The (Over)Criminalisation of Terrorism Offences in Malaysia and Indonesia

Mukhriz Mat Rus

15 YEARS ANNIVERSARY
ICCT
International Centre for Counter-Terrorism

The (Over)Criminalisation of Terrorism Offences in Malaysia and Indonesia

Mukhriz Mat Rus

ICCT Policy Brief

July 2025

15 YEARS ANNIVERSARY

International Centre for Counter-Terrorism

About ICCT

The International Centre for Counter-Terrorism (ICCT) is an independent think and do tank providing multidisciplinary policy advice and practical, solution-oriented implementation support on prevention and the rule of law, two vital pillars of effective counter-terrorism.

ICCT's work focuses on themes at the intersection of countering violent extremism and criminal justice sector responses, as well as human rights-related aspects of counter-terrorism. The major project areas concern countering violent extremism, rule of law, foreign fighters, country and regional analysis, rehabilitation, civil society engagement and victims' voices. Functioning as a nucleus within the international counter-terrorism network, ICCT connects experts, policymakers, civil society actors and practitioners from different fields by providing a platform for productive collaboration, practical analysis, and exchange of experiences and expertise, with the ultimate aim of identifying innovative and comprehensive approaches to preventing and countering terrorism.

Licensing and Distribution

This article represents the views of the author(s) solely. ICCT is an independent foundation, and takes no institutional positions on matters of policy unless clearly stated otherwise.

ICCT Policy Brief
July 2025
DOI: 10.19165/JIIB4526
ISSN: 2468-0486

Contents

Introduction

The legal response to terrorism often entails prioritising the criminal justice approach. However, ordinary criminal law and processes are often viewed as insufficient to prevent and address the threats posed by terrorism.[1] Consequently, the boundaries of criminalisation have been expanded to encompass preparatory and precursor acts that may lead to terrorism, even though this may not adhere to the strict application of harm principles.[2] This trend may lead to over-criminalisation, observable in various jurisdictions, including Malaysia and Indonesia. The pertinent question is how far the boundaries of criminal law should be stretched. Altering criminal law without proper protections could jeopardise the rule of law and fundamental rights, potentially harming established values and systems of criminal justice. Furthermore, any actions undertaken to combat terrorism that do not adhere to the rule of law, constitutionalism, and human rights principles may be counterproductive in addressing this phenomenon. This policy brief primarily examines the criminalisation of terrorism-related offences in Indonesia and Malaysia, as well as their potential for over-criminalisation. It also highlights and recommends good practices to ensure the criminal justice response to terrorism in both countries in line with the rule of law and human rights principles.

Methodology

This research adopts a doctrinal legal perspective to evaluate terrorism laws and their effects on the criminal justice system and counter-terrorism strategies. It examines the terrorism-related offences criminalised in Indonesian and Malaysian laws.[3] This chapter of law was incorporated into the Penal Code in 2003 and has undergone several amendments.[4] Focusing on the relevant legislation, this paper analyses the enforcement of the laws and their judicial interpretation in terrorism trials. To achieve this, the study relies on court-provided and open-access statistics, case reports, judicial decisions, and reports from government agencies and civil society organisations. To contextualise these laws and their underlying principles, references are made to broader legal frameworks, including the established principles of criminal law, procedural law, and constitutional rights. The study also considers international and regional counter-terrorism instruments that have shaped the legal responses of Indonesia and Malaysia.[5] A comparative analysis aims to identify similarities and differences in terrorism-related offences between the two jurisdictions and to highlight best practices that other countries could adopt.

1 As stated as one of the justifications to enact the first anti-terrorism law in Indonesia, Law 1/2002; *that the laws and regulations in force to date are not comprehensive and adequate to eradicate criminal acts of terrorism* (bahwa peraturan perundang-undangan yang berlaku sampai saat ini belum secara komprehensif dan memadai untuk memberantas tindak pidana terorisme), see also Topo Santoso, "Anti-Terrorism Legal Framework in Indonesia: Its Development and Challenges." Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada 25, no. 1 (2013): 87–101; 93

2 The harm principle in criminal law is a legal and philosophical idea asserting that the state should only penalise actions that cause harm to others. This principle offers a rationale for limiting liberty. If a person's behaviour does not harm another individual, the law should refrain from intervening, even if the behaviour is deemed immoral or offensive. See: Mill, John Stuart. On Liberty. London: John W. Parker & Son, 1859, Feinberg, Joel. The Moral Limits of the Criminal Law. Vol. 1: Harm to Others. Oxford: Oxford University Press, 1984; Simester, A. P., and Andrew von Hirsch. Crimes, Harms, and Wrongs: On the Principles of Criminalisation. Oxford: Hart Publishing, 2011; Duff, R. A., Lindsay Farmer, Sandra Marshall, and Victor Tadros, eds. The Boundaries of the Criminal Law. Oxford: Oxford University Press, 2010.

3 The primary sources of reference for Indonesia include Law No. 1/2002 on the Eradication of Criminal Acts of Terrorism, concentrating on Chapter III: Criminal Acts of Terrorism (Articles 6–19), and Law No. 5/2018 amending Law No. 1/2002. Furthermore, in 2023, Indonesia introduced a new criminal code, namely Kitab Undang-undang Hukum Pidana or Criminal Law Code No. 1/2023 (KUHAP 2023), which will take effect in 2026. This law governs terrorism-related offences in Chapter II: Crime of Terrorism (Articles 600-602). As for Malaysia, attention will centre on Chapter VIA of the Penal Code that regulates terrorism-related offences

4 In this paper, the Indonesian legal provisions are referred to as 'article', a translation of 'pasal', while the provisions in Malaysian legislation are termed 'section', translated from 'seksyen'.

5 For example, the United Nations Security Council Resolutions, the ASEAN Convention on Terrorism 2007, the ASEAN Comprehensive Plan of Action on Counter Terrorism 2009, the ASEAN Plan of Action to Prevent and Counter the Rise of Radicalisation and Violent Extremism (2018 – 2025), ASEAN Human Rights Declaration 2012

Criminal Justice Responses to Terrorism in Malaysia and Indonesia

Enhancing the role of criminal law and the criminal justice process within counter-terrorism arrangements while observing their limits and boundaries is paramount to maintaining a fair and effective counter-terrorism strategy and operation. The utilisation of criminal law upholds restraint by ensuring individual accountability, the presumption of innocence, protection from arbitrary detention, proof of guilt beyond a reasonable doubt, due process, the right to a fair defence, independent adjudication, and proportional punishment. This approach provides a strong foundation for countering terrorism, ensuring that the rule of law is upheld and the legitimacy of the counter-terrorism agenda is retained.[6][7] The distinct characteristics of terrorism are often cited as the primary reason for modifying ordinary criminal law and procedures. Accordingly, the criminal justice response to terrorism often entails criminalising terrorism-related activities and using exceptional processes for investigation, trial, and sentencing.[8] Indonesia and Malaysia each have their unique approach to counter-terrorism, which is clearly visible in their respective legal frameworks and processes.

