

REGULATORY STRATEGIES AND LEGAL ISSUES FOR COUNTERING TERRORISM IN INDONESIA

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ABSTRACT

Terrorism is a form of international crime that is a global threat. Data from the Global Terrorism Index shows an increase in the number of victims of acts of terrorism from 2000-2014. In developing countries, acts of terrorism have a higher fatality rate than in developed countries. Acts of terrorism are also more common in developing countries which have minimal health insurance. On the other hand, acts of terrorism are often associated with Islamic teachings. The results of research in Indonesia as one of the developing countries and the largest Muslim country in the world say differently. The majority of the populations (95%) reject the existence of ISIS in Indonesia. Actions of terrorism have indeed increased since 2000-2016, but in the last five years (2011-2016) the number of acts of terrorism that occurred has tended to decrease. Terrorism in Indonesia is generally motivated by factors of thought, economy, politics, social, psychology and education. The strategy of countering terrorism as an international crime, Indonesia uses a combination of two approaches, namely the hard approach (law, military, and intelligence) and the soft approach (deradicalization, outreach).

Keywords: Indonesia, Legal Strategy, Terrorism, International Crime, Counter-Terrorism.

INTRODUCTION

Terrorism has long been classified as an international crime. The main characteristics of international crimes are crimes that endanger humanity, crimes in which the perpetrator can be extradited, and are not political crimes (Sardjono, 1996). Terrorism is an international crime, if a criminal act is a crime in international law, the crime is committed to spread terror or threats aimed at citizens or the state; contains ideological, religious, or political objectives with cross-border effects; with the long-term target of collapse of public trust in government (Thontowi, 2013).

The criminal act of terrorism has become a global threat, so it is not an exaggeration if the international community agrees to strongly condemn it as an international crime which is the common enemy of mankind (*hostis humanis generis*). Data from the Institute for Economics and Peace, which annually releases the Global Terrorism Index, shows an increase in terrorism attacks in the 2000-2014 periods. In 2014, there were 32,685 people who died as a result of terrorist attacks. This figure is 80 percent higher than the previous year, namely 18,111 deaths. The number of victims of terrorist attacks has increased dramatically in the past 15 years. Compared with the death toll from homicides in the same period, the figure is 13 times lower. The majority of victims of terrorist attacks occur in five Muslim countries: Iraq, Nigeria, Afghanistan, Pakistan and Syria. Although more attacks have occurred in Iraq, the number of casualties is higher in Nigeria, where the Boko Haram and Funali terrorist groups operate. Boko

Haram is known as the deadliest terrorist group, defeating the ruthlessness of ISIS in the Middle East. More and more civilians on the streets are becoming victims. They are the target of terrorist attacks, about a third of all victims of terrorist attacks. Police, government officials and business premises are more frequently targeted than people or buildings related to religion and the military (Global Terrorism Index 2014, 2014).

The fatality rate from a terrorist attack is divided into four levels: 1-2, 3-9, 10-29 and ≥ 30 depending on the country, region, weapon, type of attack and target. Attacks that occur in developing countries and related regions have a fatality rate of ≥ 30 whereas developed countries such as North America and Western Europe tend to be associated with lower mortality rates. Attacks caused by incendiary weapons and WMD (Biological, Chemical, Radiological, Nuclear) tend to trigger a relatively high number of deaths. Types of attacks from Piracy, Incident Barricades and Attacks Facilities/Infrastructure have a strong relationship with a fatality rate of ≥ 30 . Compared to other targets, port airports are more prone to produce very high mortality rates (Guohui et al., 2014). Thus, it is now very important for the state to be more vigilant against acts of terrorism because of the high level of fatality in developing countries, especially in public places which are prone to major casualties.

Terrorism usually also occurs in countries with minimal health insurance, which is mostly in developing countries. This is because in these countries, the trauma management system is often non-existent or drastically below standard. Meanwhile global public health initiatives have focused on infectious and infectious diseases (Alfa-Wali et al., 2015). The criminal act of terrorism can be categorized as an extraordinary crime that requires handling using extraordinary methods (Muladi, 2004). The handling of the threat of international terrorism is generally carried out by several countries through their legislative policies by issuing anti-terrorism laws (Salam, 2005). In order for the policy of preventing and overcoming criminal acts of terrorism to be effective, it is necessary to develop a comprehensive approach to security and defense (Thontowi, 2013).

