
Myanmar Coup and Connections of International Network Terrorism Affiliate in Transnational Legal View

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ABSTRACT

The international community nowadays currently encountering the most serious problem in the face of terrorism. Today, terrorism has destroyed and disrupted the state process. Universally terrorism is the hostisthumani generis (the enemy of all mankind). Today terrorism is directed not only against individuals and groups but towards a larger entity, namely the state, and also creates problems and dangers felt by the international community. The variety of terrorist groups is different, from radical issues to political issues. Myanmar is one of the countries in Southeast Asia, and has one of the areas called Rakhine and there are ethnic Rohingya who inhabits the region. Genocide, discrimination, and racial cleansing are three general issues that exist in myanmar. The Myanmar government accuses being terrorists affiliated with international terrorism established due to the butterfly effect of the three things above. The countries in southeast Asia unite themselves and form an international organization called ASEAN, making protection against terrorism that surrounds the southeast Asian region. Therefore, this article was made to find out the cause and countermeasures of terrorism. This research is a normative qualitative approach with a constructive paradigm with the international law

Keywords: Terrorism; Myanmar; ASEAN.

INTRODUCTION

Colonial historians of Burma claimed that its earliest civilizations had been founded under Indian influence and could not date back much beyond 500 common eras. However, recent research indicates that civilization in Burma's Irrawaddy valley is ancient – 3,500 years ago, its inhabitants were farming rice, raising livestock, and using bronze implements.¹ The name of "Burma" is derived from the eponym 'Brahma Desha' that name derived from the language of the majority ethnic group called (Bamar), was also used during the independence movement in 1948. "Myanmar" is taken from the literary form of the language and is supposed to be more neutral than Burma. "Myanmar" supposedly is associated with democratic and federalist ideologies, while "Burma" recalls military enforcement and hierarchal units.² The official name of the country, according to the 2008 constitution, is "The Republic of the Union of Myanmar."³ Myanmar is the least developed country in Southeast Asia. In the 1947 Constitution,

¹ Dinyar Godrej. (2008). *A Short History of Burma*. New Internationalist.

² Dittmer. (2010) *Burma vs Myanmar. What's is the Name?*. River Edge World Scientific Publishing Co.

³ Government of Myanmar. (2008).

the country's name was proclaimed Burma, and in 1989, the military junta changed the name to Myanmar.⁴

Rakhine, formerly known as Arakan, is a state in Myanmar. It is situated on the western coast. Chin State borders it to the north, Magway Region, Bago Region, and Ayeyarwady Region to the east, the Bay of Bengal to the west, and the Chittagong Division of Bangladesh to the northwest. Rakhine has a 14,200 square miles area. In Rakhine, it is estimated that 59.7% of the 3.8 million people are Buddhist, 35.6% are Muslim Rohingya, and the remainder is from other religious groups. The Rohingya Muslims did not originate from just one single racial stock. They are a mixture of diverse ethnic groups, including Arabs, Moghuls, and Bengalis.⁵ In Myanmar, there are 7 million Muslims, which is 15% of the country's total population, and half of them live in Rakhine.⁶

According to Amnesty International, Myanmar is one of the countries with long records of human rights violations. The restrictions on freedom of expression, violations of international human rights against ethnic minorities are still ongoing.⁷ Amnesty International notes the human rights violations committed on the Rohingya ethnic by the military junta of Myanmar: in 1978, about 200,000 Rohingya people fled to Bangladesh due to the enactment of Ngamen operation by the Military Junta. This operation examines every individual in Myanmar, documenting citizenship status and lists of people who illegally entered Myanmar.⁸ In general periodic reports issued by the Human Rights Council on human rights in Myanmar in January 2011 stated that the government of Myanmar doesn't have any responses to the poor situation in the country or commit to taking comprehensive corrective action, including the government has declared that the ethnic minorities, the Rohingyas, have no citizenship rights in Myanmar so that they are an illegal immigrant status⁹

Since the discrimination has been running very long by the Myanmar government against the Rohingya minority, that's giving rise to a separatism movement, carried out by several groups that gathered and named themselves as ARSA or Arakan Rohingya Salvation Army. ARSA or AA (Armed Army) considers that the government has committed heinous acts in treating the Rohingya minority in the Rakhine region. Therefore they are joining and gathering the Rohingya minority to fight the Myanmar military junta by using a terror activity approach to the military. From the view of international law, the activities carried out by ARSA (Arakan Rohingya Salvation Army) or AA (Armed Army) are terrorist activities.

The world is no longer confused by the current of terrorism. Many countries have definitions and reasons for what terrorism is. There are many understandings of terrorism. The United Nations hasn't yet come up with a definition of terrorism. In general, the term terrorism is divided into State Terrorism and Non-state Terrorism. However, what often happens in the 21st century is non-state terrorism. Even though, State terrorism like practiced by Israel against the Palestinian people or by the U.S. military against the Afghanistan and Iraq socialize is a more barbaric act when compared to non-state terrorism.¹⁰ Paul Jhonson define terrorism as;

“The deliberate, systematic murder, maiming and menacing of the innocent to inspire fear in order to gain political ends. Terrorism is politically evil, necessarily evil and wholly

⁴ Ullah, A. A. (2011). *Rohingya Refugees to Bangladesh: Historical Exclusions and Contemporary Marginalization*. Journal of Immigration & Refugee Studies 9 (2).

⁵ Alam, M. A. (2013). *Historical Background of Arakan*. Kaladen Press.

⁶ Jaha G. (1994). *Foreign policy of Bangladesh*, Rohingya Imbroglia: The Implication for Bangladesh In S. R. Chakravaty.

⁷ YordanGunawan, GatotPriambodo. (2013) *Burma's Rohingya Case in International Law Prespective*, Jurnal media Hukum, Vol.20 No.1.

⁸ Amnesty International. (2004).

⁹ Amnesty International. (2011).