Historically, the development of legal responses to terrorism in both countries was primarily conducted under emergency regimes, during which governments heavily depended on executive measures, including detention without trial. For instance, in Malaysia, counter-terrorism policies originated during the Malayan Emergency (1948-1960), subsequently influencing the formulation of the Internal Security Act of 1960. Consequently, the application of criminal law and procedures was significantly limited. However, following the September 11 attacks and the subsequent rise of global terrorism, responses have not only been amplified but also diversified, thereby creating wider room for criminalisation.

In Indonesia, the introduction of Law 1/2002 following the 2002 Bali bombings represented the country's first specific anti-terrorism legislation, incorporating provisions for the investigation, prosecution, and detention of terrorism suspects.[9] It is worth noting that the law was drafted months before the 2002 bombings as a reaction to global terrorism post-9/11.[10] The tragedy accelerated the enactment of the law. Before 2002, the Indonesian government used the standard Criminal Code and the abolished Anti-Subversive Law No.5/1963 to address actions now defined as terrorism.[11] Apart from providing a legal foundation for investigation, prosecution and conviction, Law 1/2002 criminalised terrorist acts simpliciter, with a broad description of terrorism and incorporated pre-existing crimes such as offences related to aviation safety, possession of firearms, explosives, and chemical weapons. These offences derive from existing emergency laws and international treaties that Indonesia ratified. Several inchoate offences, such as the prohibition of terrorism financing, accessories, incitements, and attempts, were also included in Law 1/2002.

Following the 2018 Surabaya bombings, Indonesia revised its counter-terrorism laws with Law 5/2018, which established a broad definition of terrorism and criminalised membership in terrorist organisations. Although these actions enhanced law enforcement's effectiveness, they

6 While this research focuses on the substantive criminalisation of terrorism-related offences, it does not examine the investigative and trial processes. Due to both countries' distinct legal systems and traditions, these aspects require separate, in-depth analyses. Accordingly, this policy brief will not examine the special procedural legislation in both jurisdictions in detail.
7 Ben Saul, *Defining Terrorism in International Law* (Oxford, Oxford University Press, Oxford, 2008), 318.
8 United Nations Office on Drugs and Crime, *Handbook on Criminal Justice Responses to Terrorism* (New York, United Nations Publication, 2009) 36-40.
9 Topo Santoso, "Anti-Terrorism Legal Framework in Indonesia: Its Development and Challenges." *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 25, no. 1 (2013): 87–101.
10 Simon Butt, "Anti-Terrorism Law and Criminal Process in Indonesia," ARC Federation Fellowship: Islam and Modernity. Asian Law Centre, University of Melbourne (2008): 2.
11 Shruti Bedi and Amira Paripurna, "The Architecture of Counter-Terrorism Legislation in India and Indonesia: An Analysis of Issues and Challenges". *Yuridika* 40, no.1 (2025) :97-128.

also extended the boundaries of criminal liability beyond direct violence, leading to concerns about mass surveillance and the curtailment of political dissent.[12] The law broadened inchoate offences, making it illegal to supply items usable as weapons, to be part of or lead a terrorist organisation, and to disseminate materials that advocate terrorism. Additionally, it imposed harsher penalties for terrorism-related crimes, including the possibility of the death penalty for committing a terrorist act.

Unlike Indonesia, Malaysia's criminalisation of terrorism offences was predominantly driven by global pressure in the aftermath of the September 11 attacks rather than by domestic terrorist incidents. As a result, Chapter IVA: Offences Relating to Terrorism was incorporated into the Malaysian Penal Code of 1936 in 2003. The Chapter provides definitions of *terrorist, terrorist group* and *terrorist act,* along with a list of terrorism-related offences. The government asserted that introducing the new Chapter is essential for Malaysia's participation in the International Convention for the Suppression of the Financing of Terrorism (1999) and the International Convention against the Taking of Hostages (1979).[13] Furthermore, it was also contended that the amendment aligns with the obligations established by United Nations Security Council (UNSC) Resolution 1373. Remarkably, the prosecution service only began utilising these offences a decade after their enactment.[14] Only after the introduction of the SOSMA 2012 Security Offences (Special Measures) Act 2012, which replaced ISA 1960, did the prosecution of terrorist suspects become more prominent in Malaysia.[15] This can be regarded as a significant policy shift by the government from an executive-based approach to one focused on criminal justice.[16]

A key feature of these legal developments is the increasing focus on a preventive agenda, shifting from a reactive post-crime approach to a proactive pre-crime strategy. This shift has resulted in the criminalisation of a broader range of terrorism-related activities, including membership in terrorist organisations, the possession of materials linked to terrorism, and indirect support such as financing or incitement. By emphasising early intervention, both countries have sought to prevent terrorist acts before they occur rather than merely prosecuting offenders after the fact.[17] The shift in policy to emphasise a more prominent criminal justice approach within the counter-terrorism framework is commendable. However, the trend of criminalisation beyond the established principles of criminal laws, without adequate safeguards, raises concerns about over-criminalisation.[18] The expansion of criminal liability, primarily through the expansive definitions of terrorism, precursor offences, and severe penalties, poses a risk to the fundamental legal principles of due process, proportionality, and individual rights. Such overreach may also erode public trust in the justice system, ultimately jeopardising the legitimacy and effectiveness of counter-terrorism efforts.

12 See Amnesty International, "*Indonesia: Open letter to the Chairperson of the House of Representatives of the Republic of Indonesia on the latest proposal on counter-terrorism law amendment*" (24 May 2018) https://www.amnesty.org/en/documents/asa21/8472/2018/en/; also Human Rights Watch, "Letter on Indonesia's New Counterterrorism Law" (20 June 2018) https://www.hrw.org/news/2018/06/20/letter-indonesias-new-counterterrorism-law To President Joko Widodo and Speaker Bambang Soesatyo

13 M. Kayveas. Parliamentary Debates. Dewan Negara. 19 November 2003.

14 See Public Prosecutor v Yazid Sufaat & Ors [2014] 2 CLJ 670

15 Mukhriz Mat Rus. 2022. "Malaysia's Counter-Terrorism Policy: Shifting from The Executive-Based to The Criminal Justice Approach?". *UUM Journal of Legal Studies* 13, no.1 (2002):409–429.

16 Clive Walker, and Mukhriz Mat Rus, "Legislating for National Security," in *Developments in Malaysian Law*, eds Nuraisyah Chua Abdullah. (Subang Jaya: Sweet & Maxwell, 2018), 1-25.

17 Alif Satria, "Two Decades of Counterterrorism in Indonesia", *Counter Terrorist Trends and Analyses* 14, no. 5 (September 2022): 7-16

18 Supriyadi Widodo Eddyono Ajeng Gandini Kamilah Erasmus A. T. Napitupulu, *Ancaman Overkriminalisasi, dan Stagnansi Kebijakan Hukum Pidana Indonesia : Laporan Situasi Hukum Pidana Indonesia 2016 dan Rekomendasi di 2017* (Jakarta,Institute for Criminal Justice Reform, 2017); Aditya Putra, Diana Lukitasari, "Perbandingan Pengaturan Tindak Pidana Terorisme di Indonesia dan Malaysia" Recidive 8, no. 1 (Januari-April 2019): 1-12.

