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**Significance of Abu Dujana and Zarkasih's Verdict**

**Nurfarahislinda Binte Mohamed Ismail  
V. Arianti  
Jennifer Yang Hui**

**S. Rajaratnam School of International Studies  
Singapore**

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## **ABSTRACT**

The first ever Indonesian court ruling of convicts as terrorists and the branding of the Jemaah Islamiyah (JI) organisation as a “terrorist” one is examined in great detail in this paper. Beginning with the historical development of other counter-terror trials that took place in the Archipelago, it attempts to compare the cases of Abu Dujana and Zarkasih to their precedents and highlights some of its downplayed, but astonishing significances. It also takes a look at the reasons behind the reluctance of the government in banning the JI and suggests possible implications resulting from the verdict.

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Nurfarahislinda Binte Mohamed Ismail is a graduate student at the S. Rajaratnam School of International Studies. V. Arianti is a Senior Analyst and Jennifer Yang Hui is a Research Analyst at the School. The working paper culminated from their sustained interest and research on Indonesia.



# Significance of Abu Dujana and Zarkasih's Verdict

## Introduction

In June 2007, the Indonesian anti terror police rounded up two of the prize catches of the year in Central Java: Abu Dujana, the commander of the military wing of Jema'ah Islamiyah (JI),<sup>1</sup> and Zarkasih, the acting leader of JI.<sup>2</sup> Both alleged senior leaders of JI were arrested within a week in one of the most successful counter-terrorist operations in Indonesia. The victories presented the Indonesian authorities with the problem of providing a just trial to the duo; an issue that has befuddled the nation since the trial of other terror suspects such as, most notably, Abu Bakar Ba'asyir, the alleged spiritual leader of JI whose relations with the organisation could not be satisfactorily proven during his trial.

However, the verdict of Dujana and Zarkasih's trial proved every bit as dramatic as their arrests. In addition to being sentenced to 15 years of imprisonment each, for the first time in the history of counter terrorism in Indonesia, the South Jakarta State Court decreed JI as an illegal organisation as it had been found guilty of criminal acts of terrorism.<sup>3</sup> The Indonesian courts have never been able to prove that JI legally exists, let alone punishing its members. This situation previously permitted the release of suspects who were guilty of no crime other than membership in JI. In addition, the case was significant in being the first in which a suspect, who was proven as the leader of a terrorist organization, was fined. Dujana and Zarkasih paid a Rp. 10 million (US\$1,087) fine for being the organisation's administrators.<sup>4</sup> The development has been hailed as a landmark in the history of counter-terror in Indonesia, promising just trial and possible prosecution of many more who are guilty of acts of terror. There is also the added benefit of restoring some public confidence in the legal system.

That a Jakarta court would suddenly outlaw JI more than five years after the devastating bombings along Bali's nightclub strip was a surprise. It came during the sentencing of a former leader and military commander of the network to 15 years' jail

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<sup>1</sup> "Abu Dujana Dikabarkan Tertangkap di Banyumas", *Koran Tempo*, 10 June 2007.

<sup>2</sup> "Mbah Zarkasih, Penjual Roti Alumni Afghanistan", *Rakyat Merdeka*, 16 June 2007.

<sup>3</sup> "15 Tahun Buat Abu Dujana", *Republika Online*, 21 April 2008.

<sup>4</sup> "Zarkasih Divonis 15 Tahun Penjara", *Tempo Interaktif*, 21 April 2008.

each for abetting terrorism. The Indonesian courts have increasingly grown frustrated with the hesitation of Indonesian legislators for not banning JI as required under international law. The rising political clout of Islamists blocked a ban, despite a court ruling in 2004 stating there was significant evidence JI leader Abu Bakar Ba'asyir was the spiritual chief of a group promoting terrorism. The Police may also have been annoyed at the lack of a ban and pushed the court towards imposing one.<sup>5</sup> The police have wanted more latitude for time in pursuing JI members and have worked with prosecutors to acquire it, resulting in the proscribing of JI during the Abu Dujana's trial.

This paper examines the history of terrorism trials and verdicts in Indonesia, and compares them to the verdict on Dujana and Zarkasih in order to assess its' significance in the development of Indonesia's counter-terrorism efforts. It also attempts to shed light on the reasons behind the poor record of the Indonesian counter-terror law, the inability to successfully prosecute terror suspects, and provides some recommendations regarding the issue.

### **Comparison to Previous Cases**

The first reason for the successful outcome of the trial rests with the experience of the judges and prosecutor. After their arrests in Central Java, Abu Dujana and Zarkasih were brought to Jakarta, West Java and tried at the South Jakarta State Court, which is renowned as the venue for the trials of other prominent figures such as Soeharto, the late former President of Indonesia. The same Court oversaw the trial of Abu Bakar Ba'asyir from 2003 to 2005. The presiding judge over Dujana's case was Wahjono,<sup>6</sup> who has a well earned reputation for handling difficult, high profile cases, such as the corruption charges of Soeharto and the Supersemar Foundation.<sup>7</sup> He is also experienced in handling terrorism related cases. He was the chief of the judicial panel hearing Ba'asyir's case requesting the disbandment of Indonesian anti-terror Police Detachment 88.<sup>8</sup> The Chief Judge in Zarkasih's trial was Eddy Risdyanto and the members of the judicial panel were Prasetyo and Syafrullah Sumar.<sup>9</sup> Risdyanto was

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<sup>5</sup> Mark Forbes, "The Fading Power of JI", *Theage.com*, retrieved on 25 April 2008 from <http://www.theage.com.au/news/world/the-fading-power-of-ji/2008/04/24/1208743142>.

<sup>6</sup> "Abu Dujana dan Zarkasih Dihukum 15 Tahun", *Radar Cirebon*, 21 Apr. 2008

<sup>7</sup> "PN Jakarta Selatan Tunjuk Hakim Wahjono Tangani Perkara Soeharto", *Antara News*, 19 July 2007.

<sup>8</sup> *Ibid.*

<sup>9</sup> "Zarkasih Divonis 15 Tahun Penjara", *Tempo Interaktif*, 21 April 2008.

also the chief of the judicial panel that oversaw other terrorism cases such as the one that convicted Muhammad Basri, who was responsible for the mutilation of three Christian school girls.<sup>10</sup> The Chief Public Prosecutor was Totok Bambang and his team included prosecutor, Narendra Jatna.<sup>11</sup> On the other hand, the Both Abu Dujana and Zarkasih were represented by attorney Abu Bakar Rasyida.<sup>12</sup>