RESEARCH METHODS

This research was conducted through literature and documentary studies using a normative juridical approach (Soemitro, 1982). This means that this research is conducted by focusing on examining the application of positive legal norms or norms related to terrorism. This research also seeks to find a coherence truth, namely whether there are legal rules that govern, then whether these rules are in accordance with legal principles, and whether individual/state actions are in accordance with applicable legal principles. The nature of this research is descriptive analytical (Ibrahim, 2005). This means that this research describes, analyzes and explains analytically the countermeasures of terrorism in Indonesia, both normative and empirical in nature with the aim of solving problems that have been formulated in legal issues, so that it covers legal principles, legal systematics, legal synchronization, legal history and comparison of laws (Soekanto & Mamudji, 1990).

The data analysis technique used in this research is qualitative analysis (Moleong, 2002). This means that qualitative data in the form of primary data obtained through the literature study is analyzed in more detail and then attention is focused on certain problems by first adjusting the data obtained based on the problem category to serve as a basis for drawing conclusions. In this analysis, the focus of research is directed at certain problems that are useful

in an effort to explain the phenomenon of attention or focus that is the target of research and conclusions are drawn using deductive logic to build a positive legal system.

Preventive Strategies in Combating Terrorism in Indonesia

The selection of the right, efficient and effective strategy is very important in overcoming the problem of global terrorism. Not every country is able to deal with this problem effectively. In fact, several countries have even suffered economic losses from their policies against terrorism (Estrada et al., 2015). This strategy in overcoming the problem of terrorism should not be carried out carelessly because of its broad and systemic impact.

For example, the impact of terrorism policies in America on the range of price fluctuations in financial instruments is one of the most important indicators of trading instruments (Essaddam & Karagians, 2014). The importance of a strategy in overcoming the problem of terrorism encourages Indonesia to use a comprehensive strategy in countering terrorism that combines a hard and soft approach. These two kinds of approaches emerge because of the background factor for acts of terrorism and the basis used to counter terrorism. The hard approach method is characterized by armed repression of terror organizations through military force. Meanwhile, the soft approach puts forward integrated and comprehensive actions in dealing with the problem of radicalism, starting from its roots (Wahyuni, 2019). This method uses persuasive methods, dialogue, invites community involvement in counteracting radicalism. This kind of approach began with the formation of the National Counterterrorism Agency (BNPT).

In the context of a hard approach, there are efforts to use a strict law against all forms of terrorism that occur in this country, be it prevention, prosecution or rehabilitation. The hard approach itself consists of law, military and intelligence. An example of a hard approach in the international world is when the United States experienced terrorism in the September 11 case. The United States panic was finally manifested by using a "*hard approach*" in dealing with acts of terrorism, namely by declaring war and would eradicate all terrorists on earth.

In the end, the hard approach has not been fully effective in countering terrorism. Apart from the loss due to the loss of the chain link if the number of actors who were shot dead is large, this also hampers information about the terror cell and organization. In addition, gunning down terrorists leaves grief and a grudge against the families and communities they have left behind. In addition, the hard approach also has limitations, for example in the use of intelligence (Husslage et al., 2015).

A tough approach must be accompanied by touch and insight so that revenge is not sustainable and even targets government officials for retaliation. Acting on terrorists should not stop with the perpetrators, but be continued with efforts to approach their families and communities. The following is a hard approach to be taken in Indonesia.

Handling through soft approaches, meaning that it does not emphasize violence and direct assertiveness, soft approaches play a major role in efforts to socialize anti-terrorism and the spirit of peace widely. The parties invited for this are various, ranging from educational institutions as a starting place to teach the spirit of peace to socialization actions through cooperation with various social organizations (mass organizations). The soft approach is generally carried out by BNPT by implementing deradicalization and counter-radicalization programs. The deradicalization program is carried out for perpetrators of terror acts, families and

sympathizers. The counter-radicalization program is implemented for the general public to increase deterrence against radical terrorism.

In addition, preventive measures are control measures carried out to prevent disturbances or violations that occur in society. Preventive steps taken by the government in the context of tackling criminal acts of terrorism, namely by increasing security and supervision of firearms, increasing security for the transportation system, increasing security for public facilities, for communication systems, for VIPs, increasing security for diplomatic facilities and foreign interests, increased preparedness for terrorist attacks, increased security of international facilities, control of explosives and chemicals that can be assembled into bombs, tightened border controls and entry and exit doors, tightened provision of travel documents (passports, visas, and so on), harmonizing visa policies with neighboring countries, issuing identity cards and population administration, monitoring community activities that lead to acts of terror, intensifying security activities, anti-terrorism campaign, the use of former victims of terrorism to inspire community empathy and solidarity to rise up against terrorism, organizing press trainings covering news about acts of terrorism, and prohibiting direct broadcast of interviews with terrorists.

