TERRORISM AND RADICALISM IN THE 21st CENTURY AS A CRIME AGAINST HUMANITY IN THE PERSPECTIVE OF LAW AND HUMAN RIGHTS

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ABSTRACT

Terrorism has becoming one of the global issues since the incidents of September 11 2001 in World Trade Centre which threatened and endangered the peace and security of mankind. It has become a worldwide phenomenon in the 21st century. Terrorism internationally condemned as the unlawful use and the manifestation of political movement. The acts of terrorism is seriously threatens the human civilization & the security of mankind. The purpose of this study is to analyze the acts of terrorism and radicalism as a crime against humanity in the perspective of international law and human rights. This study is using legal research which using statutes approach, legal doctrines and all regulations related to the acts of terrorism and crime against humanity. This result of this study will explain that acts of terrorism and radicalism constitute a crime against humanity.

Field of Research: Acts of Terrorism, Crimes Against Humanity, Radicalism, Use of force, Violations of Human Rights.

1. INTRODUCTION

1.1. The Definitions of Terrorism

Terrorism has emerged as one of the top security challenges in the 21st century. Countries around the world are engaged in unprecedented efforts to counter terrorism. Terrorism has becoming one of the global issues since the incidents of September 11 2001 in World Trade Centre which threatened and endangered the peace and security of mankind. To understand terrorism in the contemporary context, it is important to recognize that terrorism is generally considered as a tool or tactic, not an ideology or philosophy. This “tool” can be used as part of a larger political or military campaign, such as an insurgency.

For example, when Al Qaeda conducted the 9/11 attacks, it was using the “tool” of terrorism to achieve the larger purposes of diminishing American political influence in the Middle East among other objectives. Terror is the tool with which Bin-Laden and his people aspire to make their vision a reality. Since the nineties, Afghan alumni have been involved in the majority of large-scale terror attacks all over the world. This terror system included the perpetration of terror attacks and mass killings.

Paul J. Smith said that terrorism is the “systematic use of coercive intimidation, usually to service political ends”. Gus Martin said that terrorism internationally condemned as the unlawful use and the manifestation of political nature. Terrorism also used as an instrument of State control. For example: Bismark “terrorized” Prussia by using the army as a means of social control; NAZI Germany imposed reign of terror across Europe and Allied air forces resorted to ‘terror bombing’ in the Second World War, and Stalin ruled Russia by terror”. Gradually terrorism also came to refer to non-State practices. In the late nineteenth century, revolutionaries and anarchists in tsarist Russia were commonly known as terrorist. The Bolshevik seizure of power is oftend described as revolutionary terror and communist embraced terrorism as a means of class struggle.

The word “terrorism” itself was adopted from the French word ‘terreur’ which was derived from the Latin word ‘terrere’ means (to frighten). The word terreur began to be commonly used in France during the French Revolution during a period known as the Reign of Terror (1793-1794). During this period, Maximilien Robespierre used the Revolutionary Committee of Public Safety to institute terror throughout France. The Committee pursued, investigated and arrested individuals who disagreed with, or even appeared less that enthusiastic about its policies. This reign of terror has great impact which over 300.000 to 400.000 civilians were arrested on generally unsubstantiated political charges under the “Law of Suspects” and up to 40.000 were executed, without any trial. The guillotine was commonly used as the execution method, in part because of the broad public spectacle that was generated.

There are so many definitions of terrorism but there is no universally accepted definition of terrorism until now, even the United Nation agencies haven’t succeeded in making the official definition of terrorism. In the Black Law Dictionary, it is said that terrorism defined as the use of threat of violence to intimidate or cause panic, especially as a means of affecting political conduct. In the Oxford English Dictionary, terrorism defined as a system of terror: 1. Government by intimidation as directed and carried out by the party in power in France during the revolution of 1789-94; the system of “Terror”, 2. A policy intended to strike with terror those against whom it adopted; the employment of methods of intimidation; the fact of terrorizing or condition of being terrorized.