¹⁰ M. Riza, S. (2006). *Dimensi Internasional Terorisme*. Jakarta, Spektrum. p. 47-64

evil".¹¹

Better divinization comes by Johan Van D. DerVyer. He defines terrorism as;

*"Terrorism can more precisely be defined as acts of violence deliberately aimed at civilian targets with a view to promoting (mostly) a preconceived political objective. This political objective is achieved by intimidating the target such violence (which need not be, and seldom is, the victims themselves) to submit to the demands of the perpetrators out of fear emanating from the threat or actual abhorrence of the act."*¹²

Then G. Wardlaw defined terrorism as a threat for creating tremendous fear, violence, and anxiety an aimed group to force them to fulfill the political purposes or political goals. Terrorism is an international act by carried out the country territorial or aimed at citizens of a foreigner and country assistance. Those activities are usually carried against civilians and include attacks on government buildings, other buildings, ships, aircraft, and other intermediaries.¹³

Regulation or prevention related to terrorism crimes in the international law scene consistently combating terrorism crime. The first attempt to define terrorism was in 1937 at the Convention for the Prevention and Punishment of Terrorism. The "act of terrorism" means criminal acts directed against a State and intended or calculated to create a state of terror in the mind of a particular person, a group of persons, or the general public.¹⁴ And evident from the many international arrangements and agreements that contain the crimes of terrorism. From a normative aspect, International Law has provided deals against acts of terrorism by regulating them in several UN Security Council conventions and resolutions. International Convention governing terrorism, i.e.:

- i. International Convention for this prevention, and Punishment of Terrorism in 1937
- ii. International Convention for The Suppression of Terrorist Bombing in 1997
- iii. International Convention for The Suppression of the Financing Terrorism in 1999
- iv. Important UN Security Council Resolution on combating terrorism, resolution No. 1368 of 2001 on the statement of UN sympathy for the victims of the tragedy of September 11, 2001, the tragedy in the WTC building

Every act of terrorism aims to spread chaos through fear and insecurity to the international community, with careful and systematic planning significant influence and widespread influence. That makes it clear that the crime of terrorism leads to the crime against humanity, as stated in Article 7 of the Rome Statute (1998). There it is said that crimes against humanity are widespread and systematic.¹⁵ In addition, terrorism must be classified into an extraordinary crime because it has fulfilled elements as an extraordinary crime, i.e., endangering humanity values, terrorist attacking by random, indiscriminate, and non-selective, that tend to afflict innocent people, always contain elements of violence, potential links to organized crime, are likely to be used by advanced technologies such as chemical weapons, Biology, even nuclear.¹⁶

International conventions also explain the criminal acts of terrorism included the type of international criminal act that has international aspects and is also referred to as crimes against the international community (*Delicta Juris Gentium*). That is accord by determination of terrorist crimes in the convention for the prevention and punishment of terrorism in Geneva, 1937, the International Convention for the Suppression of Terrorism Bombing 1998, and the

¹¹ A.M. Hendropriyono. (2009). *Fundamentalism Kristen, Yahudi, Islam*. Jakarta, Buku Kompas. p. 26

¹² Johan Van der Vyer. Prosecuting Terrorism in International Tribunals. www.law.emory.edu/.../van_d-Amerikaserikat. p. 572

¹³ G. Wardlaw. (1982). *Political Terrorism; Theory, Practise and counter Terrorism*. p. 16

¹⁴ Zdzislaw Galicki, *International Law and Terroris*, <http://www.sagepub.com/lippmanstudy/articles>

¹⁵ Nasution, Aulia Rosa. (2012). *Terorisme Sebagai Kejahatan Terhadap Kemanusiaan: dalam perspektif hukum internasional dan hak asasi manusia*. Jakarta. Kencana Prenada Media Group. p. 56.

¹⁶ Sulaiman, King Faisal. (2007). *Who is The Real Terrorist? Mengungkap Mitos Kejahatan Terorisme*. Yogyakarta. Elmat-era-Publishing. p. 29.

International Convention for the suppression of the financing of terrorism, 1999 as transnational crimes.¹⁷

Therefore, international criminal acts indicate the existence of a criminal event of an international characteristic, namely crimes stipulated in international conventions as international criminal acts. However, the term national criminal is intended to indicate the existence of criminal acts that are national but contain transnational or cross-border aspects of the country.¹⁸

Therefore, as a result of discrimination and genocide by Myanmar against the Rohingya minority, fomenting the establishment of militant groups by the Rohingya minority. Therefore many several questions arise. Is the genocide and human rights violations committed by junta military Myanmar against the Rohingya is the reason for the emergence of armed militant groups.? And then, how does ASEAN handle current terrorism in the globalization era?

METHOD

This research is a normative qualitative approach with a constructive paradigm with the international law, and Indonesian law approaches the regulation and convention that regulate it, especially that regulated with terrorism in Myanmar or Burma.

This research uses a statue approach by looking at how the constructions are done through the analysis of several journals and books.¹⁹ It would tell regulations such Universal Declaration, International Convention, and International Law²⁰. This research also uses a case approach because this research aims to study the norms or regulations about terrorism in Myanmar. The method of collecting data in this research has been done through library research by literature learning. Because by conducting an understanding study of books, related journals, articles, records, reports, and legal journals or others related to the main problem as the object of this research, can conclude this research.

The data has been analyzed systematically through juridical thinking. Systematically, the research will be analyzed based on international law and Indonesian law, especially relating to the issue of human rights. Juridical review means it would be connected with the principle of law, conventions, and other related regulations²¹

ANALYSIS AND DISCUSSION

Genocide and Discrimination, Fueling Apathy of Armed Groups Affiliated with International Terrorist Networks

People in Myanmar flocked to the street to protest a coup carried out by the Myanmar armed force or Tatmadaw.²² Police responded to the demonstrator by firing tear gas at the demonstrators. Not only firing tear gas, the police even used real bullets to disperse the crowd.