The key reason for the successful prosecution of Abu Dujana and Zarkasih is an innovative use of legal tactics; applying corporate crime charges (organized crime racketeering) to prove that JI exists as a criminal organisation. An expert witness, Dr. Sulastini, lecturer of Law from the University of Indonesia,<sup>13</sup> testified to the definition of corporate crime and as to whether JI fits the prerequisites of a criminal organisation. This was instrumental in defining the term which had caused problems in previous trials. Corporation in question refers to a group of people and or resources which can be legal or illegal.<sup>14</sup> A corporate criminal act is defined by the expert witness as an act of crime that is conducted by people in a corporate environment.<sup>15</sup> Dr. Sulastini categorised JI as a corporation due to the fact that it possesses a structure in the form of the *isobah*, it has members and also because it has a single clear leader.<sup>16</sup> Dujana as the commander of the military wing of the organisation was argued to be guilty of a corporate criminal act as the act had been committed in a corporate environment, as it was obvious that there was a division of labour to commit the offences.<sup>17</sup> His actions were thus identified as corporate criminal acts.<sup>18</sup>

This was in contrast to previous cases, such as the trial of Abu Bakar Ba'asyir, which had been unsuccessful in proving JI as an organisation. Ba'asyir's conviction was mostly based on the testimony of witnesses, most of whom testified about his position in JI from hearsay and not personal experiences.<sup>19</sup> Among the witnesses in Ba'asyir's trial, only Nasir Abbas, the Malaysian former trainer and senior member of

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<sup>10</sup> "Terdakwa Mutilasi Poso Divonis 19 Tahun", *Seputar Indonesia*, 12 December 2007.

<sup>11</sup> "Korporasi Abu Dujana Dapat Dikenai Rp. 1 Triliun", *Kompas*, 25 February 2008.

<sup>12</sup> "Zarkasih Divonis 15 Tahun Penjara", *Tempo Interaktif*, 21 April 2008; "Abu Dujana dan Zarkasih Dihukum 15 Tahun", *Radat Cirebon*, 21 April 2008

<sup>13</sup> "Korporasi Abu Dujana Dapat Dikenai Rp. 1 Triliun", *Kompas*, 25 February 2008.

<sup>14</sup> Court Papers for the Trial of Abu Dujana.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> "Korporasi Abu Dujana Dapat Dikenai Rp. 1 Triliun", *Kompas*, 25 February 2008.

<sup>19</sup> "Abu Bakar Ba'asyir's Legal Saga", *BBC News*, 13 June 2006.

JI, testified that Ba'asyir was the *amir* of the organisation.<sup>20</sup> According to Abbas, Ba'asyir once attended a graduation ceremony for the participants of the Hudaibiyah military training camp in the Southern Philippines.<sup>21</sup> Other witnesses challenged the existence of JI and Ba'ashir's role in JI. Mas Selamat Kastari, the leader of the Singapore chapter of JI who is currently at large, told the court that JI was an "informal organisation"<sup>22</sup> and was "only a common religious group".<sup>23</sup> Kastari and four other witnesses also failed to provide a linkage between Ba'asyir and JI. Kastari said that, "What I know is that Abu Bakar Ba'asyir was very close to Abdullah Sungkar and it is possible that he replaced him."<sup>24</sup> The other four witnesses claimed not to know about the existence of JI or Ba'asyir was indeed the leader of the organisation.<sup>25</sup> They also said that they only knew Ba'asyir from the speeches and sermon sessions he gave and from the mass media.<sup>26</sup>

The definition of an organisation was sketchily outlined during Ba'asyir's trial. Ultimately Ba'asyir was proven guilty for involvement in a plan, purportedly by JI, to overthrow the Indonesian government in September 2003, however the court ruled that there was no evidence of him leading the organisation.<sup>27</sup> The critical problem was that Indonesian law strictly defined an organisation as one that was registered and also had a clear documented structure. JI itself has never been registered as an organisation and thus presented a problem for the prosecutors to define, at that time. Dujana and Zarkasih's prosecutors managed to circumvent this problem. Testimonies such as that by Dr. Sulastini showed that JI must be included in the law on terrorism as, according to the law, the corporation need not be legal nor does it need to be registered in the Department of Judicial Affairs.<sup>28</sup> The law on Terrorism thus recognises the existence of an unregistered corporation, and hence by definition illegal.

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<sup>20</sup> "Pernyataan Nasir Abbas Kuatkan Dugaan Posisi Ba'asyir Dalam Jemaah Islamiyah", *Radio Nederland Wereldomroep*, 23 December 2004, retrieved on 13 May 2008 from <http://www.geocities.com/koedamati/rn241204.htm>.

<sup>21</sup> *Ibid.*

<sup>22</sup> "Court Produces More Information on JI", *The Jakarta Post*, 12 June 2003.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> Zachary Abuza, "Abu Bakar Ba'asyir Walks Out of Prison Today a Free Man: A Real Setback in the War on Terror in Southeast Asia", *Counterterrorism Blog*, 13 June 2006, retrieved on 12 May 2008 from [http://counterterrorismblog.org/2006/06/print/abu\\_bakar\\_baasyir\\_walks\\_out\\_of.php](http://counterterrorismblog.org/2006/06/print/abu_bakar_baasyir_walks_out_of.php).

<sup>28</sup> Court Papers on the Trial of Abu Dujana.



The interesting element with using the corporation law is that responsibility for criminal actions does not end with the individual, but rests with the entire organisation.<sup>29</sup> Punishment must be meted out to both the perpetrator and corporation. The corporate responsibility has its own punishment, which includes physical punishment, and a fine of up to Rp. 1 quintillion (US\$ 107,188,000).<sup>30</sup> The organisation can also be frozen or disbanded, according to the prerogative of the presiding judge.<sup>31</sup> As JI as an organisation has yet to be registered with the government, the fine would be shouldered by those known to be the caretakers.<sup>32</sup> Dujana and Zarkasih were thus required to pay a fine for being the organisation's administrators.<sup>33</sup>

Having established JI was an organisation, the judges further accepted that several members knew one another, just like individuals in other types of organizations. This fact was proven during trial.<sup>34</sup> For example, the relationship between Dujana and Zarkasih vis-à-vis other members of JI appeared to have been outlined clearly during the trial as being that of supervisor and subordinate. Dujana and Zarkasih were acquainted with each other, as well as with Nur Affifuddin, another terror convict who was sentenced to seven years of imprisonment on the same day as the duo. The relationship among the men was established during the police investigation, and allowed the police to reconstruct a meeting the men conducted in Sleman, Yogyakarta, Central Java in March 2007.<sup>35</sup> Dr. Sulastini reinforced the evidence by testifying that it was not possible for people in the same corporation not to know the command structure of the organisation when they were part of a hierarchy and taking orders from certain members.<sup>36</sup> The fact that Dujana was a witness during the trial of his subordinates: Maulana Yusuf alias Kholis alias Abdullah bin Goek Soewarto and Suparjo alias Sarwo Edi Nugroho at the Central Jakarta State Court in December 2007<sup>37</sup> further reinforced the courts findings.

The success above was in contrast to the case of Sandi Arif, who was suspected of a number of terrorism cases in Ambon, Maluku. In September 2007, the

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<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> "Zarkasih Divonis 15 Tahun Penjara", *Tempo Interaktif*, 21 April 2008.

<sup>33</sup> *Ibid.*

<sup>34</sup> "15 Tahun Buat Abu Dujana", *Republika Online*, 21 April 2008.