Terrorism is the most widely accepted contemporary usage of the term, is fundamentally and inherently political. It is also ineluctably about power: the pursuit of power, the acquisition of power and the use of power to achieve political change. Terrorism is thus violence or equally important, the threat of violence, used and directed in pursuit of, or in service of, a political aim. According to the opinion of Noam Chomsky, the international terrorism expert, the term of terrorism began to used in the end of the 18th century, particulary which shows the actions of violence from the ruling government in order to ensure that the people will obey the government. In other words, the term of terrorism refers to coercion from the ruling government. Walter Laquaer said that terrorism is the unlawful use of force for political purposes which targeting many civilian population; Walter Reich said that terrorism is a strategy of violence which designed to achieve certain desires from individual or certain groups by means of terror to frighten the public in large scale. Brian Jenkins said that terrorism is the unlawful use of force which designed to achieve the political purposes. From those definition, we can identify

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3 Paul J. Smith, Ibid.
4 Gus Martin, Understanding Terrorism, Challenges, Perspectives and Issues, SAGE Publications, Washington D.C., Cetakan Ke-4, hal. 22 (2013)
10 Gus Martin, Op.cit., hal. 37
the main component of terrorism. First, the use of unlawful force. Second, the actors which led by state actors or non state actors. Third, using the unconventional methods. Fourth, committed the attack to the civilian population and targeting the military objects. Fifth, the act of terrorism aimed to influence the audience.11

Terrorism internationally condemned as the unlawful use and manifestation of political movement. In October 2004 the UN Security Council unanimously passed Resolution 1566 which defines terrorism and declares that in no circumstances can terrorist acts be condoned or excused for political or ideological reasons;

Criminal acts, including those against civilians, committed with the intent to cause death or serious bodily injury or taking of hostages with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

One of the great controversies and challenges in the study of terrorism is the issue of definition. It is well-known fact that currently the international community does not subscribe to a single definition of terrorism. The U.S. Federal Bureau of Investigation defines terrorism as the “unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof in furtherance of political or social objectives”.12 Meanwhile, the Department of Homeland Security (DHS) under Section 2 of the Homeland Security Act of 2002 defines terrorism as any activity that—(A) involves an act that—(i) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and (ii) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and (B) appears to be intended—(i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion or to (iii) to affect the conduct of a government by mass destruction, assassination or kidnapping.13 The U.S. Department of Defense (DoD) defines terrorism as “the calculated use of unlawful violence or threat of unlawful violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious or ideological.14

Historically, the definition of terrorism is compiled in many international convention of terrorism. In article 1 paragraph 2 of the international convention from League of Nations,1937 which stated that terrorism is the criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public.15 In the article 2 paragraph 1 of the draft comprehensive convention on International Terrorism, terrorism defined as follows:

Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally causes; (a) death or serious bodily injury to any person; or (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; or (c) damage to property, places, facilities or systems referred to in paragraph

11 Ibid.
1(b) of this article, 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.

There are many definitions of terrorism but no universally accepted definition of terrorism until now, even the United Nation agencies haven’t succeeded in making the official definition of terrorism. Noam Chomsky said that the term of terrorism began to used in the end of the 18th century which shows the actions of violence from the ruling government in order to ensure that the people will obey the government. In other words, the term of terrorism refers to coercion from the ruling government. Walter Laquaer said that terrorism is the unlawful use of force for political purposes which targeting many civilian population; Walter Reich said that terrorism is a strategy of violence which designed to achieve certain desires from individual or certain groups by means of terror to frighten the public in large scale. Meanwhile, Brian Jenkins said that terrorism is the unlawful use of force which designed to achieve the political purposes.

From those definitions, we can identify the main component of terrorism. First, the use of unlawful force. Second, the actors which led by state actors or non state actors. Third, acts of terrorism is using the unconventional methods. Forth, committed the attack to the civilian population and targeting the military objects. Fifth, the act of terrorism aimed to influence the audien. Historically, the definitions of terrorism are compiled in international conventions of terrorism. According to article 1 paragraph (2) of the International Convention from League of Nation, 1937 which stated that terrorism is the criminal acts directed against a State and intended or calculated to create a State of terror in the minds of particular persons or a group of persons or the general public. A better definition of terrorism can be seen in the International Convention for the Suppression of Terrorist Bombings, 1997 in article 2 paragraph (1):

Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility: (a) with the intent to cause death or serious bodily injury; or (b) with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.

The definition of terrorism in the UK Legislation is contained in the Terrorism Act (2000) stated that terrorism as:

The use or threat of action where the action falls within if it a) involves serious violence against a person; b) involves serious damages to property; c) endangers a person’s life, other than that of the person committing the action, d) creates a serious risk to the health or safety of the public or a section of the public; or e) is designed seriously to interfere with or seriously to disrupt an electronic system. Terrorism also means the use or threat which is designed to influence the government or to intimidate the public or a section of the public and the use or threat is made for the purpose of advancing a political, religious or ideological cause.

