

Dynamics of Anti-Terrorism Regulation: A Comparative Study Between Indonesia, Malaysia and the United States

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Abstract

This paper examines the dynamics of anti-terrorism regulations in Indonesia, Malaysia and the United States by comparing the legal frameworks and law enforcement mechanisms in each country. legal frameworks and law enforcement mechanisms that apply in each country. The purpose of this research is to analyse how each country shapes its anti-terrorism law as a response to national threats, while at the same time maintaining a balance of as a response to national threats, while at the same time maintaining the balance between state security and human rights protection. The main issues discussed include differences in legal approach, scope of state authority in counter-terrorism operations, as well as monitoring mechanism to prevent authority in counter-terrorism operations, as well as monitoring mechanism to prevent abuse of authority. abuse of authority. The method used is juridical method used is normative-comparative juridical by analysing statutory instruments, government policies, and institutional practices in the three countries. The results The results show that Indonesia emphasises procedural guarantees in its anti-terrorism law, Malaysia maintains a preventive detention model rooted in historical security doctrine. rooted in historical security doctrine, while the United States applies a layered a layered approach backed by extensive intelligence powers and judicial oversight. judicial oversight. In conclusion, although all three countries prioritise national security, their approaches reflect different security, their approaches reflect different legal traditions and political

contexts. political context. Therefore, a balanced regulatory model should take into account effectiveness, constitutional accountability and protection of fundamental rights.

Keywords

Anti-Terrorism Law, Comparative Legal Study, National Security, Human Rights Protection.

I. Introduction

Terrorism is a violent phenomenon that has historically evolved along with social, political and ideological dynamics in various parts of the world.¹ Conceptually, terrorism can be understood as an act committed by individuals or groups with the aim of creating widespread fear (terror) through symbolic and destructive violence. These acts are generally directed against civilian targets or state infrastructure with the intent to influence government policy, impose a particular ideology, or destabilise the nation. The emergence of terrorism cannot be separated from various triggering factors such as political conflict, social group marginalisation, ideological radicalisation, to geopolitical intervention and global inequality.²

Over time, forms of terrorism have evolved significantly. In the past, acts of terrorism tended to be localised and conventional, but in the last two decades, terrorism has evolved into a transnational threat that uses modern instruments, including

¹ Arief Fahmi Lubis, “Perubahan Model Ancaman Terorisme Ditinjau dalam Hukum Tata Negara di Indonesia,” *Ideas: Jurnal Pendidikan, Sosial, dan Budaya* 7, no. 3 (August 25, 2021): 251, <https://doi.org/10.32884/ideas.v7i3.382>.

² Miski Miski, “Tindak Pidana Terorisme Dalam Perspektif Hukum Pidana Islam Dan Hukum Positif,” *Al-Mazaahib: Jurnal Perbandingan Hukum* 9, no. 1 (November 27, 2021): 83, <https://doi.org/10.14421/al-mazaahib.v9i1.2367>.

digital technology and social media.³ The emergence of groups such as Al-Qaeda, ISIS, Boko Haram, and other regional networks proves that terrorism no longer recognises regional boundaries, but is global and interconnected.⁴ In addition, recent trends such as lone-wolf terrorism - where perpetrators act independently without formal ties to a particular terrorist group - have become new challenges that are difficult to detect and prevent with conventional security approaches.

The danger of terrorism to a country lies not only in the number of casualties or physical damage caused, but also in the long-term psychological, social, and political effects.⁵ Terrorist acts can cause mass fear that transcends the time and space of the incident, weaken public trust in the state, and create sharp social polarisation. Terrorism also has the potential to paralyse government functions, disrupt economic growth, and create systemic political instability. In many countries, terror attacks have triggered the implementation of extraordinary measures, which sometimes result in the restriction of civil rights and the weakening of democratic principles.⁶

Strategically, terrorism also attacks symbols of state power - such as state institutions, places of worship, and public facilities - with the intention of showing the state's weakness in keeping its

³ Waraney Timothy Osak, Fernando Max Karisoh, and Natalia Lana Lengkong, "Yurisdiksi Universal Dalam Mengadili Kejahatan Terorisme Menurut Hukum Pidana Internasional," *Lex Crimen* XII, no. 3 (2023).

⁴ Dr. Qudsia Akram , Fatima Afzal , Arusha Siddique, "Terrorism and Counter Terrorism in Africa: A Case Study of Boko Haram and Al-Qaeda in Nigeria," *Pakistan Journal of International Affairs* 4, no. 3 (September 27, 2021), <https://doi.org/10.52337/pjia.v4i3.220>.

⁵ John Mueller and Mark G. Stewart, "Terrorism and Bathtubs: Comparing and Assessing the Risks," *Terrorism and Political Violence* 33, no. 1 (January 2, 2021): 138–63, <https://doi.org/10.1080/09546553.2018.1530662>.

⁶ Hashmat Ullah Khan, "An Analytical Investigation of Consequences of Terrorism in the Middle East," *Journal of Economic Criminology* 4 (June 2024): 100067, <https://doi.org/10.1016/j.jeconc.2024.100067>.

citizens safe.⁷ In this case, a state that fails to respond to terrorism appropriately may lose legitimacy in the eyes of its own people. Therefore, the state is required to formulate anti-terrorism policies that are not only repressive, but also preventive and holistic. An approach that relies solely on the power of the authorities without an understanding of the ideological and social roots of radicalism risks expanding the support base of terrorist groups.⁸

The rise of terrorism poses a multidimensional challenge to the modern state.⁹ It not only attacks the physical body of the state through acts of violence, but also undermines the ideological and institutional foundations of the state through the spread of fear and social disintegration. Therefore, counter-terrorism strategies should not be reactive and short-term, but should be built on a strong legal foundation, human rights protection, and community participation in strengthening national resilience.¹⁰

In the last two decades, terrorism has become one of the most pressing global threats, prompting many countries to reorganise their legal frameworks and strengthen their counter-terrorism strategies.¹¹ The development of forms and patterns of terrorism attacks, especially with the emergence of transnational networks,

⁷ Bakir Alispahic, “Special War and Terrorism,” *TECHNIUM: Social Sciences Journal* 17 (2021).