<sup>35</sup> "Abu Dujana Sering ke Ngalik", *Jawa Pos*, 12 July 2007.

<sup>36</sup> *Ibid.*

<sup>37</sup> "Abu Dujana Bersaksi Lagi di PN Jakarta Pusat", *Detik.com*, 11 December 2007.

Ambon State Court had freed Arif of terrorism charges on the grounds of insufficient evidence of his relationship with other members of the terrorist group as being other than students and religious teacher.<sup>38</sup>

Judge Wahjono, the presiding judge in the Dujana and Zarkasih's case, also ruled that JI is an organisation that carries out acts of terrorism, albeit a clandestine one.<sup>39</sup> The fact that secret meetings were conducted between Dujana, Zarkasih and JI-linked members was taken into account during the trial, such as the meeting in Bandung, Semarang, West Java in 2005, whereby Hasanudin and Ustadz Sahid reported about the situation in Poso, Central Sulawesi to Dujana and Zarkasih.<sup>40</sup> According to the judge, JI is an organisation that comprised a network of people and is illegal.<sup>41</sup> The organisation was also accused of using *infaq* (donation of members) as a means of financial support. It was proven to have a source of financial supply from *infaq*.<sup>42</sup> The accusation was proven when judge Eddy Risdyanto was able to obtain an admission from Dujana that the money provided by Zarkasih came from the *infaq* from the congregation.<sup>43</sup>

The most damning testimony came from Nasir Abbas, a former JI member and alumni of Afghanistan military training who graduated in the same year as Zarkasih. He identified Dujana as a member of JI and said that Dujana had taken the *bai'at* (oath of allegiance) to the organisation.<sup>44</sup> He said that he himself held the position of the head of Mantiki III, which covered the areas of Sabah, Southern Philippines and Indonesia within JI.<sup>45</sup> Abbas also testified to meetings involving himself and Dujana in Tawangmangu, Central Java and Puncak, West Java.<sup>46</sup> According to him, Dujana was acting as the note-taker during the meeting.<sup>47</sup> He also said that he gave some money to Dujana during the meetings,<sup>48</sup> showing the relationship between himself and Dujana as well as with other members of the organisation. Unlike the testimony given

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<sup>38</sup> "Sandi Arif Tersangka Terorisme Divonis Bebas", *Kompas*, 19 September 2007.

<sup>39</sup> "15 Tahun Buat Abu Dujana", *Republika Online*, 21 April 2008.

<sup>40</sup> "Abu Dujana Pernah adakan Pertemuan Rahasia di Bandung", *Republika Online*, 12 July 2007.

<sup>41</sup> Tatan Syuflana, "Abu Dujana dan Zarkasih Divonis 15 Tahun Penjara", *Suara Pembaruan Daily*, 22 April 2008.

<sup>42</sup> *Ibid.*

<sup>43</sup> "Abu Dujana: Zarkasih Bukan Amir JI", *Official Website of South Kalimantan Police*, 5 February 2008 retrieved on 12 May 2008 from <http://www.telekalsel.com>.

<sup>44</sup> Court Papers for the Trial of Abu Dujana

<sup>45</sup> *Ibid.*

<sup>46</sup> "Nasir Abbas: Saya Pernah Kasih Uang ke Dujana", *Kompas*, 21 January 2008

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

during Ba'asyir's trial, Abbas' testimony appeared to have been taken more seriously this time by the panel of judges.

Other members' testimonies corresponded with Abbas' testimony as well. Sikas alias Karim, who had been responsible for transporting the firearms from Solo to Yogyakarta, was one of the witnesses. Sikas told the court that he joined JI in 1997.<sup>49</sup> Zarkasih said of himself that he was technically not a member of JI as he had never taken the *bai'at*, which was a prerequisite for joining.<sup>50</sup> Their testimonies showed that JI existed as an organisation to be participated in as it possessed a set of rules and prerequisites for participation.

The change in strategy was critical. Proving that JI existed and was involved in crimes such as the illegal possession of weapons and explosives made it easier to convict individuals. Other crimes that JI was proved to be involved in included raising funds for the purpose of enabling people to acts of terror. Abu Dujana was convicted of helping the terror perpetrators by supplying firearms in addition to wiring Rp. 5 million (US\$ 543.50) per month to participants of military training in Moro, the Philippines.<sup>51</sup> He was also convicted of concealing information about the planning of and the acts of terrorism themselves, in addition to failing to report them to law enforcement authorities.<sup>52</sup> Zarkasih was also implicated by association regarding the movement of explosives from Surabaya to Poso as he had failed to report it to the police despite having knowledge that it was taking place.<sup>53</sup> Dujana and Zarkasih were also implicated in an armed robbery in Poso, where 500 million rupiah (US\$ 54,000) was stolen from the local government and later sent by Hasanudin to Dujana, who gave the money to Zarkasih.<sup>54</sup> Both were found guilty of protecting and aiding Malaysian terror fugitive Noordin M Top,<sup>55</sup> assuring JI implication in bombing acts that had taken place in the Archipelago such as the August 2003 bombing of the JW Marriott Hotel in Jakarta. In addition, JI was also seen as being involved in terrorism acts in Poso as Dujana was found to have provided shelter to Syaiful Anam alias Brekele, a person convicted of involvement in the bombing of the Tentena traditional

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<sup>49</sup> Court Papers for the Trial of Abu Dujana.

<sup>50</sup> *Ibid.*

<sup>51</sup> "15 Tahun Buat Abu Dujana", *Republika Online*, 21 April 2008.

<sup>52</sup> *Ibid.*

<sup>53</sup> "Abu Dujana dan Zarkasih Dihukum 15 Tahun", *Radar Cirebon, Op.Cit.*

<sup>54</sup> "Abu Dujana Pernah Diberi Uang Pemenggal Kepala di Poso", *Detik.com*, 11 December 2007.

<sup>55</sup> "Leaders of Terrorist Group JI get 15 Years Each", *The Jakarta Post*, 22 April 2008.

market.<sup>56</sup> Sheltering terror convicts indicated sympathy for them and possibly a deeper relationship.

Previous verdicts on JI terror perpetrators only found them guilty on a personal level while JI as an organisation was not seen to be perpetrating terrorist acts. The Bali bombers and Poso terror convicts were all sentenced according to the crimes committed on a personal level while no reference to the organisation they belonged to were made during the trial. The case of the Muhammad Basri, the Poso terrorist who was sentenced to 19 years of jail in December 2007, is an example of this.<sup>57</sup> Although Basri and one of his accomplices, Arbin Djanatu, were the leaders of a group that was suspected of being linked to JI,<sup>58</sup> the verdict of the case did not relate the crimes to the organisation that its perpetrators were linked. Basri, like other terror convicts such as the Bali bombers, was simply found guilty of crimes conducted in their own personal capacity. These included the shooting of two Poso residents, possession of firearms, challenging law enforcement officers and using a torch bomb in September 2006.<sup>59</sup> The verdict on Dujana and Zarkasih was thus a breakthrough in the sense that JI can now be implicated in the trials of suspected terror perpetrators for conducting crimes of terrorism.