The definition of terrorism has been stated also in other twelve international conventions of terrorism. On the other hand, the UN Security Council has issued four UN Resolution which related to international terrorism. The UN Security Council Resolution No. 1368 which issued at September 2001 and UN Security Resolution No. 1373 issued at October 15th, 2002, has insisted all countries to make action to respon the terrorist attacks. The UN Security Council Resolution No. 1373 and No. 1438 also expressed condolences and deep sympathy for the government and the people of Indonesia, for all victims and its family and insisted many countries in the world to fight against terrorism and called the

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entire nations to work together to help Indonesia in finding and prosecuting the perpetrators of terrorism to justice.

Terrorism can be classified into two types. The first type is State Terrorism or State Sponsored Terrorism, and the second type is a Non-State Terrorism. State Terrorism is a use of terror by a government as an instrument to subjugate other party to achieve governments purposes. State Terrorism oftenly occurred in the authoritarian and repressive government. In other words, this kind of authoritarian and repressive government always using terror as their instrument to intimidate anyone against their policies. State Sponsored Terrorism can be transformed into transnational crime if a country commits acts of terror against other countries by giving assistance, protection, financing plan, and facilitating terrorist group to other countries. For example, State Terrorism in Adolf Hitler authoritarian regime in Germany and Joseph Stalin totalitarian government in Uni Soviet which commits many acts of terror like kidnapping, punishing, torturing, and executing many innocent civilian which make a lot of people terrified. On the other hand, Non-State Terrorism is a terror used by non-State actor by individual or certain group of people against the people or government with any motives behind. For example, the terrorist group of Bali Bombing which was led by Imam Samudera, the terrorist group of Noordin M. Top from Jemaah Islamiyah, the terrorist Group of Santoso which commits many acts of terrorism in Sulawesi, and also the terrorist group of Abu Sayyaf who commits murder and hostages in the south areas of Philippine.

1.2. State Terrorism and Non-State Terrorism

R. Tackrah describes the differences between State Terror and Terrorism. State Terror means a terror practiced by a government in office appears as law enforcement and it is directed against the opposition, while terrorism on the other hand implies open defiance of the law and is the means whereby an opposition aims to demoralize government authority. Meanwhile Jerrold Post defines State Terror as “the state truning its resources such as police, judiciary, military, secret police etc. against its own citizenry. For example when Saddam Hussein used nerve gas against his own Kurdish citizens, this was example of state chemical and biological weapons terrorism. Other examples of state terror in the form of political pogroms and ethnic cleansing campaigns orchestrated by a state include the Turkish-sanctioned policy implemented between 1915 and 1916 to slaughter more than 650,000 ethnic Armenian. State terrorism also occurred during the period leading up to World War II between 1933 and 1945, where NAZI Germany purued a policy of persecuting and systematically exterminating nearly 6.5 million Jews and others including “asocials” like Gypsies, homosexuals the handicapped, the mentally ill and Soviet Prisoners.

On the other hand, agitational terror which is generally associated with individual who are interested in disrupting the existing order so that they might ascend to political power themselves, would always apply to non-State actors. Non-State Terrorism is a terror used by non-State actor by individual or certain group of people against the people or government with any motives behind. For example, in early 20th century, one of the famous leader of Russia, Vladimir Lenin eschewed agitational terrorism. He was extremely suspicious of suing terror tactics to achieve political goals. In later years, Joseph Stalin would take a State terror where hundreds of thousands of bodies, as the result of Soviet terror have been discovered in practically every Soviet city, including the center of Moscow. Another example of non-state terrorism also committed by the terrorist group of Bali Bombing which led by Imam Samudera, the terrorist group of Noordin M. Top from Jemaah Islamiyah, the terrorist Group of Santoso which commits many acts of terrorism in Sulawesi, and also the terrorist group of Abu Sayyaf who commits murder and hostages in the south areas of Philippine.

