

The Trial of Abu Bakar Ba'asyir: A Test for Indonesia

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On October 27, the re-trial of the alleged spiritual leader of Jemaah Islamiyah (JI), Abu Bakar Ba'asyir began. While significant in its own right, the trial is in many ways a litmus test of the new Susilo Bambang Yudhoyono administration's commitment to combating terrorism.

Head of the Salafist madrasa Al Mukmin, Ba'asyir's graduates read like a who's who of Southeast Asian terrorism. But prior to 2002, Indonesian authorities were unwilling to detain the militant cleric, despite pressure from their neighbors and the United States. In fact, key political leaders and opinion-makers, such as Indonesian Vice President Hamzah Haz, continued to make high profile visits to Ba'asyir's madrasa in a symbolic show of solidarity. At the same time, authorities stonewalled requests for Ba'asyir's arrest, denying the existence of JI or al-Qaeda cells in their country – that is, until Indonesia was targeted in the Bali bombing of October 2002 that killed 202 people.

Ba'asyir was incarcerated immediately after the October 2002 attack, but his prosecution was woefully mishandled from the start – despite damning video testimony linking Ba'asyir directly to al-Qaeda from a Malaysian JI member, Faiz bin Abu Bakar Bafana. In September 2003, the court found Ba'asyir guilty of involvement in a JI plot to overthrow the Government but said there was no proof he led the JI network.

The United States and Australia were infuriated by the ruling, which the court never fully explained. Many of the judges were concerned about becoming victims of Islamist violence, and were thus angered when the police refused to offer them special protection. However, there is also some evidence that the judges were trying to demonstrate an unprecedented degree of judicial independence, and were angered at the blatant diplomatic interference by the United States and Australia. But more likely, the judges were simply unimpressed by a very poor prosecution.

So were the higher courts: An appeals court overturned Ba'asyir's treason conviction but ruled that he had to serve three years for immigration-related offences. In March 2004, the Supreme Court announced that his sentence would be reduced to 18 months; roughly time already served.

On April 30, as he was released from prison, Ba'asyir was re-arrested on retroactive terrorism charges, but there seemed to be little political will on the part of the Megawati administration to put him on trial again. Yet police and the state prosecutor's office were confident that this time they could build up a stronger case against Ba'asyir. U.S. officials provided additional intelligence gleaned from the August 2003 arrest of Hambali, a senior al-Qaeda official and JI's operational chief. Another key JI leader, Abu Jibril, who was captured by Malaysia, provided additional testimony in the case. But perhaps the most important testimony will come from a former senior JI leader, Mohammad Nasir bin Abbas, who renounced JI and has fully cooperated with the Indonesian police, providing much needed insight into the organization. [1]

As the police and prosecutor's office were building up their case, however, authorities were dealt a legal setback. On July 23, Indonesia's new Constitutional Court ruled that the retroactive use of the 2003 anti-terror law No. 16 to cover the Bali bombings was unconstitutional, while making an exception for convictions already secured in that case. "This decision does not annul the convictions against Amrozi and his friends, but in the future, the anti-terrorism law will no longer be [retroactively] enforceable after this decision," announced the Constitutional Court's clerk, Muhammad Asrun. [2] Lawyers for those already sentenced in connection with the Bali blasts have said that the exception is outrageous and argued that their clients' convictions should be overturned. Indonesia's Justice Minister insisted that the ruling would not annul the convictions of the 32 people who had already been tried under this law, though this did open another avenue for appeals to the Supreme Court. While the anti-terrorism law No. 16 remains in force, as does a broader related law No. 15, both can now only be applied to crimes committed after their passage.

As a result of the ruling and the mixed signals about its implementation, the Indonesian National Police announced that they were dropping all charges against Ba'asyir that linked him to the Bali bombing, saying he will still be charged with heading JI and for other attacks. As Detective Chief Suyitno Landung stated: "...[E]ven though we have put aside the Bali case, we will not stop investigating. We are only revising his file...The article used against Abu Bakar Ba'asyir will still be the anti-terrorism laws." [3]

According to the indictment, the charges against Ba'asyir include:

Planning and inciting acts of terrorism – including the establishment of a training camp on the Philippine island of Mindanao;

Using his position to influence/persuade others;

Conspiring to commit acts of terrorism;

Withholding information about terrorist acts – specifically the indictment says that he gave permission to key Bali bomber Amrozi to go ahead with the plan.

The last charge, however, will likely prove to be problematic. Indonesia has no conspiracy law. And since Ba'asyir was incarcerated at the time of the September 2003 Australian Embassy bombing and the attack on the JW Marriott hotel in August 2004, there is very limited evidence linking him to either case. Furthermore, Ba'asyir cannot be charged for the Bali attacks under the counter-terrorism legislation, he has instead been charged for Bali under the country's criminal code.