However, Dujana and Zarkasih's sentences were comparatively light considering their roles in authorising many terror acts in the Archipelago. The panel of judges had given a sentence lighter than the original life sentence demanded by the public prosecutors due to a number of factors. These include the duo's cooperation with law enforcement officers, the fact that they had never been prosecuted in court previously, their expression of regret for their actions and for the case of Abu Dujana, consideration of familial burdens.<sup>60</sup> Cooperation and expression of regret appeared to be an effective tool in reducing sentences, as also seen in the case of Ali Imron, one of the convicted Bali bombers. Imron is currently serving a life sentence and regularly assists the police in their investigations after his original death sentence was reduced to life imprisonment in consideration of the remorse he showed.<sup>61</sup> Certainly, the sentence makes sense upon consideration that Dujana and Zarkasih were not responsible for direct acts of terrorism, such as construction of bombs and carrying

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<sup>56</sup> "Abu Dujana Lindungi Pelaku Peledakan Bom Tentena", *Antara News*, 26 September 2007.

<sup>57</sup> "Terdakwa Mutilasi Poso Divonis 19 Tahun", *Seputar Indonesia*, 12 December 2007.

<sup>58</sup> "Militants Jailed for Sulawesi Killings", *The Straits Times*, 12 December 2007.

<sup>59</sup> "Terdakwa Mutilasi Poso Divonis 19 Tahun", *Seputar Indonesia*, 12 December 2007.

<sup>60</sup> "Abu Dujana dan Zarkasih Dihukum 15 Tahun", *Radar Cirebon*, *Op.Cit.*

<sup>61</sup> "Bali Bomber Now Campaigns to Stop Terrorism", *ABC News*, 20 September 2007.

explosives to the designated area as done by the Bali bombers. They had also not been proven to be directly coordinating the attacks like Mukhlas, one of the Bali bombers had done.

Therefore, the significance of the verdict for Dujana and Zarkasih lies less in their individual sentences than the fact that, for the first time, JI was convincingly proven to be an organisation which members were guilty of committing acts of terror in the Indonesian court. The reasons for past inability to proscribe JI will be discussed in the following section.

### **Reason for Inability to proscribe JI**

Indonesia had come under intense pressure from Western governments, especially the US and Australia, to proscribe JI. The organization had never been officially banned in Indonesia and the government consistently denied its existence. In 2002, following the UN listing of JI, the Coordinating Minister for Politics, Law, and Security, Susilo Bambang Yudhoyono, who is currently the Indonesian President, said that, with reference to the police investigation, JI had never formally existed in Indonesia.<sup>62</sup> Following the bombing outside the Australian Embassy in 2004, Hari Sabarno, the acting Coordinating Minister for Politics, Law, and Security said that the Indonesia government had no plans to outlaw the group.<sup>63</sup>

Responding to the pressure from the Australian government to proscribe JI in the aftermath of the Bali Bombing II in 2005, Vice President Jusuf Kalla denied JI's existence. He said that JI's structure and members were not obvious and therefore the Indonesia government did not proscribe JI earlier.<sup>64</sup> This was confirmed by Hassan Wirajuda, Minister of Foreign Affairs as well as Widodo A.S., Coordinating Minister for Politics, Law, and Security, saying that the government had yet to proscribe JI as an organisation as it had never been officially registered as a formal organisation and had never been proven to exist in Indonesia.<sup>65</sup>

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<sup>62</sup> "Tak Ada Jaringan JI di Indonesia: Terorisme Dinyatakan Musuh Bersama", *Suara Merdeka*, 29 Oct. 2002

<sup>63</sup> Matthew Moore and Karuni Rompie, "Evidence Not Enough to Ban JI: Indonesia", *The Sydney Morning Herald*, 14 Sept. 2004, retrieved on 06 May 2008 from <http://www.smh.com.au/articles/2004/09/13/1094927512773.html>.

<sup>64</sup> "Kalla: Jemaah Islamiyah Tak Pernah Ada di Indonesia", *Tempo Interaktif*, 9 Oct. 2005

<sup>65</sup> "Jemaah Islamiyah tidak Pernah Eksis di Indonesia", *Metro TV*, 7 Oct. 2005, retrieved on 06 May 2008 from <http://www.metrotvnews.com/berita.asp?id=2908>; "Widodo A.S.: Jemaah Islamiyah Tidak Ada Secara Formal", *Tempo Interaktif*, 10 Oct. 2005

Despite the uniform statements issued by Indonesian political leaders rationalising their decision of not banning JI, President Susilo Bambang Yudhoyono said in an interview with *Time Magazine* in 2004 that the government might proscribe JI if its existence could be proven.<sup>66</sup> Although trials of alleged JI members had provided evidence regarding the existence of JI, it is unlikely that the government, or at least the Ministers, will officially proscribe JI or bring a proposal of legislation for outlawing JI to the House of Representative (DPR).

The fact that the decision of outlawing JI has come late, and only as a result of the trial, and not from a legislation or a Presidential/Minister Decree, implies that Indonesia's principle of democracy has brought about the complexity and difficulties for the Indonesian government to proscribe JI. Proscribing JI through the courts appeared to be the safest way for the government as courts are ostensibly neutral and independent institutions which are theoretically free from government intervention. Pressure from the Islamist groups and parties has been the main factor explaining why proscribing JI earlier on the ministerial level or in a form of legislation had been a difficult and sensitive issue. In addition, to a little extent, the role of moderate Islamic groups in convoluting the banning of JI in regards to their response to Ba'asyir's trial will be also explained.

### **Islamist Political Parties**

An important factor that had prevented the government from banning JI through the political process is the likelihood of opposition from the Islamist political parties. These parties adhered to Islam as their ideology, and implicitly or explicitly struggle for the implementation of sharia law or for Islamic values in Indonesia. The votes for the Islamist parties correspond to the Lingkaran Survey Indonesia (LSI) – a reputable Indonesian independent survey institution – survey in 2006 that revealed that less than a fifth of Indonesian Muslims supported the implementation of sharia law although ideological preference did not always motivate voters in the general election. The votes for the Islamist parties increased from 17.8% (18% seats in DPR) in the 1999 general election to 21.3% (23.2% seats in DPR) in the 2004 general election.<sup>67</sup>

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<sup>66</sup> Sidney Jones, "The Political Impact of the 'War on Terror' in Indonesia", *Asia Research Centre, Murdoch University Working Paper No. 116*: 5, November 2004, retrieved on 09 May 2008 from <http://www.warc.murdoch.edu.au/wp/wp116.pdf>, 9 May 2008.

<sup>67</sup> "Perolehan Kursi Parpol DPR RI Hasil Pemilu 2004 Dibandingkan Pemilu 1999", *CETRO*, retrieved from <http://www.cetro.or.id/pemilu2004/suaradprri2004.pdf>.