20 Ibid.
1.3 Perspectives of Terrorism

Terrorists deliberately cloak themselves in the terminology of military jargon. They consciously portray themselves as bona fide (freedom) fighters, if not soldiers who are entitled to treatment as prisoners of war (POWs) if captured and therefore should not be prosecuted as common criminals in ordinary courts if law.\(^{21}\) Terrorist organizations almost without exception now regularly select names for themselves not with the word “terrorism” but in any of its forms such as: a) freedom and liberation movements (e.g., the National Liberation Front, the Popular Front for the Liberation of Palestine, Freedom for the Basque Homeland); b) armies or other military organizational structures (e.g. the National Military Organization, the Popular Liberation Army, the Fifteeth Battalion of the Liberation Army); c) Actual self defence movements (e.g. the Afrikaner Resistance Movement, the Jewish Defence Organizations); d) Righteous vengeance (e.g. the Organization for the Oppressed on Earth, the Justice Commandos of the Armenian Genocide, the Palestinian Revenge Association)\(^{22}\)

The terrorist will always argue that it is society or the government or the socio-economic “system” and its laws that are the real “terrorist” and more over that if it were not for this oppression, he would not have felt the need to defend either himself or the population he claims to represent. In the book of Invisible Armies, written by Sheikh Muhammad Hussein Fadlallah, the spiritual leader of the Lebanese terrorist group responsible for Anderson’s kidnapping, he explains that they don’t see themselves as terrorist but as a Mujahideen or holy warriors who fights holy war for the people. The Hezbollah also considered their movements as resistance movements.\(^{23}\) One of the famous quote of terrorism is “ one person’s terrorist is another person’s freedom fighter” which applied for terrorist groups, movements or individuals. Terrorist never consider themselves as the “bad guys” in their struggle for what they would define as freedom. They might admit that they have been forced by a powerful and ruthless opponent to adopt terrorist methods, but they see themselves as freedom fighters or in the case of radical Islamists, as obedient servants of God. Benefactors of terrorist always live with clean hands because they present their clients as freedom fighter.\(^{24}\)

Terrorism must be recognized as its very core as being a form of political activity. Terrorist use criminal methods to pursue political objectives. This analysis is important because a lot of debates within governments on whether to treat terrorism as a crime or as a form of a warfare. Terrorism can be prosecuted on the basis of its constituent acts such as murder, destruction of property and so on but it has political nature which distinguish it from any ordinary crimes or regular street crime or organized crime. Some experts considered acts of terror as a warfare because of its method of carrying on politics by other means by using violence. However, there is one major difference between war and terrorism. War is considered legitimate, while terrorism is considered illegitimate. This is why the best analysis concedes that terrorism falls somewhere in the middle of the spectrum between war and crime.\(^{25}\)

By distinguishing terrorist from other types of criminals and irregular fighters from other forms of crime and irregular warfare, terrorism consists of essential elements such as: a) ineluctably political in aims and motives; b) violent or threatens violences; c) designed to have far reaching psychological repercussions beyond the immediate victim or target; d) conducted either by an organization with an identifiable chain of command or conspiratorial cell structure (whose members wear no uniform or identifying insignia) or by individuals or a small collection of individuals directly influenced, motivated, or inspired by the ideological aims for example of some existent terrorist movement and / or its leaders; and e) perpetrated by a subnational group or nonstate entity.\(^{26}\)

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\(^{21}\) Bruce Hoffman, Inside Terrorism,, P. 26

\(^{22}\) Bruce Hoffmann, Ibid...P.22

\(^{23}\) Op.cit., P. 23

\(^{24}\) Gus Martin, Understanding Terrorism..Op.cit., P. 42


\(^{26}\) Bruce Hoffman, Inside Terrorism,, P.40
1.4. Terrorism and Radicalism as a Global Phenomenon in the 21st Century

Toward the end of the twentieth century, Muslim and Arabic terrorism became the most prominent component of world terrorism. Its origins were in the emergence of the revivalist movements promoting a return to fundamentalist Islam and those of its protagonists who wanted to impose their aims by force. Such movements appeared in several countries; in the Arabian Peninsula it took the form of Wahhabism, the teaching spread by an eighteenth century sect that was little noticed at that time. On the Indian subcontinent, terrorism was connected with the desire to strengthen the identity of the muslim minority to the Hindu majority. The founders of Pakistan had been secular politicians but on the fringes of their movement, religious extremists were active. As time went by, they became more prominent.