Meanwhile, preemptive efforts, which are efforts to control, contain appeals or approaches to society, which include enlightening religious teachings by charismatic religious figures and high credibility in the religious field to eliminate extremism and radicalization of understanding of religious teachings by hardline fundamentalist groups. involvement of political parties and social organizations or non-governmental organizations that have the same or similar visions and ideologies in dialogue with radical groups, firmly designating terrorist organizations and related organizations as prohibited organizations and dissolving them, adjusting political and government policies by responding to terrorist political demands with political policies that can accommodate the aspirations of radical groups, the involvement of radical groups that has the potential to lead to acts of terror in peaceful conflict resolution through dialogue, negotiations, and so on. The political concession area for groups operating underground becomes a constitutional formal movement, socio-economic programs, among others: poverty alleviation, equitable development and its results, job creation, employment development.

In the non-penal counter-terrorism strategy, BNPT is also involved, such as carrying out deradicalization activities for terrorists who are in Penitentiaries; conducting education activities for groups/communities that have the potential to become terrorists; conduct socialization activities for terrorist inmates who have finished serving their sentence at the correctional institution; carry out counter-radicalization activities against people who are not affected by radicalism; and counter-media literacy for the spread of radicalism through social media. In addition, BNPT has also had dialogues with State/Private Universities and Islamic organizations on how to reduce radicalism.

Legislative Policy on Combating Terrorism

In relation to the hard approach, Indonesia has issued statutory provisions in the form of Gov. Reg. in Lieu of Law No. 1 of 2002 amended by Law No. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, Presidential Instruction No. 4 of 2002 assigned by Coordinating Minister for Political, Legal, and Security Affairs to formulate an integrated policy to eradicate terrorism, as well as formulate operational steps which include deterrence,

prevention, overcoming, termination, settlement and all legal actions, as well as Presidential Instruction No. 5/2002 assigns the Head of BIN to coordinate the operational implementation of intelligence activities of all agencies so that an intelligence community can be formed that is able to work effectively and efficiently (Salam, 2005).

The urgency of forming Law no. 15 of 2003 is to show Indonesia's commitment to international cooperation in accordance with the determination of the Indonesian people as stated in the Preamble of the 1945 Constitution, namely to protect the entire Indonesian nation and all the blood of Indonesia and participate in implementing world order based on independence, eternal peace and social justice. The implementation of this commitment is carried out with reference to the Anti-Terrorism Resolution of the UN Security Council on September 28, 2001. The core of the resolution asks all countries to cooperate in preventing and suppressing acts related to terrorism.

Furthermore, in order to strengthen efforts to combat terrorism financing, Indonesia has also passed the Joint Regulation on the Inclusion of Identities of Persons and Corporations in the List of Suspected Terrorists and Terrorist Organizations and the Immediate Blocking of Funds Owned by Persons or Corporations Listed in the List of Suspected Terrorists and Terrorist Organizations. Indonesia also supports prevention efforts, including implementing UN Security Council Resolutions 1267 and 1988 that are in line with Indonesian national law related to countering terrorism financing (United Nations Security Council Resolution, 1999 & 2011). On that basis, Indonesia already has a List of Suspected Terrorists and Terrorist Organizations based on the Al-Qaeda Sanctions List and the Taliban List for the asset freezing process.

Establishment of a Special Detachment

After the Bali bombing, based on Presidential Instruction No. 4 of 2002, assigned the Coordinating Minister for Political and Security Affairs to do two things, namely formulating a national policy and strategy for eradicating terrorism and coordinating all operational steps to eradicate terrorism (Yudhoyono, 2002). Furthermore, based on the Decree of the Coordinating Minister for Politics and Security No. Kep-26/Menko/Polkam/11/2002 formed the Coordinating Desk for Combating Terrorism (DKPT) with the task of assisting the Coordinating Minister for Political and Security Affairs in formulating policies for the eradication of criminal acts of terrorism which include aspects of deterrence, prevention, countermeasures, termination of settlement and all necessary legal actions, by appointing Inspector General Pol. Ansyad Mbai as Chairman of the DKPT.