Islamist political parties have a tendency to support Ba'asyir, and they may contribute to the reason for JI not being outlawed earlier.<sup>68</sup> It was again reflected in Ba'asyir's arrest where a degree of sympathy toward him was shown by prominent figures from the Islamist parties. For instance, Vice President Hamzah Haz, who was also the chairman of United Development Party (PPP), an Islamist political party, in 2002 revealed his intention of visiting Ba'asyir in the prison, although he did not subsequently do so. However Hamzah Haz did make an earlier high profile visit to Ba'asyir's Pesantren of Pondok Ngruki in Central Java in a symbolic action to demonstrate solidarity with Ba'asyir.<sup>69</sup> Another example of support toward Ba'asyir was shown by the Prosperity and Justice Party (PKS), another Islamist political party, when the party supported the remission granted by the Indonesian government for Ba'asyir.<sup>70</sup> Hidayat Nurwahid, the leader of the party, who is currently the chairman of Consultative People Assembly (MPR), also visited Abu Bakar Ba'asyir in the police prison in 2004.<sup>71</sup> However, the Islamist parties had not officially commented to the Abu Dujana's Court decision of outlawing JI, which also indicated that they might agree to the idea of proscribing JI if it based on evidence during the trial.

Any formal statement or policy issued by the Indonesia President through his minister to proscribe JI would be likely to endanger the government's credibility. If the decision to outlaw JI came from the Minister, the DPR would likely question the decision to the President or the Minister. It would be even harder if the decision to ban JI was in the form of law, as it will be subjected to the DPR's approval. It appears that the government is reluctant to take the political risk of issuing a policy that is likely to undermine its position, as around 23% of DPR seats since 2004 have been occupied by Islamist parties.<sup>72</sup> In addition, it is difficult to come to a consensus on

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<sup>68</sup> "PKS Sesalkan Intervensi AS Atas Pembebasan Ba'asyir", *Tempo Interaktif*, 17 Apr. 2004; "PPP Haramkan Pluralisme dan Terorisme", *Tempo Interaktif*, 23 Dec. 2005; "Hamzah Haz Menampik Melindungi Terorisme", *Sinar Harapan*, 6 Jan. 2003

<sup>69</sup> "Hamzah Haz Bersedia Jenguk Abu Bakar Ba'asyir", *Sinar Harapan*, 30 Oct. 2002; Simon Elegant, "Sketchy Response", *TIME*, 4 Nov. 2002, retrieved from <http://www.time.com/time/magazine/article/0,9171,501021111-387000,00.html>; Zachari Abuza, "The Trial of Abu Bakar Ba'asyir", *Terrorism Monitor* 2, No. 21, 4 Nov. 2004, retrieved from <http://www.jamestown.org/terrorism/news/article.php?articleid=2368802>.

<sup>70</sup> "PKS Dukung Pemberian Remisi Kepada Ba'asyir", *Suara Merdeka*, 10 Oct. 2005

<sup>71</sup> "Hidayat Jenguk Ba'asyir di Rutan Salemba", *Kompas*, 19 Apr. 2004

<sup>72</sup> Damien Kingsbury, "Asking the Impossible", *The Age*, 09 May 2005, retrieved on 10 October 2005 from <http://www.theage.com.au/news/opinion/asking-the-impossible/2005/10/09/1128796408091.html>.

banning JI even within the government itself. The cabinet consists of a fragile coalition including Islamist parties.<sup>73</sup>

It is also unlikely that the next Indonesian President, who will be elected in 2009 will ban JI. The Megawati and Yudhoyono administrations have shown their reluctance to face the potentially high political cost of outlawing JI, and they will be even less likely to do so when facing an election. Indonesian democracy will still provide room to the Islamist parties and any government may require support from a range of Islamic political parties, thus making them unwilling to offend the “Muslims”. For instance, Indonesian government usually grants remission to prisoners who exhibited good behaviour while in prison, including Ba’asyir. If the government had not given Ba’asyir a remission, it would have sparked protests by the Islamist parties for treating Ba’asyir differently.

### **Hard-Line Islamist Groups**

There would be a strong current of opposition from the hard-line Islamic groups, if JI were to be outlawed. The term “Jemaah Islamiyah” (JI) itself had disturbed many Indonesian Muslims. Literally, JI means “Islamic Congregation/Community”. Therefore, when the West blamed JI for a series of bombings in Indonesia, it was seen as indirectly blaming Indonesian Muslims for committing terrorism.<sup>74</sup> The Muslim hardliners were the most active group who propagated that the use of the JI term could refer to any Islamic organizations in Indonesia.<sup>75</sup> The Indonesia government was fully aware of the “JI” terminology sensitivities. Officers and security officers’ investigations in the immediate aftermath of the series of bombings in Indonesia had been careful not to use the term “JI” to describe any act of terrorism in order not to agitate the Indonesian Muslims, especially the hardliners.<sup>76</sup>

Many Muslim hardliners in Indonesia perceived any arrest of alleged JI members as a threat against Muslim activists. The hardliners use the term “Muslim activists” to describe pious Muslims who propagate Islam and the importance of implementing sharia law in Indonesia. In this regard, the hardliners also call the alleged JI members “Muslim activists”.

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<sup>73</sup> *Ibid.*

<sup>74</sup> Bilveer Singh, “The Challenge of Militant Islam and Terrorism in Indonesia”, *Australian Journal of International Affairs* 58, No. 1, March 2004: 65;

<sup>75</sup> Abdul Halim, “Jemaah Islamiyah dan Teroris”, *Suara Merdeka*, 28 Mar. 2007

<sup>76</sup> Matthew Moore and Karuni Rompie, *Op.Cit.*



The strong opposition from the hardliners against the banning of JI was clearly reflected in the case of the arrest and trials of Abu Bakar Ba'asyir – the alleged JI leader – where many Islamic organizations and prominent figures protested heavily and fought for the release of Ba'asyir. For instance, tens to hundreds of people from MMI, a legal organisation in Indonesia led by Abu Bakar Ba'asyir, staged protests against the judiciary of the Supreme Court, Judicial Commission, and the Minister of Justice and Human Rights over the arrest and imprisonment of Abu Bakar Ba'asyir.<sup>77</sup>

The Indonesian Police also met strong resistance from Ba'asyir supporters. At least two physical clashes occurred, resulting in the injury of up to 20 MMI members and police.<sup>78</sup> Even when Ba'asyir was about to be released, the police had to deploy up to 200 security personnel as 500 supporters of Abu Bakar Ba'asyir from MMI, Islamic Defender Front (FPI), and Betawi Brotherhood Forum (FBR) planned to welcome the release.<sup>79</sup>

Proscribing JI means all alleged JI members would be arrested although some of them might not have been involved in violent activities. As the arrest of some alleged JI members by the Indonesian authorities had already sparked many protests, outlawing JI would not be a feasible option for the government. For instance, many young Muslims from Yogyakarta Solidarity Forum of the Youths of the Mosque (FSRMY) condemned the performance of Detachment 88 that had arrested and “kidnapped” many so-called Muslim activists.<sup>80</sup> Other similar protests were mainly carried out by MMI and Anti-Kidnapping Front (FPP) and occurred in Surakarta, Central Java.<sup>81</sup> The measure had included numerous articles in the websites of Islamic hard-liner groups and a book titled “Densus 88 Undercover” criticizing Detachment 88's acts of killing, kidnapping and method of the arrests of the so-called Muslim activists. If the government were to officially proscribe JI, it would ignite more protests over the arrest of suspected JI members, especially if they were not proven to have committed any violence during the trials, such as the case of Ba'asyir.