Islamist fundamentalism is one form or another had always been present, just as in Christianity and Judaism there had been fundamentalist trends all along. It preached that one should adhere very closely to the Koran; that Allah was the only true lord, the only God worthy of obedience and true worship; and that one should believe in the uniqueness of the Prophet Muhammad. This basic tenets were common to every Muslim. What was really new was the conviction of the Salafis that they were Islam, not just one of several factions; that state and society should be based on the principles of the religious law, the Sharia, an not on secular law; and that this aim could be achieved most likely only by violence. The new Islamic fundamentalism also emphasis on jihad (holy war) , even though it exact meaning was not always made clear. Many fundamentalist also believed in the necessity to reestablish the Khilafah (the unity of politics and religious rule) which had vanished with the break-up of the Ottoman Empire after Word War I.

The radical Islamic movements exist and act at various levels of intensity and violence in all muslim countries in order to topple regimes and establish Islamic states according to the spirit of the Sharia, and to achieve independence for Muslim minorities in states identified with other cultures (Russia, China, the Philippines, Serbia, India and more). Radical Islam is therefore involved in struggles against foreign cultures on four levels: a) depositing “secular” regimes and replacing them with Islamic regimes in Muslim states; b) The struggle of Muslim minorities to achieve independence and establish independent Islamic state; c) The struggle against ethnic cultural minorities demanding autonomy or independence from Muslim states; d) The struggle against foreign cultures, particularly Western culture, at friction and contact points with the Islamic culture.

The roots of Islamic Fundamentalism are varied from religion to religion and from country to country. In Egypt, and other Middle Eastern countries, it was the general dissatisfaction with the prevailing state of affairs, the imperfections of politics and society and fear of and resistance against Western ideological and material influences. Islamic Fundamentalism utilizes a variety of means and tools to achieve it goals from education, information, economic aid and spiritual welfare to political sabotage, terror and war. Radical Islamic elements count three countries whose regimes can be characterized as Fundamental Islamic: Iran, Afghanistan and Sudan, as well as scores of Fundamental Islamic movements and organizations active throughout the Muslim world. The Fundamental Islamic states serve as a source of inspiration, encouragement, finance and support for the radical Islamic movements, and they act through their own channels and also via these organizations to export the Islamic revolution, the product of their school of thought and to wage battle against foreign cultures.

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28 Ibid.
29 Walter Laquaer (2004) , No End To War : Terrorism in The Twentieth First Century, P.31
30 Ibid.
32 Walter Laquaer (2004) , No End To War : Terrorism in The Twentieth First Century, P.31
particularly the western culture. The victory of the Islamic Mujahidin in Afghanistan and the Soviet Union’s defeat in the theater of war were conceived as an Islamic victory in Islamic circles. The collapse of the Soviet Union and the disintegration of Communist Ideology created an ideological and political vacuum, which opened an historical “window of opportunity” for Islamic circles. Communism and Socialism which constituted an ideological basis for the majority of secular regimes in Muslim states, crumpled and left an ideological vacuum that radical Islam aspires to fill.

Terrorism became truly global for the first time in history in the 1990s as local conflicts turned into a worldwide campaign. The war in Afghanistan had lasted for about ten years; radical Islamist, flush with enthusiasm, thought that it might take only another decade to overthrow the present Arab and Muslim governments and yet another few years to defeat America and the West. Underlying the new globalization of terrorism was the concept of jihad; in its present form, this was a loose federation of terrorist groups that had developed in the 1970s and 1980s. These decades were not a good time for Muslim and above all, Arab radicals. The Arab countries such as Libya and Syria were ruled by military dictators and attempts to establish truly Islamic regimes. The overthrow of the Shah and the coming of the power of Ayatollah Khomeini and his supporters also happened in Iran. Iran was the most active country at the time as far as the export of violent religion and terrorism was concerned. Then, with the outbreak of the war in the Afghanistan, a new window of opportunity suddenly opened up, and militants for all over the Muslim world were not slow to make use of it.