⁸ Emi Nugraheni Solihah and Ali Masyhar, “The Implementation of Capital Punishment in Indonesia: The Human Rights Discourse,” *Journal of Law and Legal Reform* 2, no. 2 (April 30, 2021): 321–28, <https://doi.org/10.15294/jllr.v2i2.46625>.

⁹ Maxim Lepskiy and Natalia Lepska, “The Phenomenon of the Terrorist State in Contemporary Geopolitics: Attributive, Static, and Dynamic Characteristics,” *American Behavioral Scientist*, December 1, 2023, 00027642231214080, <https://doi.org/10.1177/00027642231214080>.

¹⁰ Brice Tseen Fu Lee, “Power Projection and Counter-Terrorism: Strategies for Small States Like Brunei Darussalam,” *Journal of Terrorism Studies* 5, no. 2 (November 25, 2023), <https://doi.org/10.7454/jts.v5i2.1064>.

¹¹ Kristine Toohey and Tracy Taylor, “Mega Events, Fear, and Risk: Terrorism at the Olympic Games,” *Journal of Sport Management* 22, no. 4 (July 2008): 451–69, <https://doi.org/10.1123/jsm.22.4.451>.

digital-based radicalisation, and lone-wolf attacks, has challenged conventional legal mechanisms. Countries around the world are adjusting their regulations to respond to this threat, while maintaining a balance between national security and the protection of human rights.¹²

Several previous studies have examined this issue from various perspectives. For example, Rachminawati and Nursabila (2023) examined the stagnation of terrorism case handling in the Southeast Asian region despite ASEAN having established various regional legal instruments, such as the ASEAN Convention on Counter Terrorism (ACCT) 2007, and noted that overlapping regulations and weak implementation are the main factors for the ineffectiveness of ASEAN anti-terrorism policies.¹³ On the other hand, Joy Zaman Felix Saragih and George Jan Christian Zherman Saragih (2023) examined the effectiveness of anti-terrorism regulations in Indonesia in dealing with organised crime financing, and noted that the weak financial supervision system and suboptimal legal instruments are the main obstacles in preventing the flow of funds that support terrorism networks.¹⁴ Then the research conducted by Ahmad Bardi (2023) examined the comparison of the qualification of terrorism offences in Law Number 5 Year 2018 with various regulations in other countries,

¹² Ali Masyhar et al., “Digital Transformation of Youth Movement for Counter Radicalism” (IJALS SYMPOSIUM ON TECHNOLOGICAL ADVANCEMENT FOR SOCIAL WELFARE: Technological Advancement for Social Welfare: Contemporary Development and the Future Impact, Semarang, Indonesia, 2022), 030010, <https://doi.org/10.1063/5.0109808>.

¹³ Rachminawati Rachminawati and Arivania Shafa Nursabila, “Stagnasi Penanganan Kasus Terorisme di ASEAN: Kritik terhadap Tumpang Tindih Regulasi dan Kendala Implementasinya,” *El-Dusturie* 2, no. 2 (January 15, 2024), <https://doi.org/10.21154/el-dusturie.v2i2.7138>.

¹⁴ Joy Zaman Felix Saragih and George Jan Christian Zherman Saragih, “Efektivitas Regulasi Anti Terorisme dalam Menghadapi Pendanaan Kejahatan Terorganisir (Organised Crime),” *Locus: Jurnal Konsep Ilmu Hukum* 5, no. 1 (2025).

and noted that the inclusion of ideological, political, or security disturbance motives in Indonesian law is not found in anti-terrorism regulations in other countries and is considered to have no juridical consequences on the construction of the terrorism offence itself.¹⁵ Then, research by Afdal Ramadhan (2024) examines the criminal law approach to terrorism in Indonesia and the Philippines, and notes that although both face similar threats in the Southeast Asian region, Indonesia emphasises policy reform and international cooperation, while the Philippines prioritises strict law enforcement and military intervention in countering terrorism.¹⁶

The novelty of this paper lies in the scope of comparative analysis that juxtaposes three countries with different legal systems, institutional approaches, and socio-political backgrounds in responding to terrorism. Different from previous studies that generally only compare two countries or focus on one particular legal aspect (such as prevention or prosecution), this study offers a more comprehensive perspective by evaluating the effectiveness of regulations, institutional accountability, and the balance between national security and human rights protection simultaneously. In addition, this study expands the analysis not only in terms of written legal norms, but also in terms of implementation and its impact on democracy and the rule of law. By combining normative juridical approaches and comparative legal studies, this research aims to offer theoretical and practical contributions to the development of policies that balance security needs with respect for constitutional rights in Indonesia, Malaysia, and the United States.

¹⁵ Ahmad Bardi, “Pengaturan Kualifikasi Terorisme Dalam Undang-Undang Pemberantasan Tindak Pidana Terorisme Dan Perbandingannya Dengan Negara Lain,” *JATISWARA* 38, no. 1 (March 31, 2023), <https://doi.org/10.29303/jtsw.v38i1.484>.

¹⁶ Afdal Ramadhan, “Analisis Komparatif Hukum Pidana Terorisme: Studi Kasus Antara Negara Indonesia Dan Filipina” (Thesis, Jakarta, IBLAM School Of Law, 2024).

While the analysis draws upon observable trends and policy outcomes, it acknowledges the methodological limitations in fully capturing the complex real-world implementation of anti-terrorism regulations. Thus, the novelty of this research lies in the comparative framework of three countries that are rarely discussed together in legal literature, as well as in the emphasis on the accountability dimension in the context of modern anti-terrorism regulations.

The urgency of this research lies in the need to analyse anti-terrorism regulations with a more comprehensive comparative approach, covering legal, institutional and political variables. In the context of the increasing risk of transnational attacks, national approaches in combating terrorism should be evaluated not only in terms of internal effectiveness, but also its compatibility with human rights norms and international democratic principles. This research aims to fill that gap by presenting an in-depth comparative analysis of the anti-terrorism legal frameworks in Indonesia, Malaysia, and the United States—three countries with different legal systems, political traditions, and security orientations.