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<sup>77</sup> “Masa Pendukung Ba'asyir ke Jakarta Protes MA”, *Tempo Interaktif*, 15 Aug. 2005; “Keluarga Ba'asyir Akan Temui Komisi Yudisial”, *Tempo Interaktif*, 18 Aug. 2005; “Ormas Islam Berdemo Meminta Pembebasan Ba'asyir”, *Tempo Interaktif*, 4 Dec. 2003

<sup>78</sup> “Pemindahan Ba'asyir: Polisi Tangkap 40 Jamaah Pendukung MMI”, *Gatra*, 30 Apr. 2004, retrieved from <http://www.gatra.com/2004-05-01/artikel.php?id=36702>.

<sup>79</sup> “Abu Bakar Ba'asyir Disambut Gema Takbir”, *Suara Merdeka*, 15 Jun. 2006

<sup>80</sup> “Pemberantasan Teroris Jangan Melanggar HAM”, *Kompas*, 20 Sept. 2003

<sup>81</sup> “FPP dan MMI Demo Tuntut Pembubaran Densus 88 Anti Teror”, *Tempo Interaktif*, 20 Aug. 2004

The government's reluctance to outlaw JI is understandable since the Muslim hardliners constitute a significant percentage of the Indonesia population. The result of a LSI survey in 2006 was quite shocking: 9% of the Indonesian Muslims believed that the suicide bombings that had taken place in Bali in 2002 and 2005 by JI was justifiable as a jihad to defend Islam.<sup>82</sup> Further examination of the survey showed that less than a fifth of 200 million Indonesian Muslims supported the hard-line Islamic groups that struggle for the implementation of *sharia* in Indonesia. According to the survey, 17.4% of Indonesian Muslims supported JI's goal, 16.1% supported MMI, and 7.2% supported Hizbut Tahrir Indonesia (HTI), an organisation that aims to establish an Islamic international caliphate.

Thus the government was faced with a dilemma; succumb to Western pressure and ban JI, or capitulate to strong opposition from the Islamic hard-line groups. Street protests against the government, police, and judicial institutions were actively carried out by the Islamic hard-line groups. The groups also have the capability to sue the government legally and to lobby parliament, as reflected in the Ba'asyir's arrest and trial. The presence of such vocal groups had instigated the banning unfeasible.

### **Moderate Islamic Groups**

The hard-liners were not the only problem. Moderate Islamic organizations, such as NU and Muhammadiyah, the two biggest Islamic organisations in Indonesia, would probably display mixed responses towards the action. The two organizations had not officially responded to the Court decision of proscribing JI in the trial of Abu Dujana, which may suggest the organizations are willing to tolerate outlawing JI if it is based on evidence of involvement in violence, presented at trial. Therefore, when Ba'asyir's trial failed to prove Ba'asyir's leadership on JI, the two groups and Muslims public might have believed that Ba'asyir had nothing to do with JI. In 2002, the leader of Central Administrative Board of NU, Ahmad Bagdja urged NU followers to respect the trial of Ba'asyir.<sup>83</sup> The General Secretary of Indonesian Ulema Council (MUI), Din Syamsuddin, in 2003 encouraged Ba'syir to sue the Australian government, as well as international terrorism experts, for accusing

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<sup>82</sup> "Many Indonesian Support JI", *Lembaga Survey Indonesia*, 16 Oct. 2006, retrieved on 10 December 2007 from <http://www.lsi.or.id/liputan/144/many-indonesians-support-ji-survey>.

<sup>83</sup> "Menkopolkam: Gunakan Logika dan Akal Sehat dalam Kasus Ba'asyir", *Sinar Harapan*, 29 Oct. 2002

Ba'asyir of being the leader of JI. Din, who is currently the chairman of Muhammadiyah, also questioned the imprisonment of Ba'asyir at that time.<sup>84</sup>

Support toward Abu Bakar Ba'asyir from the moderate Muslim organisations may also imply that many Indonesian Muslims may question the testimony of Nasir Abbas, which may have wider implications for the use of former terrorists as witnesses. NU and Muhammadiyah also said the Western countries should respect the Court's decision in sentencing Ba'asyir to 2.5 years of imprisonment.<sup>85</sup> However, it should be noted that the two organisations supported the government's commitment to combat terrorism in Indonesia, particularly NU which has been active in disseminating counter-radical ideology and initiating a number of seminars with anti terrorism message. The conflicting messages from the abovementioned might have contributed to the difficulties the government faced in proscribing JI earlier.

Despite court's decision on proscribing JI, it is still unlikely that the government will ban JI in the future. The factors mentioned above, especially the pressure from the Islamist hardliners as well as Islamist parties would be a major obstacle of banning JI through a legislation or a ministerial decree. Court decision on the banning of JI is probably a maximum indirect effort that the government could do. The court is perceived as an apolitical entity which is relatively free from Islamist influence, compared to parliament or the cabinet. The further ban of JI is unlikely to materialise as no follow up action taken so far by the Indonesian authority, especially the law enforcement agencies (the Attorney General's Office, Police, Ministry of Justice and Human Rights, or Supreme Court) following the court decision on the banning of JI.

Despite government difficulties in outlawing JI, the government still has considerable success in combating terrorism. The Ministry of Foreign Affairs reported in February 2008 that 300 terrorists had been arrested by the Indonesian authorities, and 200 of them had since been sentenced.<sup>86</sup> The Indonesian authorities were still able to charge them under the Law on Anti-Terrorism for their actions despite the fact that JI has not been outlawed.

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<sup>84</sup> "Dien: Ba'asyir Harus Tuntut Balik Howard", *Gatra.Com*, 5 September 2003

<sup>85</sup> "NU-Muhammadiyah Minta Australia Hargai Vonis Ba'asyir", *Koran Tempo*, 7 Mar. 2005

<sup>86</sup> "Sudah 300 Teroris Ditangkap di Indonesia", *Tempo Interaktif*, 21 Feb. 2008

## **Implications of trial**

### Implication of harsh sentences on Zarkasih and Dujana

On 21 April 2008, the South Jakarta District Court concluded its hearing on Abu Dujana's case and sentenced the self-proclaimed leader of the Jemaah Islamiyah (JI), the militant group blamed for the 2002 Bali bombings to 15 years' jail on terrorism charges. The panel of judges found him guilty of violating the anti-terror law by assisting terrorists and possessing, storing and moving firearms and ammunition intended for acts of terror.<sup>87</sup>

The charges against Abu Dujana did not relate to any specific incident, although one of the men he protected, Malaysian national Noordin M. Top, had been accused of masterminding the Bali attacks, which killed 202 people, including 88 Australians. He had been proven legally and convincingly of having engaged in the crime of terrorism. Dujana had hidden weapons, provided financial aid and facilities to terrorists, and had failed to inform authorities of their whereabouts.