Over-criminalisation Concerns

Over-criminalisation, or excessive criminalisation, results in the creation of superfluous or overlapping offences, facilitates the potential for abuse, and may adversely affect the integrity of the criminal law and justice system.[19] This phenomenon frequently arises when criminalisation transcends the accepted norms and parameters of criminal law justice.[20] This deviation can have a detrimental impact on society and the criminal justice system.[21] The overzealous manipulation of criminal law in countering terrorism arguably may cause over-criminalisation,[22] which could potentially weaken the rule of law and jeopardise counter-terrorism initiatives. Four main aspects associated with the over-criminalisation of terrorism-related offences in Malaysia and Indonesia and their impacts on the rule of law and counter-terrorism efforts will now be discussed.

Defining Terrorism that Results in Overcriminalisation

"*Nullum crimen, nulla poena sine lege*" or no crime, no punishment without law - this fundamental doctrine in criminal law ensures that no act can be punished unless it is specifically categorised as a crime by legislation. Moreover, the rule of law necessitates the clarity and consistency of criminal law.[23] As a result, laws must precisely define offences.[24] Nevertheless, defining the elements of terrorism-related acts presents a significant challenge. This is primarily attributable to the absence of a universally accepted definition of terrorism.[25] Nonetheless, international debates help governments formulate a working definition for criminalising terrorism-related offences. It's worth noting that the criminalisation expands its scope not only by using the broad term terrorism but also through terms like encouragement and preparation, which go beyond established criminal terms such as incitement and attempt.[26]

Initially, Law 1/2002 in Indonesia did not define terrorism except for a general-worded description in Article 6 that criminalised the criminal act of terrorism (*tindak pidana terorisme)*. The term was then defined in Law 5/2018 as: An act that uses violence or threats of violence that creates an atmosphere of terror or widespread fear, which can cause mass casualties and/or damage or destruction to strategic vital objects, the environment, public facilities, or international facilities with ideological, political or security disturbance motives.

The Malaysian Penal Code, on the other hand, does not define terrorism.[27] The minister who introduced the bill in Parliament justified this by stating that a conceptual definition is unnecessary, provided judges can grasp its general and intended meaning.[28] Nevertheless, Chapter IVA of the Penal Code 1936 defines the terms *terrorist, terrorist group, terrorist entity, terrorist property, and terrorist act.*[29] These definitions were adopted verbatim from the Model Legislative Provisions

19 On over-criminalisation, see Douglas Husak, *Overcriminalization: The Limits of the Criminal Law* (Oxford: Oxford University Press, 2008), 33–45; A

20 See AP Simester AP and Andreas von Hirsch, *Crime, Harms and Wrong: On the Principles of Criminalisation* (Oxford, Hart Publishing, Oxford, 2011),

21 Andrew Ashworth, Lucia Zedner, Preventive Justice (Oxford, Oxford University Press, 2014):

22 Lucia Zedner, "Countering terrorism or criminalising curiosity? The troubled history of UK responses to right-wing and other extremism". *Common Law World Review* 50 no.1(2021): 57–75

23 It is also an established principle under customary international law. See also Article 14, International Covenant on Civil and Political Rights

24 The guilty act (actus reus) and blameworthy mental state (mens rea) must be plainly spelt out, and penalties will be imposed upon conviction. The definition of the offence stipulates the burden of proof that the prosecution would bear and facilitates the accused to prepare the defences. For certain offences, the law also encompasses specific defences that would exempt the accused from liability if the fact is substantiated. Further, criminal law requires precise and unequivocal definitions of offences that provide fair warnings, enabling individuals to identify what is unlawful and to make informed decisions accordingly.

25 See Alex P. Schmid, "Defining Terrorism", International Centre for Counter-Terrorism (March 2023)

26 See Clive Walker, Mariona Llobet Anglí, Manuel Cancio Meliá. (eds.), *Precursor Crimes of Terrorism: The Criminalisation of Terrorism Risk in Comparative Perspective* (Edward Elgar, Cheltenham, 2022); David Anderson, 'Shielding the Compass: How to Fight Terrorism Without Defeating the Law' (2013) 16 European Human Rights Law Review 233.

27 The Malaysian National Security Council has articulated a definition of 'terrorism'; however, this definition lacks legal significance, particularly in terms of criminalisation.

28 Malaysia, Parliamentary Debates, Dewan Negara Hansard, 19 November 2003, 64 (M. Keyveas)

29 Section 130B, Penal Code (Malaysia)

on Measures to Combat Terrorism proposed by the British Commonwealth Secretariat in 2002 to assist countries in implementing UNSCR 1373/2001.[30] It can be argued that the definition was formulated considering other international obligations and, presumably, the Common Law system. Singapore and Brunei, neighbouring Commonwealth nations, adopted the identical definition of terrorist act developed by the Commonwealth Secretariat.[31]

Concerning the term terrorist act, it is stipulated by the Malaysian Penal Code that four criteria must be satisfied. The criteria pertain to the actions or threats involved, the underlying motivation, the intended target, and any exceptions. First, actions or threats can be considered as a terrorist act if it is listed in the provision:[32]

Second, the act done or threat made must be with the intention of advancing a political, religious, or ideological cause.[33] These critical elements will be further discussed later in this paper. Third, the act or threat must be aimed at intimidating the public, whether wholly or partially, or at influencing or compelling any government or international organisation to undertake or abstain from specific actions.[34] Finally, an act cannot be considered a terrorist act if it is advocacy, protest, dissent, or industrial action, if it is not intended:

- to cause serious bodily injury to a person;
- to endanger the life of a person;
- to cause a person's death; or
- to create a serious risk to the health or safety of the public or a section of the public.

The final element appears to be an effort to distinguish between terrorism and legitimate dissent while safeguarding citizens' civil rights. While the first three conditions appear reasonable, condition (iv) addresses risk instead of crime or threat. This could lead authorities to interpret rallies, street protests, or demonstrations as acts of terrorism.

The wide-ranging definition of a terrorist act outlined in the Malaysian Penal Code confers considerable judicial discretion regarding the determination of who qualifies as a 'terrorist' and the actions that are classified as terrorist acts. Drawing upon previous rulings and judgments, the courts seem to adopt two significant approaches when addressing definitional issues in terrorism-related cases.[35] The first is the action-based approach, which emphasises the individual's criminal conduct. Consequently, an act will only be recognised as a terrorist act if explicitly articulated in the Penal Code. One example is the case of Hassan bin Hj Ali Basari (2014), where the presiding judge referred to Section 130(b) of the Penal Code in his judgment on what constitutes terrorism. He concluded that an armed intrusion by a group of foreigners from the Philippines into Kampung Tanduo, Sabah, was a terrorist act.[36] The group, namely the Royal Sulu Army, was not yet listed as a terrorist organisation at that time. The second is the label-based approach, which establishes connections between a criminal act and a terrorist organisation. This method requires a judge

30 Office of Civil and Criminal Justice Reform, *Model Legislative Provisions on Measures to Combat Terrorism* (London, Commonwealth Secretariat, 2002)

31 See Section 2(1), Anti-Terrorism (Financial and Other Measures) Act 2008 [Chapter 197] of Brunei; and Section 2(2) Terrorism (Suppression of Financing) Act 2003 [Chapter 325] of Singapore.