This research is significant because it places three diverse regulatory models side by side: Indonesia with its civilian legal system and ongoing democratic consolidation process;¹⁷ Malaysia, with its hybrid legal system that combines elements of common law and Islamic law, reflects a legal framework shaped by both colonial legacy and religious influences—this duality allows for a unique approach to preventive detention;¹⁸ blending formal legal

¹⁷ Izzy Al Kautsar and Danang Wahyu Muhammad, “Sistem Hukum Modern Lawrance M. Friedman: Budaya Hukum dan Perubahan Sosial Masyarakat dari Industrial ke Digital,” *Sapientia Et Virtus* 7, no. 2 (October 4, 2022): 84–99, <https://doi.org/10.37477/sev.v7i2.358>.

¹⁸ Francisco José Sosa-Duque and Catherine A. Tauber, *FIGURE 14 in The Neotropical Green Lacewing Genus Ceraeochrysa Adams (Neuroptera: Chrysopidae)-New Synonymies and Combinations, a New Species, and an*

procedures with discretionary executive powers; and the United States, with its common law tradition and extensive counter-terrorism powers, operates under a framework that emphasizes judicial oversight and constitutional protections even amid expansive security measure.¹⁹ This comparison allows for a more comprehensive understanding of how different jurisdictions interpret and implement counter-terrorism policies within their respective constitutional frameworks. The novelty of this study lies in the scope of the three-country comparison and its analytical focus on the balance between the protection of national security and human rights.

The purpose of this study is to evaluate the effectiveness, legal accuracy, and compliance with human rights principles of the anti-terrorism regulations in each country. Through the normative-comparative juridical method, this study aims to identify the strengths and weaknesses of each system, and contribute to the development of a more balanced and rights-based counter-terrorism regulation model. This research is also expected to provide practical recommendations for policy makers, legal academics, and the international community in formulating an effective and equitable global legal framework in dealing with the threat of terrorism.

II. Method

This research uses a normative legal research method that relies on literature studies and conceptual juridical approaches

Updated Key to Species (Zenodo, May 13, 2021), <https://doi.org/10.5281/ZENODO.4756211>.

¹⁹ Jessie Blackbourn, “Counterterrorism Legislation and Far-Right Terrorism in Australia and the United Kingdom,” *Common Law World Review* 50, no. 1 (March 2021): 76–92, <https://doi.org/10.1177/1473779521989332>.

to legislation and legal doctrines relevant to the topic of anti-terrorism.²⁰ Normative legal research is conducted to examine positive legal norms that regulate the eradication of criminal acts of terrorism in Indonesia, Malaysia, and the United States, both from the constitution, laws, and other derivative regulations.²¹ In this case, the data is collected through literature studies which include primary legal materials such as laws and regulations and court decisions, as well as secondary legal materials in the form of scientific journals, reference books, institutional reports, and official documents from each country.²² The approach used in this research includes two main approaches, namely a case study approach and a comparative legal approach. The case study approach is used to analyse the implementation of anti-terrorism regulations based on concrete events and policies enacted after a particular terror.²³ In carrying out the analysis, this research uses descriptive analytical techniques to describe the legal substance systematically, as well as evaluative-comparative to compare and assess the advantages and disadvantages of each regulatory model. The limitation in this research is that no direct interviews or empirical surveys were conducted, so the analysis is entirely based on document data and a normative approach. Therefore, the results of this research are oriented

²⁰ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)* (Jakarta: Rajawali Press, 2009).

²¹ Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Rajawali Press, 2012).

²² Elisabeth Nurhaini Butar-Butar, *Metode Penelitian Hukum, Langkah-Langkah Untuk Menemukan Kebenaran Dalam Ilmu Hukum* (Bandung: PT. Refika Aditama, 2018).

²³ Mukti Fajar Nur Dewata and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2010).

towards theoretical juridical studies and not quantitative measurements of policy effectiveness statistically.

III. Result & Discussion

A. Legal and Institutional Frameworks for Counterterrorism in Indonesia, Malaysia, and the United States

The legal framework for combating terrorism in Indonesia has undergone significant development in line with the increasing intensity and complexity of terrorism threats since the early 2000s.²⁴ An important milestone in national legal arrangements occurred after the 2002 Bali Bombing I incident, which prompted the Indonesian government to pass Government Regulation in Lieu of Law (Perppu) Number 1 Year 2002, which was later enacted into Law Number 15 Year 2003 on the Eradication of the Criminal Acts of Terrorism.²⁵ This law became the main legal basis in responding to terror attacks, but was considered to have limitations in terms of prevention and early action. In response to a series of further terrorism attacks, such as the Thamrin Bombing (2016) and Surabaya Bombing (2018), the government and the House of Representatives revised the regulation through Law Number 5/2018.²⁶ This revision provides greater legitimacy to the security

²⁴ Linda Novianti, “Pidana Mati Terhadap Tindak Pidana Terorisme di Indonesia Dihubungkan dengan Tujuan Pemidanaan dalam Perspektif Hukum Positif dan Hukum Pidana Islam,” *JURNAL SYNTAX IMPERATIF : Jurnal Ilmu Sosial dan Pendidikan* 4, no. 1 (April 11, 2023): 50–70, <https://doi.org/10.36418/syntax-imperatif.v4i1.221>.

²⁵ Radhityo Maulana Putra et al., “Studi Literatur Mengenai Tragedi Bom Bali I 2002, Faktor Penyebab Dan Dampaknya Dalam Perspektif Agama,” *Moderasi: Jurnal Kajian Islam Kontemporer* 1, no. 1 (2023).

²⁶ Mubdiul Rozaq and Fahmiron, “Kebijakan Kriminal dalam Penanganan Tindak Pidana Terorisme di Indonesia,” *UNES Law Review* 6, no. 2 (2023).

forces, especially to the National Police (Polri) and the National Counterterrorism Agency (BNPT), to carry out preventive and repressive actions more effectively. Law No. 5/2018 also regulates the involvement of the Indonesian National Army (TNI) in counter-terrorism operations with the provision that such involvement must be regulated in legislation, as an effort to maintain the principles of civilian supremacy and operational accountability.²⁷ Institutionally, BNPT functions as a cross-sector coordinator, while Densus 88 Antiterror acts as the main operational unit tasked with direct action against terrorism perpetrators.²⁸

Meanwhile, Malaysia has a long tradition of using a prevention-based national security approach as the main strategy for countering threats. One of the most significant regulations is the Prevention of Terrorism Act (POTA) 2015, which replaces several previous provisions of the Internal Security Act (ISA) 1960 that have been removed.²⁹ POTA gives the Prevention of Terrorism Board sweeping powers to impose preventive detention for up to two years without the need for court approval.³⁰ These detentions can be extended without open court proceedings, drawing criticism from civil society groups and the international community for its perceived disregard for the principle of fair trial and the right to

²⁷ Marimin Marimin, "Politik Kriminal Peran Tentara Nasional Indonesia (TNI) Dalam Penanganan Pemberantasan Terorisme Di Indonesia," *Jurnal Hukum Progresif* 9, no. 1 (April 30, 2021): 74–86, <https://doi.org/10.14710/jhp.9.1.74-86>.