Abu Dujana will serve just over 14 years in jail as the 10 months he had already spent in detention will be deducted from the sentence.<sup>88</sup> He was also fined Rp.10 million (1,068 USD) for having been an executive of JI, an outlawed organization accused of organising the Bali attacks.

Meanwhile, another senior JI leader, Zarkasih, also stood trial. Zarkasih was understood to have led the extremist group in 2004, before Dujana rose to prominence within the organization.<sup>89</sup> There have been varying reports of Zarkasih's and Dujana's leadership in JI. Dujana was also believed to have been the head of the military wing in JI in 2004.

The two men were arrested within a week of each other in different parts of Central Java. Dujana was shot and wounded by police during a raid on his hideout in the city of Banyumas, in front of children.<sup>90</sup> His defence lawyers took up that issue, citing that the Detachment 88, Indonesian counter-terrorism forces, had violated human rights and had asked for leniency in his final sentencing.<sup>91</sup> However, that issue

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<sup>87</sup> "Indonesian court jails top Islamic militant on terrorism charges", *AFP*, 21 May 2008.

<sup>88</sup> "Indonesian court jails two militants for 8 years", *Reuters*, 21 May 2008.

<sup>89</sup> *Ibid.*

<sup>90</sup> "Abu Dujana Dikabarkan Tertangkap di Banyumas", *Koran Tempo*, 10 June 2007.

<sup>91</sup> *Ibid.*

had been overridden by the panel of judges while making their decisions to sentence him.<sup>92</sup>

JI was previously believed to have links with Al-Qaeda, but security analysts now believe the organization is isolated. However, at the end of Dujana's and Zarkasih's trial, the court ruled that JI was "an organization for terrorism"<sup>93</sup>.

### Proscribing of JI

The proscribing of JI could prove to be a milestone marking progress in Indonesia's long battle against terrorism in the region. The court finally found JI guilty of being an organization that permits terrorism.<sup>94</sup> Prior to the trial of Abu Dujana and Zarkasih, the inability of the Indonesian courts to link JI with Al-Qaeda and its failure to prove that JI was a terrorist organization, had rendered the ineffectiveness of the Indonesian law to render appropriate punishments to members of JI, who have no direct involvement in terrorist acts. Many of those who were arrested and brought to trial had been allowed to leave, after merely slapped with a light jail term or free. As discussed in the earlier section of the paper, Abu Bakar Ba'asyir was one such JI member who escaped harsh sentencing. Ba'asyir's release was a stinging rebuke to Indonesian laws and its efforts to mitigate terrorism in the country.

### Consequences of the inability to proscribe JI

Upon his release, Abu Bakar Ba'asyir did not change but instead increased his efforts to propagate Islamists' ideology to the Indonesian population. Ba'asyir has been described as the ideological godfather of JI, even though there is no official evidence of his connection with the Islamic group. He claimed that JI does not exist and that the CIA and Israel were behind terror attacks in Indonesia including the 2002 Bali bombings. Even after open confessions from the bombers, Ba'asyir claimed, in August 2006, that the 2002 Bali bombs were "replaced" by a "micro-nuclear" weapon by CIA. Ba'asyir has expressed sympathy for Osama bin Laden and Saddam Hussein, but had claimed that he did not agree with all of their actions, in particular "total war."

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<sup>92</sup> "Indonesian Court Jails Top Islamic Militant on Terrorism Charges", *AFP*, 21 May 2008.

<sup>93</sup> *Ibid.*

<sup>94</sup> "Jakarta Court Deems JI a Terrorist Group", *The Sydney Morning Herald*, 21 April 2008.

He further stated "...If this occurs in an Islamic country, the *fitnah* [discord] will be felt by Muslims. But to attack them in their country [America] is fine"<sup>95</sup>.

He has claimed the 9/11 attacks were a false flag attack by America and Israel as a pretext to attack Muslims in Afghanistan and Iraq, a suggestion upheld by many conspiracy theorists.<sup>96</sup> In a speech following the Bali attacks Ba'asyir stated that he supported Osama bin Laden's struggle because his is the true struggle to uphold Islam. He continued to be portrayed in Western media as an extreme thinker who inspires deadly actions, however to Ba'asyir the true terrorists are America and Israel. He has stated his belief that Indonesia must adhere to *sharia* law and has renewed his calls for an Islamic state in Indonesia, particularly legitimising armed jihad as an obligation to all Muslims.<sup>97</sup>

*"There is no nobler life than to die as a martyr for jihad. None. The highest deed in Islam is Jihad. If we commit to Jihad, we can neglect other deeds, even fasting and prayer".<sup>98</sup>*

Controversy surrounding Ba'asyir heightened in early 2008 after a sermon given by the cleric in late 2007. Ba'asyir allegedly refers to tourists in Bali as 'worms, snakes and maggots' with specific reference to the immorality of Australian infidels. Ba'asyir has returned to his hard-line rhetoric. His early release from prison has been described as the catalyst to his revitalized, hard-line approach towards non-Muslims. Ba'asyir's view on non-Muslims is highlighted in this statement made in East Java in 2006, 'God willing, there are none here, if there were infidels here, just beat them up. Do not tolerate them.'<sup>99</sup> The cleric has also previously warned of severe retribution if the Bali bombers were to be executed by firing squad.

Ba'asyir's example is just one of the many that resulted from the law's earlier weakness in its ability to proscribe JI as a terrorist organization, resulting in it being unable to properly prosecute the wrongdoers. Thus, the previous JI members who

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<sup>95</sup> "Terrorism", *The Economist*, 18 October 2008, retrieved from [http://www.economist.com/agenda/displaystory.cfm?story\\_id=E1\\_TPRJTQS](http://www.economist.com/agenda/displaystory.cfm?story_id=E1_TPRJTQS).

<sup>96</sup> "Bashir links CIA to Bali bombings", *ABC News Online*, 29 August 2006.

<sup>97</sup> "Indonesian cleric fights for a Muslim state", *CS Monitor*, 2 May 2002, retrieved from <http://www.csmonitor.com/2002/0502/p07s01-woap.html>

<sup>98</sup> *Ibid.*

<sup>99</sup> "Terrorism", *The Economist*, *Op.Cit.*

were allowed to go free were able to continue to preach their extremist version of Islam that propagates violence and hatred.

#### Authority given to security officers in Indonesia

The decision to proscribe JI is a first step in counter-terrorism progress in Indonesia. It also demonstrates that operations against JI (which has been unable to launch a major terrorist attack for two and a half years) have eroded both the network's capacity and support. No one now speaks up for the group, which first sought mainstream legitimacy by naming itself the "Islamic community".