The reason why the demonstrators flocked to the street is caused by political influence in Myanmar. Aung San Suu Kyi won the Nobel Prize for peace when she was under house arrest in 1991. The Norwegian Nobel Committee has decided to award the Nobel Peace Prize for 1991 to Aung San Suu Kyi of Myanmar for her no-violent struggle for democracy and human rights.²³ Suu Kyi has been famous since 1990 for her campaign to restore democracy. She

¹⁷ Abdussalam, Andri Desasfuryanto. (2012). *Hukum Pidana Internasional*, Penerbit PTIK, Jakarta, Cetakan ke-3. p.22

¹⁸ I Wayan Parthiana, *Hukum Pidana Internasional*, Penerbit Irama Widya, Bandung 2006, p.31-32

¹⁹ Ibrahim, Jhony. (2006). *Teori dan Metodologi Penelitian Hukum Normatif*. Malang, Bayu Media. p. 302

²⁰ Yordan Gunawan, Gatot Priambodo, *op.cit.* p. 160

²¹ *Ibid.*

²² Tatmadaw is the official name of the armed forces of Myanmar (Burma). It is administered by the [Ministry of Defence](#) and composed of the [Army](#), the [Navy](#) and the [Air Force](#).

²³ Nobel Committee press release. 11 October 2007 at the Wayback Machine.

spent 15 years for life in prison between 1989-2010 after organizing demonstrators for voicing democratic reform and free election. Suu Kyi is also a controversial figure. Her name has appeared in the International Criminal Court regarding Gambia's demands for the genocide committed by the Myanmar military against the Rohingya minority.

On Gambia's lawsuit against Myanmar. Racial discrimination problem until genocide by Myanmar against minorities of Rohingya becomes a think of the past by the people of Myanmar like let's wind up then, and that both of problem is a regular activity usually done by the people in Myanmar. How not, that conflict has been going on since the mid-19 century until now. United Nations investigators also accused Aung San Suu Kyiof conspiring with the military for genocide over 2017.

As a result of discrimination and genocide by Myanmar against the Rohingya minority, they were fomenting the establishment of militant groups by the Rohingya minority. And then Myanmar labeled those groups are terrorists and called them ARSA or Arakan Rohingya Salvation Army in Myanmar. Anti-Terrorism Central Committee declared ARSA a [terrorist](#) group on August 25, 2017, following the country's counter-terrorism law.²⁴ ARSA is a Rohingya insurgent group active in northern Rakhine State, Myanmar. According to a December 2016 report by the International Crisis Group, it is led by Ataulah Abu Ammara Jununi, a Rohingya man who was born in Karachi, Pakistan, and grew up in Mecca, Saudi Arabia.²⁵ The Arakan Rohingya Salvation Army (ARSA) carried out an attack on police and army, causing the military to take action, resulting in more than 400 thousand Muslim Rohingya fleeing to Bangladesh with cruelty and extensive ethnic claim. In response, ARSA has officially been declared a terrorist organization by the Myanmar government and is involved in an international terrorist network. Even so, their lead denied those accusations. In a VOA report on March 30, 2017, Ata Ullah, the commander of the Faith Movement, now rebranded as the Arakan Rohingya Salvation Army, said the ARSA doesn't associate with any terrorist organizations, eschews attack against civilians and religious minorities, and wants to state "load and clear" that its "defensive attacks" are only aimed at the "oppressive Burmese regime." They said they would support international peacekeeping troops in the state.

And how transnational law responds to this phenomenon. Before answering that question, we have to know what transnational law it is.? And why transnational crime can happen. Before that much better to understand what Transnational Crime is. It is viewed in the epistemology of the term transnational used in the United Nations Convention Against Transnational Organized Crime (UNCATOC). In Indonesia, transnational crime is contained on Act No.5 2009 concerning Ratification of the United Nations Convention Against Transnational Organized Crime. While in United Nations, transnational crime is regulated in Article 3 section (2) UNCATOC. United Nations Convention Organized Transnational Crime explains an offense transnational in nature if.²⁶

- a) It is committed in more than one state;
- b) It is committed in one state, but a substantial part of its preparation, planning, direction, or control takes place in another State;
- c) It is committed in one state but involves an organized criminal group that engages in criminal activities in more than one state; or
- d) It is committed in one state but has a substantial effect in another State.

Starting in the 1990s with the end of the Cold War and the advent of globalization, transnational crime issues ramped up their operations and expanded them worldwide. These

²⁴ *The Republic of the Union of Myanmar Anti-terrorism Central Committee Statement.* (2018). The Republic of the Union of Myanmar Anti-terrorism Central Committee Statement.

²⁵ Milar, Paul. (2017). *Sizing up the Shadowy Leader of the Rakhine State Insurgency*, Southeast Asia Globe Magazine.

²⁶ United Nations Convention Against Transnational Organized Crime And The Protocols Thereto. (2004). New York.

organizations are believed to have been helped by weakening government institutions in some countries, more open borders, and the resurgence of ethnic and regional conflicts across the former Soviet Union and many other regions. Mainly due to its clandestine nature, international crime is hard to measure. Criminal proceeds comprise between two and five percent of global gross domestic product by the most conservative estimates.²⁷

In 1951 United States used a single sentence for conceptual definition as transnational crime: offense whose inception, prevention, and direct effect or indirect effect involved more than one country. Such crimes must be differentiated from international crimes recognized by and can therefore be prosecuted under international law and domestic crimes under one national jurisdiction. To be considered a transnational crime, a crime must involve the crossing of borders or jurisdictions.²⁸ International organized crime tends to develop in nations with weak law enforcement institutions, and citizens have limited economic alternatives. Farmers frequently turn to drug cultivation, boosting the international narcotics trade. Unemployment citizens seek work abroad and fall victim to human trafficking rings. Across the globe, government corruption and illicit trade fuel and sustain each other.²⁹