32 Section 130B(2), Penal Code (Malaysia), if the actions: (a) involves serious bodily injury to a person;(b) endangers a person's life; (c) causes a person's death;(d) creates a serious risk to the health or the safety of the public or a section of the public; (e) involves serious damage to property; (f) involves the use of firearms, explosives or other lethal devices; (g) involves releasing into the environment or any part of the environment or distributing or exposing the public or a section of the public to - (i) any dangerous, hazardous, radioactive or harmful substance; (ii) any toxic chemical; or (iii) any microbial or other biological agent or toxin; (h) is designed or intended to disrupt or seriously interfere with any computer systems or the provision of any services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure; (i) is designed or intended to disrupt, or seriously interfere with the provision of essential emergency services such as police, civil defence or medical services; (j) involves prejudice to national security or public safety;(k) involves any combination of any of the acts specified in paragraphs (a) to (j)

33 Section 130B(2)(b), Penal Code (Malaysia)

34 Section 130B(2)(c), Penal Code (Malaysia)

35 Mukhriz Mat Rus, Terrorism and the Law of Malaysia: Who Are The 'Terrorists'? paper delivered at UiTM International Conference on Law & Society 2021, Shah Alam, Malaysia, 1-2 November 2023

36 Public Prosecutor v Hassan bin Hj Ali Basari [2014] MLJ 153;.Hassan Ali Basari [2018] 4 CLJ 561 a

to determine whether a specific group is classified as a terrorist entity. For example, in the case of Siti Noor Aishah Binti Atam (2016), the court accepted the Ministerial Order which declared the Islamic State, Al-Qaeda and Jemaah Islamiyah to be terrorist groups.[37] In numerous cases, terrorism experts were summoned to aid the court, including in the case of Siti Noor Aishah. The court rejected the evidence of two out of the three expert witnesses. Prosecutors called these witnesses to shed light on the connections between the objects found in the accused's possession and the terrorist organisation. One witness was unable to explain how he concluded that the books were linked to terrorism, while another failed to provide a satisfactory answer as he had only analysed the translated versions of the books in question. In Mustaza Abdul Rahman (2018), the defence sought to challenge the credibility and the testimony provided by the expert witness called by the prosecution and subsequently called upon another expert to rebut.[38] Given the pivotal role of expert witnesses, any deficiencies in their expertise, impartiality, and independence could directly impact the fairness of a trial concerning terrorism-related charges. There may be concerns about the credibility of the experts if they have a close or prior connection to the police or security services.[39]

The main concerns regarding the over-criminalisation associated with the definition of terrorism are, firstly, the broad and ambiguous construct of legal definitions of terrorism. Secondly, the motivation elements within these definitions may lead to encroaching on citizens' political and civil rights.

The definition of terrorism in Indonesia can be argued as broadly worded, encompassing a wide array of acts while leaving critical terms undefined. Phrases such as 'an atmosphere of terror or widespread fear' are subject to subjective interpretation and raise questions about the judges' application of these provisions. In the same vein, the Malaysian Penal Code covers various general acts that have broad meanings. For instance, an act that involves prejudice to national security or public safety can be considered a terrorist act. This broadness in the definitions opens the door for potential misuse of power and abuse of authority, such as the criminalisation of legitimate political dissent or the targeting of minority groups.[40] The concept of national security tends to be broad and amorphous in Malaysia. It is conveniently left to the discretion of decision-makers in the executive branch or the court in specific contexts or activities. This concept comprises public order, racial and religious harmony, economic strength, social welfare, political stability, and strong government, all of which are considered integral to the country's security and stability.[41] The notion comprises public order, racial and religious harmony, economic strength, social welfare, political stability, and strong government.[42] Expansive definitions will undoubtedly afford the authorities greater scope and flexibility in preventing terrorist activities, as they will effectively lower the thresholds for arrest. However, there is concern that this may divert attention from appropriate targets and potentially open the door to abuse in targeting political opponents and minorities. This potential diversion of attention raises serious questions about the effectiveness of these laws in combating terrorism, which should be a cause for concern.

Moving on to another critical aspect of the definition, we must consider the elements of the motivation behind committing acts of terrorism. It is worth noting that at the beginning, there was a hesitance to include motives such as political or ideological elements in both countries' definitions. For Malaysia, the elements of advancing a political, religious or ideological cause were absent in the initial definition introduced in 2003 and were added later in 2007. For Indonesia, motivation elements were absent in the proposed definition put forth in 2011 by the

37 Siti Noor Aishah Atam [2018] 5 CLJ 44.
38 Public Prosecutor v Mustaza Abdul Rahman [2018] 9 CLJ 101.
39 Tasniem Anwar and Marieke de Goede M., 'From contestation to conviction: terrorism expertise before the courts' (2021) 48 *J Law Soc.* 137–157
40 Section 130B(3)(j), *Penal Code* (Malaysia)
41 David Bonner, *Executive Measures, Terrorism and National Security: Have the Rules of the Game Changed?* (Hampshire, Ashgate Publishing, 2007) 14.
42 Mohd Azizuddin Mohd Sani, "Freedom of Speech and National Security in Malaysia" *Asian Politics & Policy* 5, no.4 (2013) 585.

special committee designated to recommend modifications before incorporating the definition into revised anti-terrorism legislation, Law 5/2018.[43] Conversely, some lawmakers sought to include political elements in the new legislation to distinguish terrorism from ordinary crime.[44] Ultimately, motives related to ideological, political, and security disturbances constitute an essential aspect of the definition. The first two are widely recognised elements in definitions of terrorism,[45] while the security disturbance (*gangguan keamanan*) occupies a slightly different category and encompasses a broader scope. It emphasises the intended consequence rather than the underlying motivation behind a terrorist act.

Overall, there are at least three possible legal impacts of the political, religious, and ideological dimensions in the definition of terrorism. Firstly, the politicisation of criminal trials can arise from being manipulated by the state or terrorist suspects. Secondly, motives would now constitute a component of the blameworthy mental element in a terrorism offence. Conventionally, unlike *mens rea* — the mental element — motive is not a requisite element that the prosecution must establish to secure a conviction for ordinary crimes. Thirdly, the spectrum of admissible or relevant evidence, including mindset and character evidence, as well as the opinions of terrorism experts, is broadened.