Osama bin Laden was not raised or educated in religious Islamic seminaries but actually studied engineering at a prestigious university in Saudi Arabia. His radical worldview was formulated through the perusal and study of the writings of radical Islamic philosophers during his years in Afghanistan in the framework of the jihad against the Soviets. His main source of influence was the Palestinian Sheikh Abdullah Azzam, the principal ideologist and main formulator of the perception of jihad in Afghanistan, who originated from the village of Silat-al Hartiya in the Jenin district. Azam held the ultimate responsibility for formulating the perceptions of the “Global Jihad”. The first ideologist and organizer of this new jihad arising out of Afghanistan was Abdullah Azzam, a cleric born in Palestine where he studied agriculture before receiving an Islamic education in Syria and Egypt. He also received a doctorate in Islamic law. He held a lecturership at a Saudi University but his hear was not in an academic career; while in Egypt he had become a radical Islamist partly, apparently, under the influence of the brother of Sayed Qutb. Azzam wanted to dedicate his life to jihad, which he considered the duty of every Muslim. Though he had participated in the war of 1967 against Israel, Azzam was not primarily a military leader even though he took part in military actions but an intellectual and certainly a political leader with a vision. He was a man of boundless energy who traveled near and far trying to mobilize the young generation all over the Muslim world to join in the armed struggle against the infidels and to establish Khilafah, God’s rule on earth. The liberation of Afghanistan was not the aim but just the first step in the coming jihad. The real aim was to restore to Muslim rule all the territories that had once been theirs, from Southern Spain to the Philippines, Central Asia, India, parts of Europe and Africa.

33 Yoram & Shaul Shay, The Globalization of Terror…, P.20
34 Ibid.
37 Yoram & Shaul Shay, The Globalization of Terror…, P.22
Undoubtedly, Azzam contributed significantly to the conversion of the war in Afghanistan into a global Islamic issue, a symbol of the Islamic struggle against alien cultures and to the placing of the jihad in the forefront of Islamic activity against its adversaries. The Jihad was conceived as the main tool with which to achieve victory for Islam and to establish the divine government on earth. He became a symbol and leader of the jihad organizations and radical Islamic circles worldwide and his impact on the Global Jihad movement lasted beyond his lifetime. His actions and concepts influenced the development of numerous phenomena and processes in radical Islam as follows: i) The establishment of an Islamic “international” organization on the basis of the recruitment of volunteers from all over the Islamic world on behalf of the jihad in Afghanistan; ii) The creation of an international network of Islamic terror cells supported by radical Islamic movements throughout the world; iii) The triumph of the Mujahidin in Afghanistan created an aura and ethos of bravery around the Muslim fighters and serves as a source of inspiration for Muslim around the globe; iv) The creation of an extensive cadre of Islamic fighters imbued with a sense of mission and combat experience was created. These fighters became the vanguard in struggles between the radical Islam and its foes.  

2. ACTS OF TERRORISM AS A CRIME AGAINST HUMANITY IN THE ASPECT OF LAW AND HUMAN RIGHTS

2.1. Terrorism as a Crime Against Humanity

Terrorism is a crime, a crime against humanity as a whole. It is a crime against the whole world no matter who, what or which country has been or is being targeted. The attacks on September 11 affect the whole world and damages not just buildings in a particular country and the people in them. It has shattered the confidence of the world and has left an atmosphere of fear. According to the international criminal law system, the law enforcement system for international crime can be divided into two categories; a) Direct enforcement system and b) Indirect enforcement system.

Direct Enforcement System is an international criminal law enforcement which is conducted by the International Criminal Court (ICC) permanently or temporarily. The ICC is a permanent international court that was established on July 17, 1998 by the Rome Statute, which was passed through voting by 148 countries, of which 120 countries voted in favor, 7 opposed and 21 countries abstained including Indonesia. Among the 7 countries who opposed are United States, China and Iraq. More than 108 countries have ratified the Rome Statute of 1998. The ICC is an international court that initiated by the United Nations, which located in Den Haag, Netherlands.

There are around 15 to 20 judges from various nations who carried out their duty. According to Article 4 paragraph (1) of this Statute, the ICC have international legal capacity which means that the court has a position as a subject of international law. The ICC also have national legal capacity, which means that the ICC has a legal status either as subjects of international law as well as the subject of the national law in the territory of the participant and non participant countries. The ICC criminal jurisdiction includes 4 crimes which stated in the Article 5 of the Statute as follows; a) Crime of aggression; b) Genocides; c) Crimes Against Humanity; d) War Crimes.