According to A.C, Manullang, the background or motive of terrorism nationally can be sourced from several things, among others:³⁰

- 1) Religious extremism
- 2) Tribal nationalism leads to separatism and
- 3) Certain interest groups that want to cause chaos

The first motivation of terrorist groups is religious radicalism, namely, building an exclusive community as the capital and identity of the group. They believe in themselves to be truest and closest to God's threshold. Fighting against infidels is an obligation, while death is the way to the heavenly home. Radical thinks that can at any time give birth to socio-political disasters. This demeanor has underlain the violence of the Imam Samudera group in carrying out the Bali bombings that are considered to be jihad, as well as the Christmas bombings in 2000 and sweeping actions against American citizens. The second motivation of Terrorist groups is committed acts of terror intending to gain political independence driven by a desire for greater autonomy in the region. The trigger is because they feel they are maltreated by the Central Government, causing economic and social inequality. In this persuasive often targeted are buildings and government offices. Third, Terrorist groups tend to carry out their actions for political, economic, and social purposes to protect specific interests such as covering up a due process for crimes or violations that have been committed in the past or as bargaining to gain positions in the political, economic and social spheres. Acts of terror will increase when a country experiences instability in the political and economic situation. Religious fundamentalism is also the motive of terrorist groups. In addition to these three motives that can be the motives of terrorist groups is religious fundamentalism. Today's primary source of religious fundamentalism is the fusion of oppression, pressure, arbitrariness of culture, social and religion.³¹

According to Cassese, the objective elements of acts of terrorism have been regulated through 12 international conventions governing acts of terrorism, namely as follows;³²

²⁷ Transnational Organized Crime: Principal Threat and US Responsible. <http://www.fas.org/sgp/crs/>.

²⁸ Jordan J. Paust, M. Cherif Bassiouni, Sharon A. Williams, Michael Scharf, Jimmy Gurule, Bruce Zagaris. (1996). *International Criminal Law, Cases and Material*. North Carolina, USA. p. 18

²⁹ Transnational Organized Crime: Principal Threat and US Responsible. <http://www.fas.org/sgp/crs/>.

³⁰ A.C., Manullang (2006). *Terorisme & Perang Intelijen Dugaan Tanpa Bukti*. Jakarta. Manna Zaitun, Jakarta. p. 98-133

³¹ Moch. Faisal, S. (2005). *Motivasi Tindakan Terorisme*, Penerbit: Mandar Maju, Bandung, hal.10-89

³² Antonio Cassese. (2006) *The Multifaceted Criminal Notion of Terrorism in International Law*, *Journal of International Criminal Justice* 4. Oxford University Press. p. 933-958

1. Acts that whether or not they are offenses under national law, may or do jeopardize the safety of aircraft or persons or property therein or which jeopardize good order and discipline abroad;³³
2. Unlawful taking control, by force or threat thereof or by any other form of intimidation, of an aircraft in flight;³⁴
3. Acts of violence against persons on board an aircraft in flight or against the aircraft³⁵
4. Murder and other violent acts against internationally protected persons or their official premises, private accommodation, or means of transport³⁶
5. Unlawful possession, use, transfer, or theft of nuclear material as well as threat to use it;³⁷
6. Taking over a ship by force or threats or any form of intimidation or other acts of violence against the people on board or against the ship;³⁸
7. Taking control over a fixed platform by force or threat thereof or any other form of intimidation, or acts of violence against persons on board or against the platform;³⁹
8. Acts of violence against persons on board or against persons at an airport serving international civil aviation or against the facilities of the airport;⁴⁰
9. The Manufacture, or the movement into or out of a territory, of unmarked plastic explosives⁴¹
10. The delivery placing, discharging, or detonation of explosive or other lethal devices in a place of public use, a state or government facility, a public transportation system, or an infrastructure facility⁴²

The International Community sees the crime of terrorism as an ordinary crime. The crime of terrorism is said to be an international crime because terrorism is a form of crime that uses violence by a person or group of people aimed at civilian targets, both public and property, for political purposes with different motivations. So this is what underlies the placement of terrorism as terrorists. A special crime is an extraordinary crime. In the perspective of international criminal law, terrorism is a crime against humanity and belongs to extraordinary crimes.

Terrorism juridically gets into extraordinary crimes because it is special and has its peculiarities compared to other ordinary crimes that can be seen from the indicators i.e.

1. endanger the value of absolute human rights values (life, fear-free, and so on),
2. “random, indiscriminate and non-selective” terrorist attacks aimed at innocent people,
3. always contain elements of violence, threats of violence, coercive and intimidation on the civilian population and cause widespread fear,
4. its possible links to organized and even transnational organized crime, using advanced technologies such as chemical weapons, biology, and nuclear weapons⁴³

According to Indriyanto Seno Adjie, terrorism has become part of Extraordinary Crimes which means the violent crime of a special dimension or different from other violent crimes because it sacrifices people / innocent people. Although terrorism is an international crime, terrorism has not been recognized as an international crime by the United Nations. Even

³³ Article 1 (b) Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963)

³⁴ Article 1 (a) Hague Convention for the Suppression of Unlawful Seizure of Aircraft (1970)

³⁵ Article 1(1) Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971)

³⁶ Article 2 (1) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons Including Diplomatic Agents (1973)

³⁷ Article 7 Vienna Convention on the Physical Protection of Nuclear Material (1979)

³⁸ Article 3 (1) Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988)

³⁹ Article 2 Rome Protocol for the Suppression of Unlawful Acts against the safety of Fixed Platforms Located on the Continental Shelf (1988)

⁴⁰ Article II Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988)

⁴¹ Article II and III Montreal Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991)

⁴² Article 2(1) dalam International Convention for the Suppression of Terrorist Bombings (1998)