Terrorism Offence Simpliciter

Committing a terrorist act per se is an offence in Indonesia and Malaysia and is punishable by death.[46] Criminalising the terrorist act as a distinct offence poses challenges for several reasons. First, this offence acts as a catch-all, obscuring the line between violent and non-violent crimes. It also expands its scope to include individuals who are neither perpetrators nor accessories to the crime. This situation renders the offence susceptible to exploitation. It may result in the criminalisation of innocent actions as well as the expansion of prohibited conduct determined by an individual judge's interpretation. The potential for criminalising innocent actions should raise serious concerns about the fairness and justice of these laws.[47]

The second problem arises from the ambiguous description of criminal liability within the relevant provisions. For instance, the phrase "directly or indirectly commits a terrorist act" in the Malaysian Penal Code is notably imprecise. It is important to emphasise that the notion of committing a crime indirectly is a concept unfamiliar within jurisdictions governed by Common Law, which addresses varying degrees of participation in criminal activities through well-established principles such as abetment, common intention, and conspiracy. Given that indirectly committing a terrorist act — a fundamentally inchoate offence — now constitutes a complete offence, there is the potential for an individual to be charged with a double inchoate offence.[48] This situation highlights significant concerns regarding overcriminalisation.

---

43 Badan Pembinaan Hukum Nasional, *Naskah Akademik Rancangan Undang-Undang Perubahan Undang- Undang Nomor 15 Tahun 2003 tentang Pemberantasan Tindak Pidana Terorisme* [Academic Document of the Draft Law on Amendments to Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism] (Jakarta, Badan Pembinaan Hukum Nasional, 2011] 151-152.

44 Reza Maulana Hikam, "Decoding Terrorism: Analyzing the Dynamics of Definition in Indonesian Legal Instruments", *Jurnal Mengkaji Indonesia* 2, no.2 (2023): 327-340.

45 For example, see Section 1, Terrorism Act 2000 (UK), and see Ben Saul (2006), Defining Terrorism in International Law. Oxford: Oxford University Press, p.59.

46 Article 6 of Indonesian Law 5/2018, which addresses the criminal act of terrorism:
Any person who intentionally uses violence or threats of violence that create an atmosphere of terror or fear among people on a widespread basis causes mass casualties by depriving freedom or loss of life and property of others or causes damage or destruction to strategic vital objects, the environment or public facilities or international facilities shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years, life imprisonment, or the death penalty. The Malaysian Penal Code criminalises 'terrorist act' by section 130C(1), which states: Whoever, by any means, directly or indirectly, commits a terrorist act shall be punished- (a) if the act results in death, with death; and (b) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine.

47 United Nations Human Rights Council, Report of The United Nations High Commissioner for Human Rights on The Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (19 December 2014) A/HRC/28/28, para 21.

48 In Public Prosecutor v Imam Wahyudin bin Karjono & Anor [2017] MLJU 513, two accused were charged with committing a terrorist act, where one of them threw a hand grenade into a bar in Kuala Lumpur and injured eight people. The prosecution relied on section 34 of the Penal Code, the common intention provision, to implicate criminal liability against another accused who did not carry out the act, albeit both accused went to the scene and fled together by motorcycle, which is somehow sufficient to prove their involvement, directly and indirectly.

Another salient concern is related to the excessive punishments for terrorist acts simpliciter, especially the death penalty. The exceptional nature of terrorism is often used to justify a harsher sentencing. However, reactive responses may undermine the principle of proportionality in punishing criminals. The application of capital punishment is commonly criticised primarily due to its contravention of human rights principles.[49] International human rights law stipulates that such punishment should only be used for "the most serious crimes" in countries that retain the death penalty.[50] The most serious crime has been interpreted as "intentional crimes with lethal or other extremely grave consequences" or "intentional killing".[51]

In countries such as Indonesia and Malaysia that retain capital punishment, there are two key conditions to be met when sentencing terrorists to death. To begin with, capital punishment should result from a fair trial that adheres to the rule of law. Furthermore, it can be applied only to acts of terrorism that deliberately led to death. Thus, it aligns with the reasoning behind executing murderers. However, enforcing the death penalty may counteract efforts against terrorism, as it can evoke sympathy for those convicted of terrorism-related crimes.

Pre-cursor Offences

The predominant characteristic of the current criminalisation of terrorism is the enactment of precursor or inchoate offences. This reflects the pre-crime concept that seeks not only to prevent but also to pre-empt the commission of criminal acts. The precursor offences include pre-inchoate, preparatory, facilitative, and associative acts of terrorism, which encompass training for terrorism, possession of items intended for terrorist purposes, and directing a terrorist organisation.[52] Both Indonesia and Malaysia have criminalised precursor offences through a catalogue of specific offences.[53]

There are at least three often-cited reasons to criminalise precursor offences. First, they serve as a preventive measure to mitigate the anticipatory risks associated with terrorism.[54] This also echoes international law, which demands "additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism".[55] Secondly, in addition to offering early intervention, the precursor offences also target a broader array of individuals and impose penalties on those who assist in terrorist activities and prospective offenders.[56]

Thirdly, justification for the enactment of precursor offences pertains to the inherent nature of terrorism. The prosecution encounters more significant challenges in proving terrorism-related cases than ordinary offences. Acts of terrorism frequently entail "the offences of conspiracy and encouraging crime", which "are notoriously difficult to prove".[57] In 2011, the Indonesian special committee tasked with reviewing the anti-terrorism law highlighted the need to criminalise

49 UN Secretary-General, Press Statement: Capital punishment does not reduce terrorism, Secretary-General says on World Day Against Death Penalty, urging respect for human rights in all security operations (SG/SM/18185-HR/5332-OBV/1669, 7 October 2016)
50Article 6 (2), International Covenant on Civil and Political Rights 1966.
51 United Nations Economic and Social Council, Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty Resolution (25 May 1984) Resolution No. 1984/50
52 Clive Walker, Blackstone's Guide to the Anti-Terrorism Legislation (Oxford: Oxford University Press, 2002) 182; Andrew Goldsmith, "Preparation for Terrorism: Catastrophic Risk and Precautionary Criminal Law, in Law" and Liberty in the War on Terror, eds. Andrew Lynch, Edwina MacDonald, George Williams, (New South Wales, Federation Press, 2007) 59.
53 Indonesia, see Articles 10 to 16 Law 5/2018, (Malaysia) see sections 130D to 130S of the Penal Code
54 Clive Walker, "The Impact of Contemporary Security Agendas Against Terrorism on Substantive Criminal Law", in Post 9/11 and the State of Permanent Legal Emergency: Security and Human Rights in Countering Terrorism, eds, Aniceto Masferrer (Netherlands: Springer, 2012) 135.
55 United Nations Security Council, Resolution 1373 (2001). See also United Nations Security Council, Resolution No.1269 (1999), United Nations Security Council Resolution 1368 (2001); ASEAN Declaration on Joint Action to Counter Terrorism (2001). In the Malaysian case of Public Prosecutor v Anuar bin AB Rawi (2016), the presiding judge justified the enactment of a precursor offence by saying that:
Preventive action is one of the ways to counter terrorism activities from becoming rampant in our Malaysian society, particularly among youngsters who can be easily influenced by extremist ideology propagated by terrorist groups such as IS and Al-Qaeda.
56 Lucia Zedner, "Terrorizing Criminal Law" *Criminal Law and Philosophy* 8 (2014): 99.
57 Stuart Macdonald, "Prosecuting Suspected Terrorists: Precursor Crimes, Intercept Evidence and the Priority of Security", in *Critical Perspectives on Counter-Terrorism*, eds. Lee Jarvis and Michael Lister (Abingdon: Routledge, 2015) 131.

precursor activities (*kegiatan pendahuluan)*.[58] Nevertheless, such offences arguably depart from the established harm principle by criminalising acts with more remote risks than ordinary crimes. This could impact the legitimacy of the law itself and may undermine fundamental rights and freedoms.

