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The Surprise Verdict: The Proscription of Jemaah Islamiyah

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For the first time in the history of counter-terrorism in Indonesia, a court has ruled Jemaah Islamiyah a “terrorist organization”. The verdict resulted from a change in legal tactics employed by the prosecution. This development will take the fight against JI to the strategic level.

THE LABEL “terrorist organization” was meted out to Jemaah Islamiyah (JI) for the first time in the history of counter-terrorism in Indonesia in April 2008. This verdict came after the trials of Abu Dujana, the commander of the military wing of JI, and Zarkasih, the acting leader of JI. It has won praise from terrorism experts as a breakthrough in the legal quagmire that Indonesia has been facing in prosecuting terror perpetrators.

The verdict owed its success to an innovative use of legal tactics. Corporate crime charges (organised crime racketeering) were used to prove that JI existed as an organization. The term “corporation”, which was poorly defined during previous trials such as that of Abu Bakar Bashir’s, was well-argued in the current case. JI was defined as a corporation as it was proven to possess a structure (the *isobah*), membership, a financial stream and is led by a leader. The actions of leaders who have been convicted of committing terrorist acts are thus also corporate criminal acts. The prosecution of the two JI leaders and the organization itself depended much on this argument.

The significance of proscribing JI

The proscribing of JI could prove to be an important milestone in Indonesia’s long battle against terrorism. Earlier, the inability of the Indonesian courts to link JI with Al-Qaeda and its failure to prove that JI was a terrorist organization, showed the ineffectiveness of the Indonesian law. It could not punish JI members who were not directly involved in terrorist acts. Many of those tried were released after having been merely slapped with a light jail term or acquitted. Bashir was one example. His release was seen as an indictment of Indonesian laws and the seriousness of the government in dealing with terrorism in the country.

The court's proscription of JI means, theoretically, that it should now be easier to convict network leaders not directly involved in terrorism. Had a similar court judgement been made before Bashir's trial, he might have received a longer sentence. Since JI is now outlawed, recruitment of members is automatically illegal. Membership, potentially, has consequences irrespective of an individual's direct link to any specific terrorist act. This should affect JI's strength and influence. The support base should also dwindle as people would not want to be associated with a prohibited organization. The new ruling on JI may not be used to again pursue Bashir, but future members and collaborators could face arrest.

But the debate continues. There have been calls to impose a formal ban on JI. Analysts fear that since the proscription was made by a district court, it might not apply throughout the country. The other courts might choose not to follow the ruling, unless the proscription is finalized by the Supreme Court.

The Indonesian government is hesitant to enforce a national ban on JI, apprehensive that enforcement might be counter-productive. If hundreds of JI members were suddenly imprisoned, there would be an outcry against arbitrary detention. If the authorities moved against JI's string of Islamic schools, the outrage would not come just from the radical wing but also from Muslim leaders across the spectrum who would claim that Islamic schools are being unfairly stigmatised. The only way to fight extremists in a Muslim-majority country like Indonesia is to convince mainstream organizations that it is in their interests to disown the extremists — and not give radicals and moderates common cause against the government.

However, terrorism cannot be mitigated from just the tactical or operational level. It is equally important to counter it at a strategic level. JI's ideology is persistently spreading throughout the Indonesian community through its publishing companies, radical websites and members preaching freely in mosques and religious gatherings. Banning JI will be the crucial first step to challenging and discrediting its ideological influence.

The future of JI

The impact of the April court verdict outlawing JI will not be seen immediately. A ban on JI will certainly limit its capabilities and influence. Nonetheless, JI is not only the name of a terrorist organization, but also an idea. That idea — the dream of an Islamic state — has survived for decades in Indonesia, which is the world's largest Muslim country. The roots of JI can be traced back to the Darul Islam movement. But JI also hitched its bandwagon to Al Qaeda's ideology, in exchange for training and funding. Since 9/11, JI's operations have largely targeted Westerners, rather than the Indonesian government *per se*. Concerted operations since the Bali blasts have decreased JI's strength by more than two-thirds, but an estimated 1,000 members remain at large. The public outcry over the killing of ordinary Indonesians in the attacks have led to factionalism within JI. The divisions are likely to be deepened by the court verdict and recent spate of arrests.

Members will be pushed in two opposing directions, with more adopting the strategy of Bashir to work with mainstream organizations advocating Islamic law, while supporters of fugitive Bali bomber Noordin M Top will think that there is nothing to lose by resuming attacks. However, law enforcement officials believe the court judgement will strengthen the fight against JI in the long term as it will weaken them and, eventually, narrow their operating space.

The Way Forward

Contradictory statements from political leaders following the Bali Bombing II in 2005 reflected Indonesia's complex democracy. Vice President Jusuf Kalla and some ministers said that JI had never existed in Indonesia. Even now there was no statement from the government and the political parties congratulating the court's success in banning JI. The fact that the decision to outlaw JI has come late, and only as a result of the trial, and not from a legislation or Presidential/Ministerial Decree, may imply that it is unlikely for the current government to follow up the court decision, even with a ministerial decree.

Such decision will also be deemed not feasible for the government as it might give the Islamist parties, which occupy 23% of seats in the parliament, a cause against the Yudhoyono government. In addition, nearing the 2009 general election, the government will be more careful in implementing any policy that might allow rivals to paint the government as anti-Muslim. The government's recent decision to restrict the Ahmadiyah sect from propagating religious activities, after months of hesitation, shows its difficulty in facing down Muslim hardliners.

Indonesia has achieved considerable success in capturing a number of JI members: 300 terrorists have been arrested by the Indonesian authorities since 2002, with 200 imprisoned. The Indonesian authorities were able to charge these JI operatives under the Law on Anti-Terrorism and secure convictions although JI had not then been outlawed.

The Indonesian government might argue that this track record makes banning JI unnecessary. But it should know that the implementation of even a symbolic gesture like a ministerial decree banning JI would contribute significantly to Indonesia's counter-terrorism efforts.

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