JI's deteriorating strength and support is a result of the hundreds of arrests – including JI's three former leaders – and the killing or scattering of the masterminds behind the Bali bombings and Australian embassy attack. Scores of trials, convictions and confessions have largely banished theories that the network and the attacks were part of some clandestine CIA plot.

Domestically and internationally, a formal ban of JI is not the critical issue that it was a few years ago. However, the importance of the court ruling has divided terrorism analysts whose careers have grown with JI's rise. Rohan Gunaratna hailed the declaration as "a huge victory against terrorism" but said it was vital the Indonesian Government confirmed the ban with legislation.<sup>100</sup> Terrorism expert Zachary Abuza said the impact of the ruling was unclear and parliament must endorse it or leave police fighting JI "with one arm tied behind their back"<sup>101</sup>.

The International Crisis Group's Sidney Jones, the foremost authority on JI, said there was no need for a formal ban, although the court verdict would make it easier to convict network leaders not directly involved in acts of violence<sup>102</sup>.

There are suggestions that American and Australian trainers of Indonesian police and prosecutors encouraged the move. However, the verdict was not made to encourage a mass round-up of JI members. It would be politically untenable and pointless in counterterrorism terms to put hundreds of people in prison. It just means that where police have names of people who were in key decision-making positions, they may decide to move now where they might have hesitated before. If a similar

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<sup>100</sup> Mark Forbes, "JI Declared an Illegal Network", *The Sydney Morning Herald*, 22 April 2008.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

court declaration had been made before Ba'asyir's trial, he would have received a longer sentence. Though the new ruling on JI could not be used to again pursue Ba'asyir, future members could face arrest. JI is not an ordinary organisation, as its members are aware of its objectives and methods. Membership, potentially, has consequences irrespective of an individual's direct link to any specific terrorist act. The court's decision will give police officers stronger grounds to fight terrorism.

Jones disagrees with those demanding a formal ban from Yudhoyono. "I don't think there is any pressure to issue a formal ban — certainly not domestically. And internationally, I think there's a general consensus that the Indonesian Government is committed to stopping terrorism, with or without a formal ban.

Enforcing a ban could be counter-productive. If police suddenly imprisoned hundreds of JI members there would be a general outcry against arbitrary detention, Jones said. If authorities moved against JI's string of Islamic schools "the outrage wouldn't come just from the radical wing, it would come from Muslim leaders across the board that Islamic schools were being unfairly stigmatised. The only way to fight extremists in a Muslim-majority country like Indonesia is to convince mainstream organisations that it is in their interests to disown them — not give them common cause against the Government."

Legal experts are divided about the validity of the ban, with some stating it needs confirmation in Indonesia's Supreme Court. Others hold that it must be separately introduced by the attorney-general's office.<sup>103</sup> Government officials appear to view the court move as a way to sidestep issuing its own edict against JI.

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<sup>103</sup> *Ibid.*



## JI's future

With the proscribing of JI as a terrorist organisation and the ensuing debate over banning the organisation, analysts have been predicting the future of JI. Nasir Abbas, the former leader of JI's terrorist training camps and brother-in-law of convicted Bali bomber Imam Samudra, and now police informer who attempts to convert JI members from violence, sees little benefit in a further ban. According to him, there would not be any practical impact in the ban as JI is, after all, only a name or an idea.

That idea — the dream of an Islamic state — has survived for decades in Indonesia, which has 200 million Muslims — the world's largest population. The roots of JI can be traced back to the Darul Islam movement. Concerted operations since the Bali blasts have decreased JI by more than two-thirds, but an estimated 1000 members remain at large. They are factionalized and divisions are likely to be deepened by the court verdict and a recent spate of arrests.

Members will be pushed in two opposing directions, with more adopting the strategy of Ba'asyir to work with more mainstream organisations advocating Islamic law, while supporters of fugitive Bali bomber Noordin M Top will be encouraged into thinking "that there was nothing to lose by resuming attacks"<sup>104</sup>. However, law enforcement officials believe the court declaration will strengthen the fight against JI in the long term as it will very much weaken them and, eventually, narrow their space.

## **Conclusion**

### Precedence of judgment for future trials

The proscribing of JI has allowed for the trial of Abu Dujana and Zarkasih to be used as an important precedent in future trials of JI members. For example, an Indonesian court sentenced two Muslim activists to eight years in prison for aiding a top leader of the JI on 28 April 2008.

Judges found one of the accused (Arif Syaifudin) guilty of making 8 money transfers between 2005-2006 to a training camp in the southern Philippines operated by JI. Each transfer amounted to between 4 to 5 million rupiah (400-500 USD). In a

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<sup>104</sup> *Ibid.*

separate trial, a panel of three judges convinced Aris Widodo of aiding those involved in 'terrorism' by sending four coded emails to fellow militants in the southern Philippines in 2006. He was jailed for 15 years, in May of 2008 for weapons possession and harbouring fugitives, but was not charged with any specific attacks. Judges said both convicts had acted under the orders of Abu Dujana, JI's alleged military chief.

#### Effects on the ban on Islam in Indonesia

Nonetheless, opinion remains divided over the ruling outlawing JI as a terrorist organization, coming more than five years after the Bali bombings. The question is whether the ruling will have any lasting impact or permanent change.

A week into the proscribing JI as a terrorist organisation, a ministerial decision to ban a small Muslim sect, Ahmadiyah, was highlighted in local headlines and stoked tensions. The sect was deemed heretical for suggesting the group's Indian founder may have been the last prophet. Ministers, religious leaders and presidential advisers weighed into the debate, many supporting the ban. These same figures were available, but unwilling, to discuss the outlawing of JI. That many senior officials refused to comment about the the implications of the ruling says much about the sensitivity over alienating Indonesia's hardcore Muslim community – the very sensitivity that would see the comparatively harmless Ahmadiyah banned.

Leaders remain very much confined by the sway of electoral politics. It is probable that they are unwilling to step further to act upon legislation that may result in unpopularity among the largely Muslim Indonesian population. This, in turn, will add to the failure and ineffectiveness on Indonesia's struggle to contain terrorism in the region.

#### Appeal and impact

The final verdicts passed on Abu Dujana and Zarkasih may yet be overturned if they a successful appeal is filed. Both their defence lawyers have stated their intention to file an appeal as soon as possible. An overturn of the ruling will tarnish the triumph of counter-terrorism efforts in Indonesia. However, neither Dujana nor Zarkasih has made any request for appeal to date.

Indonesia needs to handle this issue with care. JI has already been proscribed in other Southeast Asian countries before Indonesia had even admitted to the presence of the clandestine group on its soil. The proscribing of JI by the Indonesian court in the trials of Abu Dujana and Zarkasih was a milestone in its counter-terrorism efforts. Operationally and tactically, the Indonesian counter-terrorism forces have been effective in mitigating the threat of terrorism by arresting scores of militants and weakening the networks of JI. There have been no major terrorist attacks in Indonesia since the last Bali bombing in 2005. However, Indonesia still has more to do in order to be able to mitigate the terrorist threat at a strategic level.

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