⁴³ Moch.Faisal, S. (2005). Motivasi Tindakan Terorisme, Penerbit: Mandar Maju, Bandung. p.10-89

the attempt to incorporate terrorism into the jurisdiction of the International Criminal Court in the Diplomatic Convention in Rome in 1998 has been rejected, especially by OIC countries and the United States.⁴⁴ International conventions also explain the criminal acts of terrorism included in one type of international criminal act that has international aspects and can be referred to as crimes against the international community (*Delicta Juris Gentium*). It is in line with the determination of terrorist crimes in the Convention on the Prevention and Punishment of Terrorism in Geneva, 1937, the International Convention for the Eradication of Terrorism Bombings, 1998, and the International Convention for the Eradication of the Financing of Terrorism, 1999 as transnational crimes.⁴⁵

Law enforcement is an essential aspect of society, and state life, stability, and social control start from here. A law - however good - will be of no use if it is unable to create order and become social control. Since the monarchy era, social control through law enforcement in the judiciary has become a serious thing.⁴⁶ Law Enforcement is an effort to apply the law in concrete situations both through the judicial process and outside the court to determine the level of obedience to the law. It is vital to realize together that law enforcement is currently experiencing a crisis. The crisis was mainly caused by differences in the paradigm of law enforcement officers who always prioritized legal certainty by ignoring the aspects of justice and expediency. It means that law enforcement officials, especially those who deal directly with the court, pay more attention to regulations and procedures so that justice becomes marginalized.⁴⁷ Law enforcement is unique because police officers see their jobs as defending and helping the community, requiring respect for others' dignity and individuality.⁴⁸

Since 1963, the international community has had 14 instruments of universal law and four amendments governing the prevention of acts of terrorism, among other things:⁴⁹

1. 1963 Convention on Offences and Certain Other Acts Committed On Board Aircraft (Aircraft Convention);
2. 1970 Convention for the Suppression of Unlawful Seizure of Aircraft (Unlawful Seizure Convention). 2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft;
3. 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Civil Aviation Convention);
4. 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons (Diplomatic Agents Convention);
5. 1979 International Convention against the Taking of Hostages (Hostages Convention);
6. 1980 Convention on the Physical Protection of Nuclear Material (Nuclear Materials Convention). Amendments to the Convention on the Physical Protection of Nuclear Material;
7. 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Extends and supplements the Montreal Convention on Air Safety) (Airport Protocol);
8. 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Maritime Convention). 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation;

⁴⁴ RomiAtmasasmita. (2004). Pengantar Hukum Pidana Internasional, Bagian II, Jakarta. Hecca Mitra Utama. 2004. p.83

⁴⁵ Abdussalam, Andri Desasfuryanto. (2012). Hukum Pidana Internasional. Jakarta. Penerbit PTIK. Cetakan ke-3. p.22

⁴⁶ I. Y. Isdiyanto. (2019) . J. Media Hukum. p.26

⁴⁷ Y. Suhardin. (2019) Mimbar Hukum. p.21

⁴⁸ F. Jaramillo, R. Nixon, and D. Sams, (2005). Policing 28. p. 321

⁴⁹ United Nations Organization, International Legal Instruments to Counter Terrorism, download on: <http://www.un.org/terrorism/instruments.shtml>

9. 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (Fixed Platform Protocol). 2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf;
10. 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection (Plastic Explosives Convention);
11. 1997 International Convention for the Suppression of Terrorist Bombings (Terrorist Bombing Convention);
12. 1999 International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention);
13. 2005 International Convention for the Suppression of Acts of Nuclear Terrorism (Nuclear Terrorism Convention);
14. 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation (New civil aviation convention).

Handling Current of Terrorism in Globalization Era on ASEAN Scope

Terrorism began to become a worldwide concern after September 11, 2001, in the United States. Al-Qaeda group as the party considered responsible for the incident and has been designated as an international terrorist group that has spread its network to the Southeast Asian region.⁵⁰ According to the United States Department of State, terrorism is premeditated violence, politically motivated, directed against unarmed targets by groups of splinter agents or agents that land usually aims to influence audiences.⁵¹ There are various definitions of terrorism. However, until now, there has been no clear and objective formulation of the term terrorism. The United Nations hasn't succeeded in making a definition of terrorism. In general, the term terrorism is divided into State Terrorism and Non-state Terrorism. But what often happens in the 21st century is non-state terrorism. Whereas State Terrorism as practiced by Israel against the Palestinian people or by the US military against the people of Afghanistan and Iraq is far more brutal than 'Non-state' Terrorism.⁵²

The rise of occurred terrorism and has caused many deaths in various countries, including Indonesia, has shown the terrorism is a crime against humanity and is a crime or grave violations of human rights.⁵³ The act of terrorism formerly killing and detonating bombs in a straightforward pattern, in contrast to today in modern times where terrorist groups have extraordinary capabilities. They are able in an instant to prepare themselves or have their group become potential killers. They can destroy buildings while claiming tens, hundreds if not thousands of innocent lives in a matter of seconds, threatening the political and economic stability of all nations of the world.⁵⁴

Referring to the definition of terrorism as regulated in the United States Act, the term terrorism is related to the use of force in achieving political goals internationally. In the opinion of Noam Chomsky, the term terrorism began to be used at the end of the 18th century, especially for shows of acts of violence by the government (rulers) aimed at ensuring the obedience of the people. In other words, the term refers to the coercive (coercive/suppressing) power of a regime that is powering. In line with this opinion, according to Martens, the US is also "the real

⁵⁰ Poltak Patogi Nainggolan. (2018) *Kerja Sama Internasional Melawan Terorisme*. Jakarta. Yayasan Pustaka Obor Indonesia. p. 132

⁵¹ Hudson. Majeska. (1999) *The Sociology and Psychologi of Terrorism: Who Becomes a Terrorist and Why?*, Washington D.C., Federal Research Division Library of Congress.