The first principles of ICC is a complementary principle. The complementary principle means that if the crime was part of ICC’s jurisdiction, the ICC will submit it to the national legal system of the country where the crime occurred. If a country is unwilling or unable to prosecute then the ICC can prosecute the crime. The complementary principle also means that a state may request an assistance from other countries to cooperate in dealing with crimes such as extradition. The existence of complementary principles are influenced by four factors as follows; a) mutual interest; b) national sovereignty; c) humanistic and humanitarian values; d) needs of world order. The second principle is the principle of legality. The principle of legality in international criminal law should be able to maintain the harmony, the social justice and the world order. The third principle is ‘ne bis in idem’. It’s a legal
doctrine to the effect that no legal action can be instituted twice for the same cause of action. But this principle can’t be applied absolutely, which means the ICC can prosecute all crimes within the ICC jurisdiction if the national court unable to run the judicial process fairly. In other words, the ICC shouldn’t play a role if the national court began to investigate and examine those crimes. The fourth principle is the individual criminal responsibility. The term’individual criminal responsibility ‘ is also commonly employed to describe the scenario where an individual is criminally responsible for his own unlawful actions as opposed to being criminally responsible for the unlawful actions of others, namely ‘collective criminal responsibility’.

2.2. Terrorism as a Violation of Human Rights

Terrorism is generally understood as acts of violence which spread terror among the civilians and civilian population. Terrorist use terror as their weapon. The hijacking and crashing of the aircrafts create terror in the minds of people, especially the direct and indirect victims. Such is the fear created that people now afraid to fly. The Abu Sayyaf kidnappers inspire fear by beheading their hostages. Exploding bombs in public places and killing innocent people inspire fear and terror, and a feeling of being unsafe anywhere at any time. Terrorism is a serious human rights violation; undermines the State and peaceful political processes; and threatens international peace and security.

Numerous resolutions of the UN General Assembly since the 1970’s, and of the Commission on Human Rights since the 1990’s assert that terrorism threatens or destroys basic human rights and freedoms, particularly life, liberty and security but also civil and political and economic, social and cultural rights. Regional anti-terrorism instruments such as 1996 Arab Convention, preamble; 1999 OIC Convention, preamble; 1971 OAS Convention, preamble; 1999 OAU Convention, preamble, OAS Declaration of Lima to Prevent, Combat and Eliminate Terrorism, 26 April 1996, preamble also stated that terrorism gravely violates human rights. UN Special Rapporteur observes that there is probably not a single human rights exempt from the impact of terrorism. 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 addition to these individual costs, terrorism can destabilize Governments, undermine civil society, jeopardize peace and security, and threaten social and economic development. All of these also have a real impact on the enjoyment of human rights.

Human rights are universal values and legal guarantees that protect individuals and groups against actions and omissions primarily by State agents that interfere with fundamental freedoms, entitlements and human dignity. The full spectrum of human rights involves respect for, and protection and fulfilment of, civil, cultural, economic, political and social rights, as well as the right to development. Human rights are universal—in other words, they belong inherently to all human beings—and are interdependent and indivisible. According to the opinion of Mochtar Kusumaatmadja and B. Arief Sidharta, the definition of human rights basically is freedom to do something or not to do something related to the subject without interference from any party and those freedoms are recognized and have protected by law and therefore have a legal basis. The human rights norms based on the idea that the people must be freed from the cruel and inhumane acts. Every human has three kinds of human rights, 1) the right to live, 2) the right for freedom, 3) the right to have something.

The Universal Declaration of Human Rights (UDHR) preamble states that ‘freedom from fear’ is part of ‘the highest aspiration of the common people’ while the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Political Rights (ICESCR) preambles refer to ‘the ideal of free human beings enjoying freedom from fear’. The political ideal of ‘freedom from fear’ was first articulated as one of four freedoms in a speech by US President Franklin D. Roosevelt in 1941. Franklin D. Roosevelt stated the Four Freedom which was known as “the four freedom speech” (1941 State of the Union Address) where he proposed four fundamental freedoms that people everywhere in the world ought to enjoy as follows; a) freedom of speech, b) freedom of worship, c) freedom from want; d) freedom from fear. The four freedoms of Roosevelt
formed an important pillar of the Universal Declaration of Human Rights that were adopted on December 10, 1948 by United Nation General Assembly. The freedom from fear is mentioned in the preamble of the Declaration.

Universal Declaration of Human Rights is considered fundamental human rights document and binding on all states. International human rights law has been codified through major human rights treaties and the remaining portion is available in customary international law. The most important of these treaties are, International Covenant on Economic, Social and Cultural Rights; and the International Covenant on Civil and Political Rights, and its two Optional Protocols. Modern human rights standards are rooted in the following four simple values: a) freedom of want, b) freedom of fear; c) freedom of belief; d) freedom of expression. These freedoms form the core principles of the Universal Declaration of Human Rights which set out the fundamental elements of international human rights accepted United Nations member states and elaborated in many subsequent human rights treaties. This declaration is accepted as “a common standard of achievement for all people and all nations”.