At a working meeting between Commission I of the DPR and the Coordinating Minister for Political and Security Affairs on August 31, 2009, the DPR decided to support the government's efforts in tackling and eradicating terrorism, because terrorism is an extraordinary crime against humanity that must be a common enemy, an effort to increase capacity and integration of counter-terrorism, in order to increase its role. community, recommends that the government establish an agency that is operationally authorized to carry out the task of eradicating terrorism, issuing regulations as an elaboration of Law Number 34 of 2004 concerning the Indonesian National Army, and Law 2 of 2002 concerning the Indonesian National Police, to regulate more detailed provisions regarding the Rules for the Involvement of the TNI, related to military operations other than war, including regulations for the involvement of the TNI in overcoming terrorism and the assistance of the TNI to the Police.

The next concrete step taken by the Indonesian government in eradicating criminal acts of terrorism, namely by establishing a Special Detachment 88 Anti-Terror at National Police Headquarters based on Presidential Instruction No. 4 of 2002 concerning the Team for the Eradication of Criminal Acts of Terrorism, including the Bomb Blasting in Bali on 12 October 2002. Detachment 88 of Anti-Terror is tasked with eradicating criminal acts of terrorism in Indonesia based on the Chief of Police No. 30/VI/2003 dated 20 June 2003. Detachment 88 has the authority to make arrests with preliminary evidence that can come from any intelligence report, for 7 x 24 hours. In addition to carrying out the task of investigating and investigating criminal acts of terrorism in the context of law enforcement, Detachment 88 of Indonesian Police's Criminal Investigation Agency also carries out functions: developing systems and methods including instructions for the implementation of investigations/investigations into criminal acts of terrorism; monitoring and supervision of staff including providing direction to ensure the implementation of investigations/investigations into criminal acts of terrorism; providing support in the form of technical guidance and strength in carrying out investigations/investigations into criminal acts of terrorism; planning for personnel needs, special equipment and budget including submission of suggestions/considerations for placement/career development for personnel carrying out the criminal investigation function in the field of criminal acts of terrorism and distribution of special equipment in the field of handling terrorism crimes; collection, management and presentation of data/statistics relating to resources and results of the implementation of the Sub-Detachment and Detachment 88 of Anti-Terror Regional Police or the Special Task Force dealing with criminal acts of terrorism; conducting investigations/investigations into criminal acts of terrorism based on the policy of the National Police Chief in accordance with the level of capability set as the scope of responsibility of the Special Detachment 88 Anti-Terror Criminal Investigation of the Police; operational coordination and supervision including technical guidance/guidance for investigations and administration of investigations carried out by the Regional Police of Anti-Terror Detachment 88 or the Special Task Force that handles terrorist crimes at the Regional Police level; Carrying out investigations/investigations into cases of criminal acts of terrorism that have political and strategic impacts through a Special Task Force.

Furthermore, the targets of the Special Detachment 88 are the presence and activities of any person/element/group/community/organization suspected of being a network or potential to be a terrorist network; crimes that are terror in nature, namely all actions that fulfill the elements of a criminal act in accordance with the provisions in the law on the eradication of the criminal act of terrorism; criminal acts or other violations of the law that may be motivated by terrorism, especially in cases of political and transnational nuances. In order not to generate pros and cons, it is proper to state that in carrying out activities for the prevention and eradication of criminal acts of terrorism by Detachment 88, it must be done by upholding the presumption of innocence and not violating the constitution and human rights.

Ratification of International Instruments

One of the manifestations of the government's concern for the eradication of criminal acts of terrorism is by ratifying international instruments related to the prevention and eradication of terrorism into national law, including Convention on Offences and Certain Other Acts Committed on Board Aircraft (The Tokyo Convention, 1963), Convention for The

Suppression of Unlawful Seizure of Aircraft (The Hague Convention, 1970), Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal Convention, 1971) ratified by Law no. 2 of 1976; International Conventional for The Suppression of Terrorist Bombing 1997 ratified by Law no. 5 of 2006; International Convention For The Suppression of The Financing of Terrorism 1999 ratified by Law no. 6 of 2006; United Nation Convention Against Organized Transnational Crime 2000 ratified by Law no. 5 of 2009; UU no. 15 of 2003 specifically also contains the embodiment of the provisions issued by the UN in Convention Against Terrorism Bombing (United Nations General Assembly, 1997) and Convention on the Suppression of Financing Terrorism (United Nations General Assembly, 1999), among other things, it contains provisions on the scope of jurisdiction that are transnational and international in nature as well as special provisions on crimes of international terrorism. It is worth mentioning that Law no. 15 of 2003 is an umbrella provision and is coordinative towards other laws and regulations relating to the eradication of criminal acts of terrorism.