⁵² M. Riza, S. (2006). *Dimensi Internasional Terorisme*. Jakarta. Spektrum. p. 47-64

⁵³ Aulia Rosa Nasion (2015) *Terorisme di Abad ke-21 Upaya Penegakan Hukum Terhadap Tindakan Kejahatan Terorisme Dalam Perspektif Hukum Internasional dan Hak Asasi Manusia*. Jurnal Marcatoria Vol 8 No 1/Juni 2015. p. 55

⁵⁴ *Ibid.*

terrorist” because the US always uses violence if its political interests are threatened. It can be seen from the events US bombing of Hiroshima and Nagasaki.⁵⁵

However, terrorism has many definitions. In International Convention for the Suppression of The Financing of Terrorism, 1999. Terrorism is defined as “Any act intended to cause death or serious bodily injury to civilians, or other persons who do not take an active part in hostilities in situations of armed conflict; when the purpose of the act, by its nature and context, is to intimidate the population or to compel any government or international organization to take or not to take action.”⁵⁶

Globalization in all its results has brought tremendous consequences related to world growth. Of the many dissuaded globalization that is very visible is an advance in technology and data. It can be imperative well and tested to affect progress in the world and state relations positively. But in progress, the benefits in technology and data in times of globalization pose a sense of concern to threats in national security.

The effect of globalization is the advancement of technology thanks to the historical record related to the industrial revolution. Today we are entering the modern age, where everything is facilitated by the development of the times. Therefore, activities such as terrorism remain and even develop coupled with the rapid advancement of technology. Acts of terrorism are caused by radical understanding where information related to radicalism is easy to be and spread through network media or the internet because it is easy to connect between individuals. The state as a legal entity also connects itself to other countries to overcome this crime of terrorism.

The Association of Southeast Asian Nations (ASEAN) is an international organization that hosts countries in the Southeast Asian region, consisting of ten members, namely, Indonesia, Malaysia, Singapore, Thailand, Myanmar, Cambodia, Laos, Vietnam, Philippines, and Brunei Darussalam. ASEAN is one of the most successful regional organizations among developing countries, particularly in maintaining the peace and stability of the Southeast Asian region for more than three decades. ASEAN was established based on creating a peaceful region and the desire of each country to work together to achieve economic growth, socio-cultural development, and peace and stability in the ASEAN region. ASEAN itself has the motto and the national anthem, ‘One Vision, One Identity, One Community’ and The ASEAN Way.⁵⁷

Southeast Asia is home to more than 625 million people and is home to 15% of Muslims of the world. The issue of terrorism in Southeast Asia began on September 11, 2001, at the World Trade Center in the United States. However, at the time, it was not fully considered and became an important issue, especially by ASEAN member states. In the Southeast Asian region itself, terrorism has characteristics that distinguish it from other regions. In the 1980s, terrorism in southeast Asia was linked to rebellion as a form of resistance against the regime, and then until 2013, the issue was getting weaker, but still exists as the example is the New People Army (NPA) in the Philippines. Terrorism in the Asian region Landmarks related to leadership that authoritarianism or totalitarianism gave rise to an underground movement considered terrorism. Terrorism in Southeast Asia has a dynamic development that sometimes uses bomb blasting as a modus operandi and sometimes uses sporadic attacks aimed at government officials or foreigners. The movement of terrorism in the Southeast Asian region has a high spirit of consistency. Although terrorist movements generally appeared and developed in the 1970/the 1980s, until now this terrorist movement still exists in fighting for its interests in several Southeast Asian countries, including the MILF (Moro Islamic Liberation Front) in the

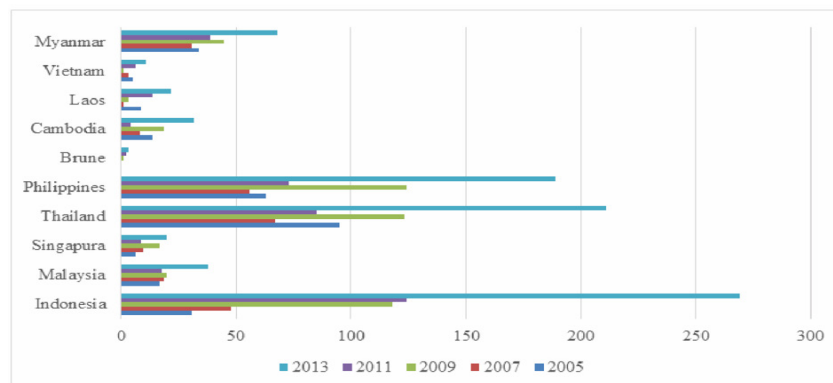
⁵⁵ Poltak Patogi Nainggolan. *Op.cit.* p. 10

⁵⁶ The International Convention for the Suppression of The Financing of Terrorism. (1999)

⁵⁷ Direktorat Jenderal Kerja Sama ASEAN, 2011 p.9

Philippines, the farmer movement in Thailand, Jemaah Islamiyah in Malaysia and Indonesia and several other terrorist organizations.⁵⁸

Table 1. The number of terrorism acts in Southeast Asia between 2005-2013



* Source on “Terrorism in Southeast Asian”, <https://www.fas.org/sgp/crs/terror/RL34194.pdf>, accessed in October 14 2021, “Terrorism in Southeast Asian : Jamaah Islamiyah”, in <http://www.theglobegwu.com/staff-blog/terrorism-in-south-east-asia-jemaah-islamiyah/>, accessed in October 14 2021 and Arabindha Archarya, 2114, *Wither Southeast Asian Terrorism*, Imperial College Press, Denver, p.40,51 dan 118-121