Terrorism aims at the very destruction of human rights, democracy and the rule of law. It attacks the values that lie at the heart of the Charter of the United Nations and other international instruments: respect for human rights; the rule of law; rules governing armed conflict and the protection of civilians; tolerance among peoples and nations; and the peaceful resolution of conflict. Terrorism has a direct impact on the enjoyment of a number of human rights, in particular the right to life, liberty and physical integrity.

Terrorist acts can destabilize Governments, undermine civil society, jeopardize peace and security, threaten social and economic development, and may especially negatively affect certain groups. All of these have a direct impact on the enjoyment of fundamental human rights. The destructive impact of terrorism on human rights and security has been recognized at the highest level of the United Nations, notably and the new Human Rights Council which states have set out that terrorism: a) threatens the dignity and security of human beings everywhere, endangers or takes innocent lives, creates an environment that destroys the freedom from fear of the people, jeopardizes fundamental freedoms, and aims at the destruction of human rights; b) has an adverse effect on the establishment of the rule of law, undermines pluralistic civil society, aims at the destruction of the democratic bases of society, and destabilizes legitimately constituted Governments; c) has links with transnational organized crime, drug trafficking, money-laundering and trafficking in arms, as well as illegal transfers of nuclear, chemical and biological materials, and is linked to the consequent commission of serious crimes such as murder, extortion, kidnapping, assault, hostage-taking and robbery; d) has adverse consequences for the economic and social development of States, jeopardizes friendly relations among States, and has a pernicious impact on relations of cooperation among States, including cooperation for development; and e) threatens the territorial integrity and security of States, constitutes a grave violation of the purpose and principles of the United Nations, is a threat to international peace and security, and must be suppressed as an essential element for the maintenance of international peace and security.

International and regional human rights law makes clear that States have both a right and a duty to protect individuals under their jurisdiction from terrorist attacks. This stems from the general duty of States to protect individuals under their jurisdiction against interference in the enjoyment of human rights. More specifically, this duty is recognized as part of States’ obligations to ensure respect for the right to life and the right to security. The right to life, which is protected under international and regional human rights treaties, such as the International Covenant on Civil and Political Rights, has been described as “the supreme right” because without its effective guarantee, all other human rights would be without meaning. As such, there is an obligation on the part of the State to protect the right to life of every person within its territory and no derogation from this right is permitted, even in times of public emergency. The protection of the right to life includes an obligation on States to take all appropriate and necessary steps to safeguard the lives of those within their jurisdiction.

As part of this obligation, States must put in place effective criminal justice and law enforcement systems, such as measures to deter the commission of offences and investigate violations where they
occur; ensure that those suspected of criminal acts are prosecuted; provide victims with effective remedies; and take other necessary steps to prevent a recurrence of violations. In addition, international and regional human rights law has recognized that, in specific circumstances, States have a positive obligation to take preventive operational measures to protect an individual or individuals whose life is known or suspected to be at risk from the criminal acts of another individual, which certainly includes terrorists. Also important to highlight is the obligation on States to ensure the personal security of individuals under their jurisdiction where a threat is known or suspected to exist. This, of course, includes terrorist threats.

3. Conclusion

The conclusions of this study are as follows. First, acts of terrorism can be classified as a crime against humanity which is conducted systematically or widespread, and organized by State or non-State actor which is directed to any civilian people. Secondly, for most countries, acts of terrorism are criminalized as an ordinary crime, but this crime has killed many innocent people, civilians or military officer, and organized by a State or non-State actors which constitute to a crime against humanity. Thirdly, the International Criminal Court has an important role to prosecute acts of terrorism that leads to crimes against humanity. On this concluding section, researcher also make recommendations. First, every non-participant country of the ICC Statue (Rome Statute 1998) should sign the Rome Statute immediately which aims to prosecute the perpetrators in the ICC. Second, the Rome Statute of International Criminal Court should add the acts of terrorism as a crime against humanity into its jurisdiction. Third, every country should be able to cooperate in combating terrorism and using the International Criminal Court as one of the legal instrument to respond the acts of terrorism in addition to its domestic law.

REFERENCES