Establishment of the Counter-Terrorism Agency

In addition to the formation of Detachment 88 Anti-Terror, the government has also formed the National Counterterrorism Agency (BNPT). BNPT is also one of the Indonesian government's efforts in the framework of overcoming and eradicating criminal acts of terrorism based on Presidential Instruction No. 4 of 2002. In addition, based on the recommendation of Commission I of the DPR, on July 16 2010 the President issued Presidential Regulation No. 46 of 2010 concerning the National Counter-Terrorism Agency and the appointment of Inspector General Pol (ret) Ansyad Mbai as Head of the BNPT based on Presidential Decree No. 121/M. the year 2010. BNPT formation based on Presidential Instruction No. 4 of 2002 is intended to form a non-structural work unit within the Secretariat of the Office of the Coordinating Minister for Political and Security Affairs to support the smooth implementation of this task, whose structure and work procedures are further stipulated by the Coordinating Minister for Political and Security Affairs. In countering terrorism, the BNPT has the duties listed in Article 2 of Presidential Regulation No. 46 of 2010, among others: formulating policies, strategies and national programs in the field of counterterrorism; coordinating related government agencies in implementing and implementing policies in the field of counterterrorism; implementing policies in the field of counterterrorism by forming task forces consisting of elements from related government agencies in accordance with their respective duties, functions and authorities.

It is worth mentioning that the BNPT has a different task from the Detachment 88, where the detachment tends to go to the investigation and investigation section while the BNPT is tasked with formulating policies, strategies and coordinating between institutions to combat terrorism. The BNPT policy in tackling terrorism is only in the form of policies that are prevention, protection and national preparation in facing terrorism.

The main functions of the BNPT are: formulating policies, strategies and national programs in the field of counterterrorism; monitoring, analysis and evaluation in the field of counterterrorism; coordination in the prevention and implementation of activities against radical ideological propaganda in the field of countering terrorism; coordination of the implementation of deradicalization; coordinating the implementation of protection for objects that are potential targets of terrorist attacks; coordination of the implementation of enforcement, capacity building, and national preparedness; implementing international cooperation in the field of countering

terrorism; planning, fostering and controlling programs, administration and resources as well as cooperation between agencies; the operation of task forces is carried out in the framework of prevention, protection, deradicalization, prosecution and preparation of national preparedness in the field of counterterrorism.

At the international level, the BNPT does Address Condition Conducive to Terrorism, Prevent and Combating Terrorism, Strengthen State Capacity, Respect for Human Right for All and The Rule of Law. Meanwhile, for the countermeasures of domestic terrorists, the BNPT carries out prevention (including deradicalization), prosecution (law enforcement and intelligence), preparedness and international cooperation. In relation to the soft approach, Indonesia carried out a deradicalization and counter-radicalization program. In this regard, Indonesia through the National Counterterrorism Agency has launched a Deradicalization Blueprint and established a Deradicalization Center for terrorist convicts. Referring to the Blueprint document, the deradicalization program includes rehabilitation, reintegration and re-education for terrorist prisoners by empowering religious leaders and psychologists to provide counter-narratives.

There are four strategies for overcoming the threat of criminal acts of terrorism, namely: first, by perfecting a strategy that is focused on law enforcement and balanced with prevention, protection and deradicalization efforts to obtain comprehensive results; second, utilize all potential state resources through the involvement of related elements in the superstructure, infrastructure and substructure; third, synergize all sectorial lines in countering terrorism which have been carried out by various components and are not separated; fourth, increasing foreign cooperation in the field of counterterrorism to the maximum in order to suppress terrorism networks that have foreign affiliations and to solve the root causes of problems involving issues outside Indonesia's territory.

CONCLUSION

After globalization, the number of acts of terrorism taking place in Indonesia tends to increase in line with the increasing number of international terrorism. The factors that led to a series of acts of terrorism in Indonesia include thought, economic, social, political, psychological and educational factors. It is worth mentioning that in the last five years the number of terrorism has tended to decrease. Although not completely lost, Indonesia's strategy that uses a hard approach and a soft approach is able to reduce the number of terrorism.

So far, the hard approach is not fully effective if it is done alone, so that a soft approach will improve it. It needs to be emphasized that overcoming terrorism cannot be done in a short time, such as punishing terrorists with the death penalty or life imprisonment. Eradicating terrorism requires preventive actions that exist in a soft approach, interventionist approaches and strengthening public vigilance so as not to be affected by terrorism and not sympathetic to the terrorism movement.

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