In Malaysia, the contentious offence of possessing items associated with terrorist acts and organisations serves as a pertinent illustration.[59] Besides being a precursor offence and frequently utilised by the prosecution, the absence of the *mens rea* element renders the offence notorious.[60] This is due to the defining criteria relating to the offending items being too broad. 'Items associated with terrorist groups' extend to books, videos, flags and pictures of a terrorist group. Thus, the prosecution does not need to prove that the material intended for a purpose is linked to the commission, preparation, or incitement of an act of terrorism. The Penal Code does not explicitly address reasonable excuses or specific defences available to an individual found in possession of such materials. As a result, this law might be applied against terrorism researchers and journalists who possess materials in good faith.[61]

Since the precursor offences expand their scope, certain groups, particularly minorities, may be at greater risk of being viewed as community suspects. The offence of being a member of a terrorist organisation exemplifies how criminalisation extends beyond the act to encompass the state of being, or status offence. Indonesia and Malaysia both classify membership in terrorist organisations as a criminal offence.[62] If a person is charged with the offence, judges in both countries may ascertain the group's status in two ways. First, the judge makes his own finding during the trial, which may be assisted by expert opinion evidence. Therefore, a credible and impartial expert on terrorism is pertinent. Second, the court may rely on the designation previously made by the authorities. In Malaysia, the government minister has the authority to designate a group as a terrorist organisation, unlike in Indonesia, where the court can only make such a declaration conclusively. At this juncture, it can be argued that the practices in Indonesia provide a more robust framework for safeguarding rights, even though the ministerial directives in Malaysia are subject to judicial review by the aggrieved parties.

Overlapping Offences

The existence of overlapping offences would rightly indicate over-criminalisation, which produces unnecessary offences. Consequently, this would confer significant authority on prosecutors to indict a defendant for multiple offences and present the possibility of abuse and double jeopardy.[63] Terrorism-related offences may coincide with other criminal acts like murder, bodily harm, and property damage. This overlap can also occur with security-related violations, including possession of weapons, explosives, and treason. Likewise, there may be overlap among terrorism offences, compounded by vague and broad catch-all provisions. For instance, Article 15 of Indonesia Law 5/2018 is frequently referred to as *pasal karet* for being too broad, ambiguous, or open to interpretation, potentially leading to arbitrary or disproportionate application.[64] As such, the enforcement of this provision may intersect with other terrorism-related crimes, as

58 Badan Pembinaan Hukum Nasional, Naskah Akademik Rancangan Undang-Undang Perubahan Undang- Undang Nomor 15 Tahun 2003 tentang Pemberantasan Tindak Pidana Terorisme [Academic Document of the Draft Law on Amendments to Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism] (Jakarta, Badan Pembinaan Hukum Nasional, 2011] 72-74.
59 Section 130JB (1) of the Penal Code states: Whoever (a) has possession, custody or control of; or (b) provides, displays, distributes or sells, any item associated with any terrorist group or the commission of a terrorist act shall be punished with imprisonment for a term not exceeding seven years, or with a fine, and shall also be liable to forfeiture of any such item
60 SUARAM, *Malaysia Human Rights Report Overview 2024* (Kuala Lumpur: Suara Inisiatif Sdn Bhd,2024) 11.
61 Mukhriz Mat Rus, "The (Over)Criminalisation of Possession of Items Associated with Terrorism in Malaysia" paper delivered at Seminar on Law and Society 2021 (SOLAS V), Kedah, Malaysia. 5-6 October, 2021.
62 Indonesia: Article 12A paragraph (a), Law 5/2018, Malaysia: Section 130KA, Penal Code.
63 Douglas Husak, Overcriminalization (Oxford, Oxford University Press, 2008) 38.
64 M. Muttaqien, "Indonesia's Responses to the "War on Terror": Several Controversial Issues in the Transition to Democracy Indonesian" *Journal of Social Sciences* 4, no 1 (2012)

it encompasses the criminalisation of all forms of inchoate offences.[65] It must be noted that authorities rely heavily on Article 15, which is used in conjunction with other articles.[66]

The presence of overlapping offences undoubtedly affords greater flexibility in the plea-bargaining process in court. The practice of presenting an alternative charge is not deemed unlawful under the Malaysian criminal justice framework. For instance, the prosecution often presents the alternative charge of possession of stolen property to individuals accused of theft. This alternative charge may be framed under the same or different law. Furthermore, this practice has also been applied in terrorism-related cases. In 2006, Yazid Sufaat pleaded guilty to a lesser charge of failing to disclose information regarding terrorist acts.[67] The initial charges were promoting the commission of terrorist acts and being members of a terrorist group under Section 130G (a) of the Penal Code.

While overlapping offences may facilitate the prosecution's ability to secure convictions, accelerate trial proceedings, and offer alternatives to the accused, it is imperative not to underestimate the potential risk of coercive plea bargaining arising from such overlapping legislation.[68] A suspect may be easily convinced to accept a lesser charge despite being innocent, especially when faced with the challenging, lengthy, and expensive legal process ahead. This must also be contextualised within a criminal justice system wherein allegations of torture during custody are prevalent, and a significant number of the accused are unrepresented. At this juncture, the public prosecutor may assume a crucial role in providing safeguards; however, this may also lead to the politicisation of the criminal process, especially if the independence of the prosecution service is frequently questioned.

65 Article 15, Law 5/2018 states:
66 Iwa Maulana, Daniella T. Putri, Indriana M. Kresna, and Destya G.Ramadhani, "Demographic Profile, Mapping, and Punishment of Terrorist Convicts in Indonesia: An Introduction to the Indonesian Terrorism Cases Database" *Perspective on Terrorism* XVIII, Issue 3 (September 2024): 161.
67 The Malaymail Online, 'Ex-army captain gets seven years jail term after pleading to lesser terrorism info omission charge' 27 January, 2017 http://www.themalaymailonline.com/malaysia/article/ex-army-captain-gets-seven-years-jail-term-after-pleading-to-lesser-terrori#QzSw2h-q4PfFJtztr.97
68 Michael Hor, 'Singapore's Anti-Terrorism Law' in Global Anti-Terrorism Law and Policy, eds.Victor V. Ramraj, Micheal Hor, Kent Roach and George Williams (Cambridge: Cambridge University Press, 2012) 285

Conclusions

It is indisputable that criminalising terrorism-related offences significantly contributes to the prevention and countering of terrorism. However, in the absence of comprehensive safeguards, the criminalisation process may yield counterproductive effects. The unintended consequences are exacerbated by the implementation of specialised procedural laws and the prevailing attitudes among authorities who historically wielded extensive power. Therefore, more robust safeguards from various institutions must be established to ensure that terrorism-related offences are enforced effectively and fairly while simultaneously upholding the principles of the rule of law and supporting the counter-terrorism agenda. Accordingly, the following policy recommendations are proposed.