²⁸ Rizal Sitinjak et al., "Efektivitas Penegakan Hukum Terhadap Tindak Pidana Terorisme di Indonesia: Studi Kasus Densus 88 AT Polri," *Journal Humaniora: Jurnal Hukum dan Ilmu Sosial* 03, no. 01 (2025).

²⁹ Abdul Razak Ahmad, "Must the Prevention of Terrorism Entail the Violation of Human Rights? The Case of Malaysia's Prevention of Terrorism Act," *UUM Journal of Legal Studies* 13, no. 1 (2022), <https://doi.org/10.32890/uumjls2022.13.2.10>.

³⁰ Faris Daniel et al., "Analysing the Prevention of Terrorism Act 2015 in Combating Terrorism in Malaysia," *CLI*, 2023.

legal justice. Under this legal framework, the Malaysian police, particularly the Special Branch, has the lead role in identifying and cracking down on potential terrorism activities, with support from the Malaysian Maritime Enforcement Agency (MMEA) as well as the Malaysian Armed Forces for specific sectors relating to border security and maritime areas.³¹ Despite a clear institutional structure, the lack of information disclosure and judicial oversight means that Malaysia's legal framework tends to be state security orientated with weak human rights oversight.

In contrast to Indonesia and Malaysia, the United States has developed a highly complex anti-terrorism legal framework that reflects its federal system and common law tradition.³² Following the 11 September 2001 attacks, the US Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, better known as the USA PATRIOT Act. This law provides an extraordinary expansion of the federal government's authority, especially to the Federal Bureau of Investigation (FBI), Central Intelligence Agency (CIA), and Department of Homeland Security (DHS), in conducting wiretaps, monitoring digital communications, monitoring financial transactions, and detaining terrorism suspects, including foreign nationals.³³ In addition, the USA

³¹ Aizat Khairi, Andika Ab. Wahab, and Mohd Na'eim Ajis, "Between Humanity and Security: The Dilemma of Malaysian Maritime Enforcement Agency (MMEA) Towards Rohingya Refugees," in *Proceedings of the Southeast Asian Conference on Migration and Development (SeaCMD 2023)*, ed. Pamungkas A. Dewanto, Kinanti R. Sabilla, and Tri S. Nurkholiq, vol. 16, Atlantis Highlights in Social Sciences, Education and Humanities (Dordrecht: Atlantis Press International BV, 2023), 91–102, https://doi.org/10.2991/978-94-6463-362-7_8.

³² Musoma Albert Lusiola, "Structural and Legal Frameworks Guiding Multi-Agency Operations and Countering Terrorism in Kenya," *International Journal of Advances in Scientific Research and Engineering* 07, no. 01 (2021): 36–47, <https://doi.org/10.31695/IJASRE.2021.33962>.

³³ Setyo Widagdo, Kadek Wiwik Indrayanti, and Anak Agung Ayu Nanda Saraswati, "Repatriation as a Human Rights Approach to State Options in

PATRIOT Act also modifies the provisions of the Foreign Intelligence Surveillance Act (FISA), by expanding the powers of the Foreign Intelligence Surveillance Court (FISC) to approve intelligence operations without public disclosure. Nonetheless, the US setting recognises the importance of checks and balances, with oversight from Congress and the federal courts, although their effectiveness is often questioned in cases of executive abuse.

TABLE 1. Comparison of Counterterrorism Regulations in Indonesia, Malaysia, and the United States

Aspect	Indonesia	Malaysia	United States of America
Main Legal Basis	Law No. 15 of 2003 in conjunction with Law No. 5 of 2018	Prevention of Terrorism Act (POTA) 2015	USA Act 2001, FISA, Homeland Security Act
Dominant Approach	Preventive and repressive based on criminal law	Administrative preventive detention (without open trial)	Intelligence and investigative approach with extraordinary authority
Main Law Enforcement Agency	Densus 88 Anti-Terror Polri, BNPT,	Special Branch (Police),	FBI, CIA, Department of

	TNI (with further regulations)	Council for the Prevention of Terrorism	Homeland Security (DHS)
Military Involvement	Allowed under certain conditions; awaiting technical regulations	Not explicitly stated	Limited, mainly overseas (via Department of Defense & NSA)
Judicial Oversight Mechanism	Limited, supervision is more administrative in nature	Very limited; Board decisions are not subject to judicial review.	Yes; through the FISA Court and legislative oversight, although it is considered weak.
General Criticism	Potential human rights violations during the detention process and military involvement	Lack of transparency and fair trial guarantees	Potential abuse of authority and violation of privacy
Balance of Human Rights vs Security	Starting to accommodate human rights, but not yet optimal in its implementation	Tends to prioritize national security over human rights protection	Tends to be strong on security, but still maintains checks and balances

Legal System	Civil law	Mixed system (common law + Islamic law)	Common law, federal
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The table above illustrates the complexity and diversity of legal and institutional approaches used by Indonesia, Malaysia, and the United States in combating terrorism. The three countries have very different characteristics, both in terms of legal system, political background, and national security preferences. Indonesia, as a country that adheres to a civil law legal system and is in the process of democratic consolidation, has a relatively new and dynamic legal framework in responding to the escalation of terrorism threats. With the enactment of Law Number 15 Year 2003, which was later revised through Law Number 5 Year 2018, Indonesia has shown serious efforts in strengthening the legal basis of counterterrorism, especially by regulating the role of institutions such as BNPT and Densus 88, as well as opening space for TNI involvement. However, the judicial oversight aspect of the state's preventive and repressive measures is still limited, and becomes an important note in ensuring accountability and protection of human rights.

