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Chink in the Armour: Tightening Jakarta's Counter Terrorist Financing Regime

Arabinda Acharya and Fatima Astuti

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The recent verdict of a South Jakarta court against Saudi national Ali Abdullah Al Khalaewi exposes the limitations in fighting terrorism at the strategic level by targeting the money that terrorists use. There is a need for a more comprehensive regime against terrorist financing.

Background

ON 27 JUNE 2010, Ali Abdullah Al Khalaewi performed “*sujud syukur*” (prostration in gratitude) in a South Jakarta Court when the judges sentenced him to one-and-half year imprisonment for “immigration violations”. The judges rejected the primary charge that Ali financed the 17 July 2009 hotel bombings as the prosecutors failed to provide evidence linking Ali’s money to the attacks.

The judgement is a severe setback as it exposes one of the weakest links in Indonesia’s overall counter-terrorism efforts. The judgement also comes at a time when three senior members of Jamaah Ansharut Tauhid (JAT), the group led by radical cleric Abu Bakar Baasyir, face prosecution for funding a militant training camp in Aceh. According to the police, Haris Amir Falah, Hariyadi Usman and Dr Syarif Usman provided Rp.400 million (\$44,000), Rp.150 million (\$16,000); Rp.200 million (\$22,000) respectively for the camp. There was speculation that as JAT’s leader, Baasyir, could also be arrested.

What went wrong?

According to his indictment, Ali admitted to giving money to Iwan and Syaifudin Zuhri whom he described as his business acquaintances. Iwan managed the Internet cafe in Kuningan, West Java – the business that was funded by Ali. Syaifudin was also the guarantor for Ali in his immigration applications. Ali acknowledged that his business earned a profit between Rp 400,000 (\$44) and one million rupiah (\$110) per month and as partners both Iwan and Syaifudin received shares of the same.

The critical points of Ali’s indictment are his links with Syaifudin, an accomplice of Noordin

Mohammad Top and the one who recruited the two suicide bombers involved in the July 2009 bombings, and how Ali's money was used to fund the operation. Unfortunately, the indictment was relatively vague on this. It only recorded the meeting in May 2009 between Syaifudin and Noordin on the plan to attack two hotels but failed to provide links between the money in Syaifudin's possession and his activities in supporting the execution of the bombings. Moreover, the charges could not be substantiated especially since Syaifudin himself was killed in a police raid in October 2009.

Thus, though the security forces in Indonesia have been successful in getting at perpetrators of attacks and foiling plots, the radical elements keep perpetuating the cult of violence through indoctrination, recruitment, training and financing. They are able to do so due to a rather ambivalent legal regime both against terrorism and terrorist financing in the country.

Weak regimes, Weaker Implementation

In 2001 Indonesia was listed by the Financial Action Task Force (FATF) in its Non-Cooperative Countries and Territories (NCCT) report. It was only in 2003 that Indonesia adopted the global AML/CFT (Anti-Money Laundering and Countering the Financing of Terrorism) standards through the enactment of Law No. 15 on Countering the Act of Terrorism and Law No. 25 on the Criminal Act of Money Laundering. Jakarta also set up the Indonesian Financial Transaction Reports and Analysis Centre (PPATK), its Financial Intelligence Unit (FIU), to monitor and investigate suspicious transactions. However, the regime is not only inherently weak and ambiguous, there is still much to be desired in respect of implementation of the AML/CFT standards. Three specific issues should be considered:

Legal Ambiguity

First, under the Money Laundering Act, assets employed directly or indirectly for terrorist activities, would be regarded as the proceeds of crime and hence cognisable. However, the Act does not explain what a terrorist activity is or what constitutes employment of the money for the same. This has resulted in myriad interpretations and subjective applications of the provisions of the Act. Moreover as Jemaah Islamiyah (JI) and its offshoots are not proscribed, it is not possible to criminalise provision of funds to these organisations.

Lack of Intra-agency Coordination

Second, coordination among different agencies appears to be less than optimal. According to PPATK, up to 30 November 2009 it has handed over 1,071 suspicious transaction reports (STR) to the law enforcement agencies. Of these, there has been no feedback on the 22 reports which involved terrorist funding. Though this is not unique to Indonesia, the lack of intra-agency cooperation and coordination has repeatedly been proven to be a definite hindrance in counter-terrorism operations.

Inadequate financial investigation

Third, obtaining convictions for a person specifically indicted on terrorist financing charges has always been an onerous task. This is due to difficulties in linking the money from that individual to the terrorist group, or otherwise showing complicity in a terrorist act. Normal investigations, which focus mainly on the tactical/operational aspects of the crime and the perpetrators either overlook or fail to produce actionable intelligence to successfully prosecute terrorist financiers. Investigation of terrorist financing, which requires specialised skills and capabilities, seems to be lacking in Indonesia.

Moving Forward

Ali's case highlights two important points.

First, legitimate business ventures are being misused by terrorists with impunity due to an ambiguous legal regime against terrorism and terrorist financing. Second, there is an urgent need for Jakarta to

make financial investigation an integral part of its overall counter-terrorism operations. Curiously, this continues to elude the concerned agencies, despite the fact that Indonesia learnt valuable lessons from the financial investigation conducted with the support of the Australian agencies following the 2002 Bali bombings. Indonesia was also successful in convicting Gun Gun Rusman Gunawan, brother of Hambali, for his role in financing the 2003 Marriot bombings.

Though this was largely due to Gunawan's own admission of the offence in court, it was a major counter-terrorism success given the fact he did not commit any other cognisable offence that could have incarcerated him. But the setback in Ali's case could undo the good work as there could now be a reluctance to proceed against the members of JAT and its leader.

Targeting financing is an important counter-terrorism tool as it degrades terrorists' ability to recruit, indoctrinate, train and operate. Thus Indonesia needs to fine-tune its CFT regime by making it more comprehensive and unambiguous in terms of definitions of "terrorist groups," "terrorist offences," or "terrorist financing." The PPATK needs to be strengthened and empowered for a stricter enforcement of AML/CFT standards. Besides, the international community must help develop the financial investigation skills of concerned agencies through programmes to assist in capacity building..

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