Revising the Broad Definitions

As previously emphasised, an expansive interpretation may undermine constitutionalism and be susceptible to abuse. Therefore, it is suggested:

- That criminal acts designed as terrorism hold the same implications as standard criminal offences is recommended, to align more closely with established and accepted principles. For instance, proving a terrorist act involving murder must be equal to, if not higher than, establishing a murder according to ordinary criminal law.
- The essential components of *mens rea and actus reus* in criminal law and general and specific defences must be explicitly stated in the law.
- Ambiguous terminology, such as “to directly or indirectly commit,” which carries unclear implications regarding criminal liability, requires careful review.

Dealing with Motivation Elements

Incorporating ideological, religious, and political aspects into the definition of the criminal code has both benefits and drawbacks. On the one hand, it underscores the distinction between offences related to terrorism and other criminal acts, thereby justifying the implementation of specialised processes and penalties. Conversely, it could jeopardise citizens’ civil rights and weaken the rule of law. Therefore, the following two checks are recommended.

- The impartiality and independence of the terrorism experts providing opinion evidence in court should remain intact. It may be prudent to contemplate the establishment of a specific code of conduct for terrorism experts who are summoned to provide testimony in court.
- The judiciary must acknowledge its role as the primary protector of the constitutional rights of individuals accused of a crime. The assertion that the security authorities are solely qualified to determine security issues warrants scrutiny and critical examination.
- The criminalisation of the terrorist act simpliciter offence is inherently vague and undermines the rule of law, which demands clarity. If the offence is retained in the criminal codes, a meticulous review is necessary to address this issue, in conjunction with the extensive definition that implicates the application of Article 6 of Indonesian Law No. 5 of 2018 and Section 130C of the Malaysian Penal Code.

Inchoate Offences

The composition of inchoate offences is meticulously crafted, akin to ordinary criminal offences, which delineate culpable mental states and wrongful acts, along with the available defences for the accused person. Therefore, it is advisable to amend the offence outlined in Section 130JB of the Malaysian Penal Code. The offence should strictly pertain to items connected to terrorist purposes or acts rather than any items associated with a terrorist group. Furthermore, the provision should be revised to incorporate the mens rea element and to exempt from liability any individual who possesses the object in good faith or with lawful justification.

Designation of the Terrorist Group

It is recommended that the designations be subjected to judicial oversight, as granting discretionary authority to the minister for declaring an organisation a terrorist entity is incompatible with the principles of the rule of law. Consequently, the relevant sections of Malaysia's anti-terrorism legislation must be amended.

Post-legislative Review

Post-legislative scrutiny by lawmakers concerning the application of terrorism-related offences in practice is highly recommended. This post-legislative scrutiny can mitigate the potential risks associated with over-criminalisation. As a result, the laws concerning terrorism-related offences will be maintained due to ongoing threats and current needs. Additionally, creating a cross-party committee could help streamline parliamentary reviews.

Executive Safeguard

The government is advised to issue an annual factual report regarding the implementation of terrorism-related offences. This report should properly present statistics on arrests, prosecutions, and convictions related to the specific charges. Beyond enhancing transparency and accountability, the report could aid Parliament and other stakeholders, such as civil society organisations and human rights advocates, in evaluating the effectiveness of these laws. Secondly, it is also important to consider the establishment of an independent reviewer for terrorism legislation, as practised in other jurisdictions.

Bibliography

Aditya Putra, Diana Lukitasari, “Perbandingan Pengaturan Tindak Pidana Terorisme di Indonesia dan Malaysia” Recidive 8, no. 1 (Januari-April 2019): 1-12.

Alif Satria, “Two Decades of Counterterrorism in Indonesia”, Counter Terrorist Trends and Analyses 14, no. 5 (September 2022): 7-16

Amira Paripurna, “The Right to a Fair Trial and Combatting Terrorism: The Case of Indonesia,” Indonesian Journal of International Law 9, no.4 (2011).

Andrew Ashworth, Lucia Zedner, Preventive Justice (Oxford, Oxford University Press, 2014):

Andrew von Hirsch and Andrew Ashworth, Proportionate Sentencing: Exploring the Principles (Oxford, Oxford University Press, 2005) 134.

AP Simester and Andreas von Hirsch, Crime, Harms and Wrong: On the Principles of Criminalisation (Oxford, Hart Publishing, Oxford, 2011),

Badan Pembinaan Hukum Nasional, Naskah Akademik Rancangan Undang-Undang Perubahan Undang- Undang Nomor 15 Tahun 2003 tentang Pemberantasan Tindak Pidana Terorisme [Academic Document of the Draft Law on Amendments to Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism] (Jakarta, Badan Pembinaan Hukum Nasional, 2011] 151-152.

Ben Saul, Defining Terrorism in International Law (Oxford, Oxford University Press, Oxford, 2008), 318.

Clive Walker, “The Impact of Contemporary Security Agendas Against Terrorism on Substantive Criminal Law”, in Post 9/11 and the State of Permanent Legal Emergency: Security and Human Rights in Countering Terrorism, eds, Aniceto Masferrer (Netherlands: Springer, 2012) 135.

Clive Walker, and Mukhriz Mat Rus, “Legislating for National Security,” in Developments in Malaysian Law, eds Nuraisyah Chua Abdullah. (Subang Jaya: Sweet & Maxwell, 2018), 1-25.

Clive Walker, Blackstone’s Guide to the Anti-Terrorism Legislation (Oxford: Oxford University Press, 2002) 182; Andrew Goldsmith, “Preparation for Terrorism: Catastrophic Risk and Precautionary Criminal Law, in Law” and Liberty in the War on Terror, eds. Andrew Lynch, Edwina MacDonald, George Williams, (New South Wales, Federation Press, 2007) 59.

David Anderson, ‘Shielding the Compass: How to Fight Terrorism Without Defeating the Law’ (2013) 16 European Human Rights Law Review 233.

David Bonner, Executive Measures, Terrorism and National Security: Have the Rules of the Game Changed? (Hampshire, Ashgate Publishing, 2007) 14.

Douglas Husak, Overcriminalization (Oxford, Oxford University Press, 2008) 38.

Douglas Husak, Overcriminalization: The Limits of the Criminal Law, (Oxford: Oxford University Press, 2008), 33–45; A

Iwa Maulana, Daniella T. Putri, Indriana M. Kresna, and Destya G.Ramadhani, “Demographic Profile, Mapping, and Punishment of Terrorist Convicts in Indonesia: An Introduction to the Indonesian

Terrorism Cases Database" Perspective on Terrorism XVIII, Issue 3 (September 2024): 161.