In contrast to Indonesia, Malaysia still maintains a more closed approach based on administrative preventive detention. This is reflected in the enactment of the Prevention of Terrorism Act (POTA) 2015, which grants the Prevention of Terrorism Board broad powers to determine detention without going through an open court process. This approach has historical roots dating back to the Internal Security Act (ISA) and tends to emphasise political stability and public order over civil liberties.³⁴ The primary law enforcement role is played by the police intelligence unit, the Special Branch, with internal institutional oversight. Criticism of

³⁴ Ahmad El-Muhammady, "Religious, Political and Health Radicalization in the Context of National Security in Malaysia and Public Order," *Journal of Public Security and Safety* Vo 12, no. 2 (2021).

the Malaysian system is mostly directed at the absence of adequate checks and balances, as well as the lack of transparency in decision-making, which has major implications for individual liberties.

Meanwhile, the United States has the most comprehensive and systematic approach in responding to the threat of terrorism, especially after the 9/11 tragedy. Through the USA PATRIOT Act, the federal government is given broad powers in intelligence gathering, communications interception, and financial surveillance, which are carried out by agencies such as the FBI, CIA, and DHS. Amendments to FISA expanded the role of the FISA Court in approving covert intelligence operations. Although judicial and legislative oversight systems are in place, their effectiveness is often questionable as many decisions are secretive. In this context, the United States has managed to build a strong intelligence-based counter-terrorism framework, but also faces serious challenges in terms of protecting privacy rights and civil liberties, especially for certain communities such as Muslims and immigrants.

This comparison shows that each country structures its counter-terrorism regulations based on its domestic realities and legal philosophy. Indonesia tends towards a more balanced approach between preventive measures and rights protection, but still faces challenges in strengthening oversight and procedural justice. Malaysia, with its high national security orientation, places deterrence as a key principle, but at the expense of fair trial principles. The United States, as a global power with a common law tradition, has built an extensive multilayered system, but continues to face international criticism for human rights violations and non-discrimination.

Overall, the table above emphasises the importance of deep reflection on the balance between security and human rights in designing anti-terrorism regulations. Countries with different legal and political backgrounds will respond to threats in different ways.

Therefore, the establishment of effective anti-terrorism regulations must be based on the principles of justice, transparency, accountability, and compliance with national and international laws, so as not to legitimise counter-terrorism efforts for potentially authoritarian actions.

All three countries show regulatory patterns that reflect their respective legal systems and socio-political contexts. Indonesia adopts a more democratic approach post-reform by prioritizing the strengthening of substantive law, but also opens up space for limited military involvement. Malaysia maintains the old deterrence-based model with a very strong involvement of administrative authorities, while the United States promotes an intelligence approach with the involvement of multilevel institutions and extraordinary legal instruments that continue to operate within the federal constitutional system. These differences reflect how the principles of rule of law, democracy, and national security are negotiated differently by each country in responding to terrorism threats. Therefore, a comparative analysis of legal frameworks and counterterrorism institutions is important to illustrate the conceptual and practical challenges in building an effective and accountable legal system in dealing with extraordinary crimes such as terrorism.

B. The State's Approach to Balancing National Security and Human Rights Protection

State efforts in tackling terrorism often pose a dilemma between the need to maintain national security and the obligation

to protect human rights.³⁵ The three countries studied-Indonesia, Malaysia, and the United States-face similar challenges, but take different approaches in balancing these two fundamental interests. These differences are influenced by the background of each country's legal system, institutional structure and geopolitical pressures.

In Indonesia, the legal approach in countering terrorism explicitly pays attention to the principles of human rights protection as reflected in Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which affirms that the protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government. In sectoral regulations, Law No. 5/2018 as a revision of Law No. 15/2003 normatively seeks to provide a strong legal basis for preventive action while guaranteeing individual rights.³⁶ Articles in the law introduce preventive mechanisms such as deradicalization, counter-radicalization, and early identification efforts by the authorities, but also require law enforcement officials to comply with the principles of criminal law and fair criminal justice procedures.

³⁵ Chibuike E. Madubuegwu, Groupson Paul Okechukwu, and Onyejegbu Emeka Dominic, "Terrorism in West Africa and National Security of States : A Critical Analysis," *NG-Journal of Social Development* 10, no. 1 (December 2021): 37–53, <https://doi.org/10.12816/0060688>.

³⁶ Muhammad Khoerul Umam, Fakhri Lutfianto Hapsoro, and Hendra Wahana Prabandani, "Analisis Peran BNPT Dalam Penanggulangan Tindak Pidana Terorisme di Indonesia Berdasarkan Peraturan Presiden Nomor 12 Tahun 2012," *PESHUM: Jurnal Pendidikan, Sosial dan Humaniora* 2, no. 4 (June 30, 2023): 743–52, <https://doi.org/10.56799/peshum.v2i4.2113>.

However, implementation practices in Indonesia still raise several concerns. For instance, arrests made without a warrant in urgent situations (Article 28 paragraph (1) of Law No. 5/2018) may risk violating the principle of non-arbitrariness under human rights law, particularly when such actions lack clear procedural safeguards, judicial oversight, or time limitations. These concerns are amplified by reports of prolonged detention without trial and the limited access to legal counsel during early stages of arrest. The involvement of the TNI regulated in Article 43I also raises constitutional debates because there is no implementing regulation that explicitly limits the scope of military involvement, making it vulnerable to excesses of authoritarianism.³⁷ Therefore, despite normative progress, Indonesia still needs to strengthen accountability, transparency, and oversight of the apparatus' actions so that human rights principles are not compromised under the pretext of national security.

Malaysia, on the other hand, adopts a very security-oriented approach, where the protection of human rights is often subordinate. The Prevention of Terrorism Act (POTA) 2015 is a concrete example of a regulation that emphasizes stability and early threat prevention, but at the expense of the principles of due process of law.³⁸ POTA allows detention for up to two years without an open judicial process and decisions taken by the

³⁷ Bayu Kurniawan, Martinus Daw, and I Made Sudiana, "Peningkatan Peran Intelijen TNI Sebagai Strategi Soft Power Pada Kebijakan Pertahanan Guna Penanganan Terorisme," *PUBLIKAUMA: Jurnal Ilmu Administrasi Publik UMA* 12, no. 2 (2024).