There will be some political fallout from the retrial. There were small but vociferous demonstrations protesting against Ba'asyir's re-arrest, as hundreds of supporters waited to greet Ba'asyir upon his release from prison. Several key Muslim leaders, including Vice President Hamzah Haz, Din Syamsuddin the vice chairman of the Muhammadiyah, the country's second largest Muslim organization, and Hidayat Nur Wahid, the head of the Prosperous Justice Party, an Islamist party that fared exceptionally well in the 2004 parliamentary elections, all visited Ba'asyir in prison and have protested his re-arrest. They will continue to view Ba'asyir as a scapegoat and blame diplomatic interference by the United States and Australia. Hidayat Nur Wahid, capitalizing on his new position as the speaker of the upper house of parliament, has promised to campaign for Ba'asyir's release. Likewise, Din Syamsuddin, who is poised to become the Muhammadiyah's new chairman, continues to voice support for Ba'asyir. Both men, like Ba'asyir, are committed to transforming Indonesia into an Islamic state governed by Shari'ah.

The trial of Ba'asyir is only one of the legal hurdles facing President Yudhoyono. Perhaps the more politically charged issue is the proscription of JI. At present, JI membership is not a crime, one has to be directly tied to an attack to be detained. For example Mustaqim, who organized JI training in

Mindanao until he was detained in the summer of 2004, is unlikely to be charged.

Why has JI not yet been outlawed? The simple answer is parliamentary opposition. While many in the parliament would like to outlaw the group, some proponents also want to ban the Mujahideen Council in Indonesia (MMI), Abu Bakar Ba'asyir's overt civil society organization that has close links with Islamist political parties. [4] Other members of parliament have resisted this, as they either do not believe JI exists or see the effort as a throwback to the Suharto era's crackdown on NGOs.

President Yudhoyono says that he is willing to submit legislation to parliament that could lead to the proscription of JI, but only after the provision of "proof" that the organization even exists. As he told Time magazine: "After the review if there are explanations and proof that JI as an organization does exist in Indonesia, and if it is legally proved that its members are involved in terrorist activities, then it will be declared a banned organization. We will use the legal process in order for this to become a legal and law enforcement issue, not a political one." [5]

With three major terrorist attacks perpetrated in Indonesia, over 100 members of JI detained, and countless economic losses, it is almost incomprehensible that the government is still cautious and concerned about the political fallout resulting from the proscription of JI.

Yudhoyono's impressive electoral mandate clearly demonstrated that the majority of the population view internal security as a key priority of the new administration. Moreover, Yudhoyono has enough religious credentials to lead by example and determine the national mood vis-à-vis the militants. While there are concerns that he may in due course be labeled as an American stooge, he can overcome this by convincing the populace that cracking down on the militants is not only the right thing for Indonesian society, but also important economically, especially as Indonesia has an estimated 40 million unemployed and underemployed people.

To be sure, there are real political constraints. No political party commands even 25 percent of parliamentary seats, and his own Democratic Party controls a mere 8 percent, necessitating large and unwieldy coalitions. Yudhoyono has included the Islamist parties, the Prosperous Justice Party and Crescent and Star Party, and appointed several of their leaders to key cabinet posts as part of his national unity government. While the Islamist parties condemn terrorism, they deny the existence of JI, though sharing its long-term vision of transforming Indonesia into an Islamic state.

The retrial of Ba'asyir is going to be the first real challenge for the new president, as he balances the economic returns and diplomatic gains with the political fallout from within his own cabinet.

Notes:

1. Martin Chulov, "Secrets of a Terror Turncoat," The Australian, 17 July 2004.
2. BBC, "Ruling Muddies Bali Bomb Verdicts," 23 July 2004.
3. Ibid.
4. "The MMI is an institution where a lot of people from a lot of Muslim groups . . . discuss how to get our vision of sharia implemented into national laws...The long-term strategy is to get Indonesia 100 percent based on sharia. As long as Muslims are the majority, the country should be ruled by sharia." Interview with Abu Bakar Ba'asyir, Ngruki, Solo, 11 June 2002. Yet there is substantial evidence that the MMI is also a front for Abu Bakar Ba'asyir's militant and terrorist activities as many MMI leaders are also JI members. For example, the MMI's board included, Mohammad Iqbal Rahman (Abu Jibril) and Agus Dwikarna; both headed JI's two paramilitary arms and were members of the JI shura. The MMI's director of daily operations is Irfan Suryahardy Awwas, the younger brother of a senior JI leader Abu Jibril, who is currently detained.
5. Simon Elegant, "I have to face many fundamental issues" Exclusive Interview with Indonesia's New President, Time Asia, 1 November 2004.

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