Lucia Zedner, "Countering terrorism or criminalising curiosity? The troubled history of UK responses to right-wing and other extremism". Common Law World Review 50 no.1(2021): 57–75

Lucia Zedner, "Terrorizing Criminal Law" Criminal Law and Philosophy 8 (2014): 99.

M. Muttaqien, "Indonesia's Responses to the "War on Terror": Several Controversial Issues in the Transition to Democracy Indonesian" Journal of Social Sciences 4, no 1 (2012)

Michael Hor, 'Singapore's Anti-Terrorism Law' in Global Anti-Terrorism Law and Policy, eds.Victor V. Ramraj, Micheal Hor, Kent Roach and George Williams (Cambridge: Cambridge University Press, 2012) 285

Mohd Azizuddin Mohd Sani, "Freedom of Speech and National Security in Malaysia" Asian Politics & Policy 5, no.4 (2013) 585.

Mukhriz Mat Rus, "The (Over)Criminalisation of Possession of Items Associated With Terrorism in Malaysia" paper delivered at Seminar on Law and Society 2021 (SOLAS V), Kedah, Malaysia. 5-6 October, 2021.

Mukhriz Mat Rus, Terrorism and the Law of Malaysia: Who Are The 'Terrorists'? paper delivered at UiTM International Conference on Law & Society 2021, Shah Alam, Malaysia, 1-2 November 2023

Mukhriz Mat Rus. 2022. "Malaysia's Counter-Terrorism Policy: Shifting from The Executive-Based to The Criminal Justice Approach?". UUM Journal of Legal Studies 13, no.1 (2002):409–429.

Office of Civil and Criminal Justice Reform, Model Legislative Provisions on Measures to Combat Terrorism (London, Commonwealth Secretariat, 2002)

Reza Maulana Hikam, "Decoding Terrorism: Analyzing the Dynamics of Definition in Indonesian Legal Instruments", Jurnal Mengkaji Indonesia 2, no.2 (2023): 327-340.

Saroja Dhanapal, Johan Shamsuddin Sabaruddin, "Rule of Law: An Initial Analysis Of Security Offences (Special Measures) Act (SOSMA) 2012" IIUM Law Journal 23 (2015)

Shruti Bedi and Amira Paripurna, "The Architecture of Counter-Terrorism Legislation in India and Indonesia: An Analysis of Issues and Challenges". Yuridika 40, no.1 (2025) :97-128.

Simon Butt, "Anti-Terrorism Law and Criminal Process in Indonesia," ARC Federation Fellowship: Islam and Modernity. Asian Law Centre, University of Melbourne (2008): 2.

Stuart Macdonald, "Prosecuting Suspected Terrorists: Precursor Crimes, Intercept Evidence and the Priority of Security", in Critical Perspectives on Counter-Terrorism, eds. Lee Jarvis and Michael Lister (Abingdon: Routledge, 2015) 131.

SUARAM, Malaysia Human Rights Report Overview 2024 (Kuala Lumpur: Suara Inisiatif Sdn Bhd, 2024) 11.

Supriyadi Widodo Eddyono Ajeng Gandini Kamilah Erasmus A. T. Napitupulu, Ancaman Overkriminalisasi, dan Stagnansi Kebijakan Hukum Pidana Indonesia : Laporan Situasi Hukum Pidana Indonesia 2016 dan Rekomendasi di 2017 (Jakarta, Institute for Criminal Justice Reform, 2017);

Tasniem Anwar and Marieke de Goede M., 'From contestation to conviction: terrorism expertise before the courts' (2021) 48 J Law Soc. 137–157

The Malaymail Online, 'Ex-army captain gets seven years jail term after pleading to lesser terrorism info omission charge' 27 January 2017 http://www.themalaymailonline.com/malaysia/article/ex-army-captain-gets-seven-years-jail-term-after-pleading-to-lesser-terrori#QzSw2hq4PfFJtztr.97

Topo Santoso, "Anti-Terrorism Legal Framework in Indonesia: Its Development and Challenges." Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada 25, no. 1 (2013): 87–101.

UN Secretary-General, Press Statement: Capital punishment does not reduce terrorism, Secretary-General says on World Day Against Death Penalty, urging respect for human rights in all security operations (SG/SM/18185-HR/5332-OBV/1669, 7 October 2016)

United Nations Economic and Social Council, Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty Resolution (25 May 1984) Resolution No. 1984/50

United Nations Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (19 December 2014), A/HRC/28/28, para 21.

United Nations Office on Drugs and Crime, Handbook on Criminal Justice Responses to Terrorism (New York, United Nations Publication, 2009) 36-40.

United Nations Security Council, Resolution 1373 (2001). See also United Nations Security Council, Resolution No.1269 (1999); United Nations Security Council Resolution 1368 (2001); ASEAN Declaration on Joint Action to Counter Terrorism (2001).

About the Author

Mukhriz Mat Rus

Mukhriz Mat Rus is a Visiting Fellow (Rule of Law) at the International Centre for Counter-Terrorism (ICCT) from January to March 2025. His research focuses on the criminal justice response to terrorism, with a particular emphasis on Malaysia and selected Southeast Asian countries. Mukhriz investigates the application of criminal law and procedures in addressing and preventing terrorism, examining the criminalisation of terrorism-related activities, the use of exceptional legal processes, and the adoption of extraordinary evidentiary rules. His work critically evaluates how these measures, if implemented without adequate safeguards, could undermine the rule of law and fundamental rights.

A former prosecutor turned academic, Mukhriz earned his PhD in Law from the University of Leeds, United Kingdom, in 2019. His doctoral research explored Malaysia's counter-terrorism strategy through a criminalisation approach, drawing comparisons with the UK's prosecution-based policies. He also holds an LL.B (Hons) from the International Islamic University of Malaysia (2017) and an LL.M from the National University of Malaysia (2014). Before transitioning to academia, he served as Deputy Public Prosecutor at the Attorney General's Chambers, Malaysia, from 2008 to 2015. He currently serves as a Senior Lecturer at the School of Law, College of Law, Government and International Studies, Universiti Utara Malaysia (UUM).

Mukhriz is actively involved in research, consultancy, and training on criminal justice, counter-terrorism, and the prevention of violent extremism. He has been invited as a resource person and subject matter expert by prominent national and international organizations, including the Royal Malaysia Police, the Human Rights Commission of Malaysia, and the United Nations Office on Drugs and Crime (UNODC). He also served as Lead Researcher for the ASEAN Intergovernmental Commission on Human Rights (AICHR) Thematic Study on the Rights of Accused Persons in ASEAN countries. In addition to his academic and policy work, Mukhriz frequently collaborates with civil society organizations to advocate for balanced, rights-based approaches to counter-terrorism.

International Centre for Counter-Terrorism (ICCT)
T: +31 (0)70 763 0050
E: info@icct.nl
www.icct.nl