³⁸ Borhanuddin Zakaria et al., "Terrorism Pre-Detection Indicator in Malaysia," *International Journal of Academic Research in Business and Social Sciences* 11, no. 11 (November 8, 2021): Pages 510-523, <https://doi.org/10.6007/IJARBSS/v11-i11/11550>.

Prevention of Terrorism Board are not subject to judicial review. These provisions reflect the legacy of the repealed Internal Security Act (ISA) 1960, but are substantially reproduced in POTA.³⁹ While Article 5 of the Federal Constitution of Malaysia guarantees the right to personal liberty, the exclusionary arrangements for individuals suspected of being a threat to national security make this constitutional provision subject to derogation through sectoral legislation.

This imbalance has drawn widespread criticism, both from domestic human rights organizations and the international community, as it opens up opportunities for violations of fundamental rights such as the right to a fair trial, the right to know the charges, and the right to legal defense. In practice, the secrecy of the detention process and the lack of public access to the grounds for arrest undermine the principle of accountability and create the potential for abuse of power by security authorities.

The United States presents a complex approach, in which national security is given a high priority, but a formal, albeit often ineffective, framework of checks and balances remains. In the aftermath of the September 11, 2001 attacks, the United States passed the USA PATRIOT Act, which granted extraordinary extensions of authority to executive agencies such as the FBI, CIA and National Security Agency (NSA).⁴⁰ This law authorizes

³⁹ Pushpamalar Govindaraju, Mohamad Rizal Abd Rahman, and Shahrul Mizan Ismail, “Ekstremisme Ganas Dan Semakan Kehakiman Dalam Kes-Kes Berkaitan Dengannya Dari Perspektif Undang-Undang Tahanan Pencegahan Malaysia,” *UUM Journal of Legal Studies* 14, no. 1 (2023), <https://doi.org/10.32890/uumjls2023.14.1.12>.

⁴⁰ Muhammad Waqas Nawab, Zahid Yaseen, and Muhammad Muzaffar, “South Asia and the US Global Counterterrorism Policy: Strategies, Challenges and Implications,” *Journal of Indian Studies* 7, no. 2 (2021).

intelligence agencies to conduct surveillance of individuals, including US citizens, without having to go through the usual court mechanisms, but rather through the Foreign Intelligence Surveillance Court (FISC).⁴¹ In the context of federal law, this legislation raises serious concerns of violating the Fourth Amendment of the United States Constitution which guarantees the right to protection from unreasonable searches and seizures.

Although formal oversight of intelligence activities is exercised by the FISC and Congress, the process is closed and inaccessible to the public, making substantive accountability difficult to achieve. Moreover, discriminatory practices against Muslims and immigrants after 9/11 reinforce the view that the US security approach ignores the principles of non-discrimination and inclusiveness in the protection of citizens' rights.⁴² On the other hand, the strong role of the judiciary and independent media remains a reminder that civilian control and civil liberties are still part of the American democratic discourse, albeit often under pressure from national security interests.

TABLE 2. State Approach Scheme in Balancing National Security and Human Rights Protection

⁴¹ Simon Chin, "Introducing Independence to the Foreign Intelligence Surveillance Court," *The Yale Law Journal*, 2021.

⁴² Davide Dell'Isola, "Discrimination against Muslims, the Role of Networks and Terrorist Attacks in Western Europe: The Cases of United Kingdom, France, and Italy," *Italian Political Science Review/Rivista Italiana Di Scienza Politica* 52, no. 1 (March 2022): 118–33, <https://doi.org/10.1017/ipo.2021.22>.

Country	Focus Approach	Characteristics of Supervision & Human Rights
Indonesia	Moderation between security and human rights	Law No. 5 of 2018; constitutional guarantee of human rights (Article 28I of the 1945 Constitution); need to strengthen accountability and supervision (limited judicial control)
Malaysia	Dominant on national security	POTA 2015; lack of judicial oversight; administrative detention without due process; human rights marginalized
United States of America	Dominant in intelligence and security	USA PATRIOT Act; surveillance without public control ⁴³ FISC mechanisms and legislative oversight; challenges to privacy protections & nondiscrimination

⁴³ Expanded surveillance powers, including government access to personal data without prior judicial authorization or transparent public oversight mechanisms, raising concerns about unchecked intrusion into citizens' privacy.

This table presents a schema of approaches used by three countries-Indonesia, Malaysia and the United States-in addressing a key challenge in counter-terrorism policy: maintaining national security while respecting and protecting human rights. The scheme simplifies each country's approach into three main elements: the focus of the approach, the legal basis, and the characteristics of human rights monitoring and protection. Despite the common goal of combating terrorism, the implementation of policies and values emphasized by each country show variations that reflect their national legal and political systems.

Indonesia takes a more moderate approach, attempting to balance between national security needs and human rights protection. This approach is reflected in the passage of Law No. 5/2018, which revises Law No. 15/2003 in response to the increasingly complex threat of terrorism following the bombings in Thamrin and Surabaya. This law expands the authority of security forces, particularly Densus 88 and BNPT, to carry out preventive measures such as deradicalization and counter-radicalization. However, this law also includes principles of human rights protection, in line with Article 28I of the 1945 Constitution which guarantees basic rights as rights that cannot be reduced under any circumstances. However, judicial control over preventive and repressive measures is still limited, and accountability mechanisms have not been fully effective, especially regarding the involvement of the TNI, which has not been regulated in detail in technical regulations. Therefore, although Indonesia's approach is in a "moderate" position, there is still a need to strengthen the aspects of institutional oversight and accountability.

Malaysia shows a more assertive and one-sided approach to national security. This focus is evident in the implementation of the Prevention of Terrorism Act (POTA) 2015, which allows the state to detain a person for up to two years without an open judicial process through a decision mechanism by the Prevention of Terrorism Council. While this policy is considered administratively effective in preventing potential terror attacks, judicial oversight is virtually unavailable, and legal proceedings are conducted behind closed doors, removing the principles of openness and procedural fairness. As a result, human rights are marginalized. Criticism from civil society organizations and international observers continues to emerge because this system is considered to open a large space for abuse of power by security forces, and threatens the principle of rule of law in the long run.

