessed on Tuesday, December 5, 2016, at 10.02 pm.

<sup>71</sup> He is head of the Leipzig detention centre

information from Rolf Jacob, head of the Leipzig detention centre, said that checks on Bakr's cell by prison guards had been reduced from 15 minute to 30 minute intervals, since psychologist also said that there were no acute signs Bakr intended to kill himself. He had been on hunger strike since his arrest.

On contrary, Alexander Hübner, the lawyer assigned to Bakr, called the case a "scandal of justice", adding that his client should have been "Germany's best-guarded prisoner". The evidence of damage to equipment in his cell should have been signal enough, he was alleged being torture<sup>72</sup>. Alexander Hübner add, al-Bakr public defender, described as Judicial scandal and said "prison officials had assured me that al-Bakr constantly will be monitored; his death due to suicide is not acceptable for me."<sup>73</sup>

The settlement on the case of al-Bakr is not ready enough, since there was a debatable fact due to the cause of his death. As a refugee al-Bakr is not only one person accused as terrorist, while there are largest number of terrorists from the refugees in Germany. Germany has experienced an influx of refugees from the Middle East and North Africa, with a majority originating from Syria. Germany processed nearly 104,000 Syrian refugees by October 2015. In the first half of 2016, the government received another 397,000 applications for asylum.

German authorities have warned that Salafist jihadists in Germany estimated to number at 7,900 are attempting to radicalize the incoming asylum

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<sup>72</sup> Kate Connolly, "German Interior Minister Demands answer after Terror Suspect's Jail Death", available at <https://www.theguardian.com/world/2016/oct/13/germany-thomas-de-maziere-demands-answers-terror-suspect-jail-death>, accessed on Wednesday, December 8, 2016, at 8.48 am.

<sup>73</sup> Whatsupic, "Saudi Dollars Role in Jaber al-Bakr's Death", available at <http://www.whatsupic.com/news-politics-world/1479799397.html>, accessed on Wednesday, December 8, 2016, at 9.07 am.

seekers. As of November 2015, at least 760 Germans have traveled to fight alongside extremist groups in Iraq and Syria, with more than 200 having had returned to Germany.<sup>74</sup> According to the Counter Extremism Project's Global Research, German citizens see Islamic extremism as one of the greatest threats to their national security.<sup>75</sup>

The protection of human rights for the suspect of terrorism, based on the explanation above can be concluded that through United Nations General Assembly which established UDHR as the basic of foundation of human rights which followed by other domestic acts in order to strengthen the human rights. Moreover, the UDHR was eventually formulated in the details regulation such as ICCPR and CAT. Generally, both ICCPR and CAT clearly mention the protection of human rights for torture, inhuman and also the rights of suspect during their investigation.

In accordance with international law, the other regulations on human rights are also clearly mentioned by the Germany laws that regulate the protection of human rights as it is mentioned in the Basic Law of Germany as well as Germany Criminal Law. The Germany government also established many government bodies on countering terrorism. Indonesia is also one of the countries which is facing serious terror and therefore it provides the regulations on combating terrorism.

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<sup>74</sup> Counter Extremism Project, "Germany: Extremism and Counter-Extremism", available at <http://www.counterextremism.com/countries/germany>, accessed on Tuesday, December 5, 2016, at 8.08 pm.

<sup>75</sup> *Ibid.*