To deal with terrorism in member countries, ASEAN conducted new cooperation known as ASEAN Our Eyes. The cooperation is a cooperation between ASEAN member states, of which Indonesia is the proposer of the initiative. ASEAN Our Eyes is under the ADMM. As is known, in doing good cooperation in any field, each party’s relationship must be well established. The security cooperation itself can be said to be cooperative security. Cooperative Security itself is a system in which states are willing to cooperate in dealing with common problems, which can be done formally or informally, carried out by countries and agencies, by prioritizing cooperation in the economic, political, and security defense fields.⁵⁹

Based on an interview with Ahmadi in 2020 quoted from the journal *Counter-Terrorism in ASEAN Through Our Eyes Initiatives*, as an Associate Policy Analyst for International Agreements at the Ministry of Defense of the Republic of Indonesia, ASEAN Our Eyes can be said to be one form of cooperative security. However, this is only seen based on the understanding of cooperative security itself familiarly. The answer of Mr. Harditya Suryawanto 2020, as a Functional Young Diplomat, one of the staff of directorate 81 international security and disarmament, ministry of foreign affairs, also has the same opinion as Mr. Ikhwan. However, in response to ASEAN Our Eyes which was initiated from the beginning by the Ministry of Foreign Affairs of Indonesia, there is miscoordination between institutions in Indonesia itself. As is known, tackling terrorism in Indonesia is not only run by one institution, but other institutions, which also contribute to counter-terrorism, both in ASEAN and only the scope of Indonesia.

In the normative aspect, International law has arrangements against acts of terrorism, as a ruling regulations UNSC conventions and resolutions.⁶⁰

1. The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons Including Diplomatic Agents (The Convention New York, 1973).
2. The Convention on Offences and Certain Other Acts Committed on Board Aircraft (The Convention Tokyo, 1963).

⁵⁸ Prisilla Octaviani Winarto, Arfin Sudirman. (2021). *Penanggulangan Terorisme di ASEAN Melalui Our Eyes Initiatives: Studi Mengenai Cooperative Security*. Isignia Journal of International Relations. p. 76

⁵⁹ Prisilla Octaviani Winarto, Arfin Sudirman, *Op.cit.* p. 80

⁶⁰ Antonio Cassese. (2003). *International Criminal Law*, New York: Oxford University Press. p. 125-126

3. The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (The Convention Montreal, 1971).
4. The Convention on the Physical Protection of Nuclear Material (The Convention Vienna, 1980).
5. The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (The Convention Rome, 1998).
6. The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf
7. The Convention on the Continental Shelf (Rome, 1988)
8. The Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1988)
9. International Convention for the Suppression of the Bombings (Convention of New York, 1997)
10. International Convention, 1999, for the Suppression of the Financing of Terrorism (New York, 1999)
11. International Convention for the Suppression of Acts of Nuclear Terrorism, 2005
12. Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation, 2010

Terrorism offenses in practice are similar with resembling a crime against humanity. Many experts consider attacks carried out by non-state actors during peacetime, which resulted in the death of thousands of civilians, to be prosecuted as crimes against humanity.⁶¹ To find out if terrorism is a crime against humanity, we will describe the definition of a crime against humanity. According to Cheriff Bassioni, crimes against humanity are large-scale victimization against an identifiable group.⁶² Cassese stated that several conditions must be fulfilled for an act to become a crime against humanity, i.e.:⁶³

1. Refer to relevant international rules and refer to various crimes against humanity so that acts of terrorism can be classified as crimes against humanity on the condition that the terrorist acts are carried out in times of war or in times of peace.
2. the act of terrorism must be able to cause or resulting
 - i. Murder,
 - ii. Great suffering,
 - iii. Serious injury or injury to the health of body, or mentality or soul or any other similar form;
 - iv. Rape or even;
 - v. Enforced disappearances of civilians in the form of arrest, detention, or abduction of persons carried out by means of or with authority, assistance, or expropriation of a state or political group, followed by a refusal to acknowledge the power of the disappearance or provide correct information about those persons, to deprive them of legal protection for a very long period.

⁶¹Geoffrey Robertson, (2002), *Kejahatan Terhadap Kemanusiaan; Perjuangan Untuk mewujudkan Keadilan Global*, Jakarta: Komisi Nasional Hak Asasi Manusia. p. 416

⁶²Erikson Hasiholan Gultom. (2006). *Kompetensi Mahkamah Pidana Internasional, dan Peradilan Terhadap Kejahatan di Timor-Timur*. Jakarta. Tatanusa. p. 58

⁶³Antonio Cassese. (2006). *The Multifaceted Criminal Notion of Terrorism in International Law*. Journal of International Criminal Justice 4. p. 948

Article 5 of the International Criminal Tribunal for Ex-Yugoslavia -ICTY statutes and also Article 3 of the International Criminal Tribunal for Rwanda statutes, the definition of crimes against humanity is formulated as follows;⁶⁴

“The International Tribunal shall have the power to prosecute person responds for the following crimes when committed in armed conflict whether international on internal character and directed against any civilian population.”

- a) Murder
- b) Extermination
- c) Enslavement
- d) Deportation
- e) Imprisonment
- f) Torture
- g) Rape
- h) Persecution on political and religious grounds
- i) Other inhumane acts.