The United States has taken an intelligence-based and high-tech approach, placing national security as its top priority, especially since the terror attacks of September 11, 2001. In this context, the USA PATRIOT Act became the main legal instrument that expanded the authority of agencies such as the NSA, FBI, and CIA in conducting surveillance of communications and activities of citizens, including their own citizens. This surveillance does not necessarily involve public control or open courts, but rather through the secret court system of the Foreign Intelligence Surveillance Court (FISC). In addition, legislative oversight by Congress is also conducted but is considered limited in its effectiveness. Therefore, while this system is powerful in terms of detection and deterrence effectiveness, it poses major challenges to the protection of the right to privacy and the principle of non-discrimination, especially against minority groups such as Muslim

and immigrant communities. The balance between rights and security in this context is often an issue of political and legal controversy in the United States.

Overall, this table shows that the approach to combating terrorism is highly dependent on how each country defines the priority between security and human rights. Indonesia seems to be trying to find a middle ground although it is still a work in progress, Malaysia emphasizes state domination and internal stability at the expense of procedural justice, while the United States prioritizes intelligence effectiveness with a closed internal oversight system and minimal public transparency. In other words, the big challenge of today's global anti-terrorism regulation is to build a system that is robust in security but still upholds constitutional and universal values in the protection of human rights.

From these three approaches, it can be concluded that there is no single perfect model for balancing national security and human rights protection. Indonesia tends to take a moderate position but is still in the process of finding an implementation format that is consistent with the principle of the rule of law. Malaysia is more conservative with a strict security approach but minimal human rights protection, while the United States prioritizes technology and intelligence with a system of checks and balances that is not always effective in preventing violations. Therefore, the development of future anti-terrorism regulations must pay attention to three main principles: effectiveness, institutional accountability, and compliance with national and international human rights norms.

C. A Comparative and Evaluative Analysis of the Effectiveness and Accountability of Anti-Terrorism Regulations

The effectiveness of anti-terrorism regulation in a country is highly dependent on the extent to which the regulation is able to prevent, detect, and take action against acts of terrorism quickly and appropriately, while remaining within a legal framework that respects constitutional principles and human rights. In the context of comparison between Indonesia, Malaysia, and the United States, it appears that each country has strengths and weaknesses in terms of operational effectiveness and normative accountability towards counter-terrorism measures. Evaluation of these two main parameters-effectiveness and accountability-provides a more comprehensive picture of the resilience and legitimacy of the legal system adopted by each country.⁴⁴

Indonesia, as a country undergoing democratic transition, has a relatively progressive regulation in terms of drafting anti-terrorism legal norms. Law No. 5/2018 provides a fairly strong legal tool for the authorities in carrying out prevention and prosecution, including the involvement of the TNI in certain situations. On one hand, the operational effectiveness of Densus 88 in thwarting various terror attack plans shows success in terms of technical implementation. However, in terms of accountability, there are still

⁴⁴ Lita Tyesta Addy Listya Wardhani, Muhammad Dzikirullah H Noho, and Aga Natalis, "The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems," *Cogent Social Sciences* 8, no. 1 (December 31, 2022): 2104710, <https://doi.org/10.1080/23311886.2022.2104710>.

a number of weaknesses, including the lack of judicial oversight of the implementation of repressive actions and potential violations of the principle of due process of law. In addition, the absence of implementing regulations detailing military involvement in counter-terrorism operations creates a gray area that risks the principles of civilian supremacy and the protection of human rights.⁴⁵ This evaluation emphasizes that technical effectiveness needs to be balanced with a strict and transparent accountability mechanism, so that the eradication of terrorism does not become a loophole for excessive actions by the state.

Unlike Indonesia, Malaysia focuses on the effectiveness of prevention by prioritizing the preventive detention approach in the Prevention of Terrorism Act (POTA) 2015. In practice, this system is considered effective in responding to potential threats early on and reducing the possibility of terrorist acts, especially through the Special Branch's intelligence work. However, this approach sacrifices many aspects of legal accountability and human rights principles.⁴⁶ The absence of judicial review of detention decisions made by the Prevention of Terrorism Council means that the system is insulated from judicial control, making it vulnerable to abuse of power. In terms of administrative effectiveness, Malaysia appears to be successful in creating a deterrent effect against terrorists. However, this success is not matched by transparency and legal accountability, which has led to criticism from civil society and the international community. This kind of regulation

⁴⁵ Sitinjak et al., "Efektivitas Penegakan Hukum Terhadap Tindak Pidana Terorisme di Indonesia: Studi Kasus Densus 88 AT Polri."

⁴⁶ Zakaria et al., "Terrorism Pre-Detection Indicator in Malaysia."

confirms that effectiveness without accountability can lead to authoritarian state practices and suppress civil liberties.

Meanwhile, the United States presents a complex dynamic in terms of effectiveness and accountability. In terms of effectiveness, the USA PATRIOT Act provides a very strong legal basis for security forces to carry out various investigative and intelligence actions, including wiretapping, personal data monitoring, and financial transaction surveillance. This makes the United States a country with a highly resilient national security infrastructure in the face of global terrorism threats. However, this system raises serious issues of accountability and oversight, especially since most of these activities are classified and not open to public scrutiny. While there is a Foreign Intelligence Surveillance Court (FISC) and oversight by Congress, these mechanisms are insufficient to ensure the protection of privacy and constitutional rights of citizens. Controversies such as the mass eavesdropping by the NSA revealed by Edward Snowden show that security effectiveness can easily intersect with civil rights violations if not strictly controlled.⁴⁷

From the comparative analysis above, a common thread can be drawn that no system is completely ideal. Indonesia is in a position to find a balance between effectiveness and accountability; Malaysia excels in administrative effectiveness but is weak in human rights protection; while the United States is highly effective in terms of technology and intelligence but faces major challenges in ensuring transparency and accountability. This evaluation shows

⁴⁷ Leon Klomp and Bouke Van Gorp, “Setting the Standard? Revisiting the Unfolding Discourse in American and British Online News on the Snowden Revelations,” *Geopolitics* 27, no. 5 (October 20, 2022): 1599–1621, <https://doi.org/10.1080/14650045.2020.1868440>.

that the success of anti-terrorism regulation is not only determined by the ability to crack down on criminals, but also by how much the legal system is able to safeguard the principles of the rule of law, procedural justice, and respect for human dignity.

TABLE 3. Effectiveness and Accountability Evaluation Scheme of Anti-Terrorism Regulations

Country	Effectiveness	Accountability
Indonesia	Medium – Responsive to terrorism through Densus 88 and BNPT	Moderate – There are guarantees of human rights in the Constitution and laws, but supervision is limited.
Malaysia	High – Preventive detention effectively prevents threats	Low – Minimal judicial control and transparency
United States of America	High – Extensive technological and regulatory support	Moderate – There are checks and balances, but they are often considered ineffective.

The table above illustrates the relative position of the three countries in two main dimensions of anti-terrorism policy: effectiveness in dealing with the threat of terrorism and accountability to the principles of law and the protection of human rights. Each country shows a different approach according to its

legal system, historical experience with terrorism, and national political and security preferences.

Indonesia occupies a medium position in terms of counter-terrorism effectiveness and accountability, based on criteria such as institutional capacity, legal safeguards, and oversight mechanisms. In terms of effectiveness, Indonesia has built a relatively robust institutional framework through the establishment of Densus 88 Anti-Terror within the National Police and the National Counterterrorism Agency (BNPT) as a coordinating body across sectors. However, accountability remains moderate due to limited independent oversight and occasional concerns regarding due process. The existence of these two institutions has enabled relatively quick preventive and prosecutorial actions against domestic terrorism networks, such as in the case of the arrest of terrorist cells after the 2018 Surabaya bombings. However, this effectiveness is still not optimal due to limitations in the civilian intelligence system, inter-agency coordination, as well as the need for clearer rules regarding the involvement of the military (TNI). On the accountability side, Indonesia already has constitutional guarantees for human rights as stipulated in Article 28I of the 1945 Constitution, as well as sectoral regulations through Law No. 5/2018, which normatively demonstrate a commitment to respecting individual rights. However, practices on the ground still show weak oversight mechanisms, both judicial and legislative, of the actions of security forces, especially in the case of surprise arrests or preventive surveillance that are not always followed by transparent legal processes.

Malaysia, on the other hand, shows a high level of effectiveness in terms of preventing terrorism, especially through the Prevention

of Terrorism Act (POTA) 2015 which allows preventive detention for up to two years without open court proceedings. This approach gives authorities tremendous flexibility to intervene early against individuals suspected of potential terrorist acts, even before an actual violation of the law occurs. This makes the Malaysian system extremely robust from an administrative and internal security standpoint. However, this effectiveness is achieved at the significant expense of legal accountability. Oversight mechanisms for detention decisions are virtually non-existent, as decisions issued by the Prevention of Terrorism Board are not subject to judicial review. In addition, the closed nature of the process makes access to justice and self-defense by suspects extremely limited. Therefore, while Malaysia is effective from a threat control perspective, the system lacks accountability, and is highly vulnerable to violations of citizens' fundamental rights.

The United States displays its own complexity, where effectiveness is high due to the full support of surveillance technology, intelligence infrastructure, and comprehensive regulation post-9/11, such as through the USA PATRIOT Act, the Homeland Security Act, and the expansion of the authority of agencies such as the FBI, NSA, and CIA. Within this framework, the US has been able to detect and dismantle terrorist plots, both at home and abroad, and protect national interests through integrated control on multiple fronts. However, the accountability of this system is at a moderate level, as despite checks and balances through the Foreign Intelligence Surveillance Court (FISC) and oversight by Congress, both operate in high secrecy and are not always effective in controlling potential abuses of power. Cases such as the mass eavesdropping on private citizens by the NSA (revealed by

Edward Snowden) show that there are serious gaps in the protection of privacy and civil rights, especially for vulnerable groups such as American Muslims and immigrants.

From the mapping, it can be concluded that none of the three countries is able to demonstrate the ideal balance between high effectiveness and high accountability simultaneously. Malaysia excels operationally but is juridically weak; the United States is strong in detection and response but has accountability bottlenecks in implementation; while Indonesia is in the promising middle ground, but needs improvements in institutions and legal oversight to reach international standards. Therefore, reflecting on the experiences of these three countries can be an important stepping stone for the establishment of a robust yet humane anti-terrorism legal system. An approach based on democratic effectiveness - i.e. a strong but legally restrained system - should be the orientation of future national security policies.

As such, future policy directions should focus on creating an integrative legal system, one that is not only effective in ensuring national security, but also upholds institutional accountability and the protection of human rights. Countries like Indonesia can learn from the experiences of other countries in building strong oversight frameworks without compromising the responsive capacity of the state to security threats. In the global context, it is also important to encourage the harmonization of anti-terrorism regulations with international standards such as the International Covenant on Civil and Political Rights (ICCPR), so that the eradication of terrorism does not become a justification for violating the principles of democracy and the rule of law.

IV. Conclusion

Terrorism is a multidimensional threat that requires states to formulate legal and institutional frameworks that are effective, accountable, and consistent with the principles of the rule of law and human rights. A comparative study of Indonesia, Malaysia, and the United States shows varying approaches. Indonesia adopts a moderate approach through Law No. 5/2018, which expands the authority of security forces, but remains weak in terms of judicial oversight and independent accountability mechanisms. Malaysia emphasizes national security through preventive detention under POTA 2015, often at the expense of due process guarantees. The United States relies on advanced intelligence operations enabled by the USA PATRIOT Act and FISA, but these face scrutiny over transparency and privacy infringements. To address its regulatory shortcomings, Indonesia should prioritize the establishment of an independent oversight body to monitor the implementation of anti-terrorism measures and ensure compliance with constitutional rights. Judicial review mechanisms should be strengthened to prevent abuse of power in pre-trial detentions. Additionally, standard operating procedures must be revised to include clear safeguards against arbitrary arrests, especially in emergency or warrantless situations as permitted under Law No. 5/2018. Capacity-building for law enforcement in human rights standards and the creation of a public complaint mechanism can also enhance trust and accountability. These reforms would help Indonesia strike a more effective balance between law enforcement objectives and the protection of civil liberties, while aligning with global counter-terrorism standards.

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