Thus, acts of terrorism that can lead to crimes against humanity can occur in times of peace or war. Then acts committed by such groups or organizations, which usually are categorized as war crimes, may also qualify as crimes against humanity.⁶⁵

Law enforcement efforts that can be carried out to prosecute terrorism as an international crime can be carried out through two approaches. The first approach is through an indirect enforcement system. The second approach is through a direct enforcement system on developing, and there is a hybrid model or mixed model that accommodates international criminal law enforcement through national criminal law and international law.⁶⁶ The practice of a direct law enforcement system has been implemented by several ad hoc International Courts, such as the Nuremberg Trial, Tokyo Trial, ICTY, and ICTR. Meanwhile, indirect law enforcement is carried out by the national court where the crime occurred or other courts that have jurisdiction over the crime that happened.⁶⁷

The indirect Law Enforcement System is to prosecute and prosecute international criminal acts against the national courts. In other words, the perpetrator is tried based on the national legal system, be it the country where the crime has been committed or other countries with interest in the crime that has occurred.⁶⁸ Indirect enforcement system can be achieved through two methods, i.e.;

1. National courts of fully sovereign states. Neither existing courts nor those established by special courts for this purpose, without international interference.
2. Special national courts are formed with intervention or assistance from the international community, called Hybrid Model or Mixed National International Courts. Intervention or international aid may be in the form of international judges or prosecutors who are seconded to the national court.
3. For example, indirect enforcement for the second model occurs in Sierra Leone,
4. Cambodia, and Timor Leste.⁶⁹

The direct law enforcement system prosecutes international crimes through an international judicial institution known as the “International Criminal Court” (ICC). A permanent judicial body can now implement the direct law enforcement system, namely the International Criminal

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⁶⁵ Poltak Patogi Nainggolan. *Op.cit.* p. 69-70.

⁶⁶ Eddy O.S Hiariej. (2009). *Pengantar Hukum Pidana Internasional*. Jakarta. Erlangga. p.69

⁶⁷ Shinta Agustina. *Op.cit.* p. 82

⁶⁸ Poltak Patogi. *Ibid.*

⁶⁹ Shinta Agustina. *Ibid.*

Court established on July 1, 2002, based in Den Haag, Netherland. ICC An International Criminal Court (the court') is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most severe crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The provisions of this Statute shall govern the jurisdiction and functioning of the court.⁷⁰The establishment of the International Criminal Court (ICC) is one of the important milestones in developing international criminal law enforcement. The existence of the ICC has progressively changed the pattern of law enforcement which was initially based on indirect enforcement methods which required certain countries to ratify international conventions to be implemented through national legal mechanisms. The model then shifted to the direct enforcement model of the international criminal law enforcement model, which is direct.⁷¹

CONCLUSION

The incident in Myanmar (coup) needs to be studied further. If we look at the coups series, there were genocidal activities to racial cleansing against the Rohingya minority who inhabit the Rakhine region. Due to this incident, there was an effect of minority protests against the Myanmar government. These protests have been friction to form an apathetic group, which the Myanmar government claims as a terrorist movement. The group calls itself ARSA or the Arakan Rohingya Salvation Army. The act of terrorism carried out by the Asra group is an act of protest rather than the genocide and racial cleansing carried out by Myanmar against the Rohingya ethnic. Regardless of whether the actions taken by the group are defined as terrorists or not, in fact, in carrying out protests that use methods or categories of terrorism. In a broad sense, it can be concluded that the actions taken by ASRA are a defense of Myanmar's treatment of ethnic groups. On the other hand, these actions are also said to be an act that causes terror on the broader community.

The Convention for the Prevention and Punishment of Terrorism, the "act of terrorism" means criminal acts directed against a State and intended or calculated to create a state of terror in the mind of a particular person, a group of persons, or the general public. The international convention also explains the criminal act of terrorism, including the international criminal act that has an international aspect and is also referred to as crimes against the international community or *Delicta Juris Gentium*. Terrorism is an international crime and has a transnational aspect too. In the international convention for the Suppression of Terrorism Bombing 1998 and the International Convention for the suppression of the financing of terrorism in 1999, terrorism has transnational crimes and has aspect international crimes.

Terrorism juridically gets into extraordinary crimes because it is special and peculiar compared to other ordinary crimes. It can be seen from the indicators, endanger the value of absolute human rights values (life, fear-free), random indiscriminate and non-selective, always contain elements of violence, and possible to organize and even transnational organized crime. Religious fundamentalist is also the motive of the terrorist group. In addition to these three motives that can be the motives of a terrorist group is a religious fundamentalist. In international law aspect, terrorism prevention has regulated in 12 international conventions and regulated on international law, i.e., Article 1 (b) Tokyo Convention on Offenses and Certain Other Acts Committed on Board Aircraft in 1963, Article 1 (a) Hague Convention for the Suppression of Unlawful Seizure of Aircraft in 1970, Article 1 (1) Montreal Convention for the suppression of Unlawful Acts against the Safety of Civil Aviation in 1971, and so on.

⁷⁰ Article 1 Rome Statute

⁷¹ Ufran. (2019) *The Resolution of Gross Human Rights Violations Through Mechanism National Courts and International Criminal Courts*. IUS Kajian Hukum dan Keadilan Volume 7 No.1. p. 174

In the globalization era, terrorism has grown because the effect of globalization is the advancement of technology related to the industrial revolution. Therefore, activities such as terrorism remain and even develop coupled with the rapid rise of technology. Globalization will always be the cover for all actions, such as terrorism and other crimes. The state must strive to be fair in all respects and have a good bond with its people. Acts of terrorism themselves are present because the domestic government policies do not work by the people's expectations, who they feel lied to or satisfied with all government actions. That's why all their efforts are heard.

The Association of Southeast Asian Nations (ASEAN) is an international organization (OI). Southeast Asia is home to more than 65 million people and is home to 15% of the world's Muslims. To deal with terrorism in member countries, ASEAN conducted new cooperation known as ASEAN Our Eyes. The partnership is between ASEAN member states, of which Indonesia is the proposer of the initiative. Ahmadi quoted says terrorism in ASEAN Through Our Eyes Initiatives, as an Associate Policy Analyst for International Agreements at the Ministry of Defence of the Republic of Indonesia. For handling the current of terrorism in the globalization era, some direct must be applied to prosecute the international act. An indirect enforcement system can be activated through two methods is Indirect enforcement system and a direct enforcement system. An indirect enforcement system is a national court through a fully sovereign state, either an existing court or creates bay specific court for this purpose, without any international interference. And the direct law enforcement system prosecutes international crimes through an international judicial institution, known as the International Criminal Court.

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