

## **Law Enforcement Against Terrorism Crime Given Human Rights Perspective**

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### **ABSTRACT**

This research aims to analyze law enforcement against criminal acts of terrorism from a human rights perspective. The research method uses empirical legal research. The results showed that law enforcement by Densus 88 tends to prioritize the presumption of guilt in arresting terrorism suspects, this is contrary to the right to the presumption of innocence of every individual involved in a legal case. as stated that every person accused of a crime has the right to be presumed innocent until his guilt is proven according to law. then the suspect of a criminal act of terrorism must be treated as an innocent individual because if this right is not fulfilled it will result in the neglect of other rights.

**KEYWORDS: Law Enforcement; Terrorism; Human Rights**

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### **I. INTRODUCTION**

Crime Terrorism is an extraordinary crime, so it requires extraordinary eradication efforts as well.<sup>[1]</sup> In Indonesia, extraordinary crimes have been regulated as originally stipulated in Government Regulation instead of Law No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism (Perpu No. 1 of 2002), and a year later, Perpu No. 1 of 2002 was passed into law through Law Number 15 of 2003 concerning Stipulation of Government Regulations instead of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism Into Law (Law No.15 of 2003).<sup>[2]</sup>

The Terrorism Law was issued in a state of emergency as a reaction to the Bali Bombing incident. After being passed, the law to eradicate criminal acts of terrorism was imposed retroactively (retroactively) for the Bali Bombing I case with convicts, among others, Amrozi bin H. Nur Hasyim, Abdul Azis alias Imam Samudra, Ali Ghufron alias Mukhlis, and Ali Imron bin H. Nur Hasyim alias Alik. According to Article 46, the Law on Combating Criminal Acts of Terrorism can be applied retroactively for legal action in certain cases before the enactment of this law, the application of which is stipulated by a separate law or government regulation. Because it has to go through a separate law or Perpu, the Perpu Number 2 of 2002 concerning the Enforcement of the Law No. 1 of 2002 on the Bali Bombing Incident on 12 October 2002 was formed.<sup>[3]</sup>

According to Law no. 15 of 2003 concerning the Stipulation of Government Regulations instead of Law (Perpu) No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism Into Law (Anti-Terrorism Law), terrorism is a transnational, organized crime, and is even an international crime that has a wide network that can threaten national and international peace and security. as a legal basis for tackling criminal acts of terrorism, it is proven that it does not make Indonesia a country free from acts of terrorism.<sup>[4]</sup>

Eradication of criminal acts of terrorism in Indonesia is not only a matter of law and law enforcement but also a social, cultural and economic problem that is closely related to the issue of the resilience of a nation. Policies, prevention and eradication measures must also aim to maintain balance and the obligation to protect the sovereignty of the state, the rights of victims and witnesses, and the rights of suspects or defendants.<sup>[5]</sup> To tackle criminal acts of international terrorism (international terrorism), it is necessary to formulate a global and comprehensive system that contains a 'criminal policy that is both preventive and repressive (covering not only material crimes but also formal crimes) as well as several programs. that is specific, without prejudice to the promotion and protection of human rights.<sup>[6]</sup>

In the context of law enforcement in the field of terrorism, sometimes the first or second type of law enforcement occurs, for example, the suspicion that terrorists have dangerous weapons so that immediate executions are carried out, incidents in Solo, Tangerang and the Sarinah area some time ago were for example, that the total law enforcement has been carried out even harshly. Thus, only a few were tried in *actual enforcement*, for example, the bombing in Legian Kuta in 2002, three of the perpetrators were sentenced to death and executed in 2007. The rest were executed *on the street*. Therefore, in future law enforcement in the

context of fighting terrorism must be carried out. carried out procedurally and measured by heeding the principle of subsidiarity and the principle of proportionality.

However, the eradication of terrorism and radicalism with religious and ideological nuances must be put in the context of positive law and uphold the principles of *the rule of law*.<sup>[7]</sup> The principle of the presumption of innocence is a fundamental principle in criminal procedural law that must be respected, meaning that as long as a terrorist suspect has not been conclusively proven through a fair trial, his rights as a suspect must be respected.<sup>[8]</sup> This statement certainly does not mean ignoring other critical aspects, for example, a suspected terrorist has made threats or attacks against law enforcement or endangers public goods or community interests at risk. Terrorists have carried out a series of actions or threats against law enforcement officers or injured members of the public is a justification for taking tough and measured actions to protect human rights in general.<sup>[9]</sup>

Shooting to death a suspected terrorist is not the right solution because it can cause the cells of terrorism to become disconnected so that the root causes of terrorism and radicalism cannot be extracted and even create new seeds of terrorism. Law enforcement in the eradication of criminal acts of terrorism should refer to the provisions of positive law and human rights standards.

### **Research Methods**

Scientific research starts with a certain issue in the field of law. A legal issue is a research problem that will be revealed using certain research methods. is a common practice and has become a general agreement, that the characteristic inherent in legal research is its normative characteristics. In this research, the research method is normative legal research with a statutory approach and a conceptual approach. The data analysis used is a qualitative analysis that is tangible from the research conclusions

## **II. DISCUSSION**

Based on the research results several things affect law enforcement in the eradication of criminal acts of terrorism so that they do not refer to human rights standards, namely as follows:

### **1. Legal Substance**

In efforts to prevent and eradicate terrorism, sharp debates always occur between protection efforts. human rights and efforts to protect national security. This debate is not only happening in Indonesia but also in the international community. Terrorism has a huge impact, which is capable of not only creating fear but also destabilizing governments. It must also be admitted that if terrorism also evolves, it will adopt new ways to spread fear among the people. And the State has an important role to play in ensuring the protection of the sense of security for the inhabitants of that State.

Therefore, the State has also evolutive adopted various ways to deal with acts of terrorism. In recent years, efforts to deal with terrorism have turned out to be a serious challenge for the protection of human rights and the principle of rule of law. The several States actively allow torture and other ill-treatment to combat terrorism, and the various frameworks and practices in place for the prevention of torture are at the same time ignored.

Researchers view that a diametrically separate separation between efforts to protect national security and protection of human rights is an unproductive step. Efforts to deal with terrorism effectively and simultaneously protect human rights should be complementary and mutually reinforcing goals as part of a common goal in the context of building the rule of law in Indonesia.

Therefore researchers also understand that balancing national security and protection of human rights is necessary for response to public emergencies. However, this effort cannot justify the limitation of rights that fall under the category of non-derogable *rights as* the researcher has described in the discussion of the first problem formulation. However, it is also important to note and understand that the right to a free and impartial trial cannot be revoked under any circumstances.

Efforts to form a national law in the context of eradicating terrorism must also be of concern to the public. The eradication of terrorism must be placed in the framework of law enforcement in the context of the criminal justice system. Also, the handling of victims of terrorism crimes must also be the centre of attention that must not be forgotten.

The rioting and hostage-taking at the Salemba Detention Center for the Kelapa Dua Mobile Brigade Branch on May 8-10 2018 and the explosion of a bomb in Surabaya on May 13 2018 sparked a debate over the discussion of the Draft Law on Terrorism. President Joko Widodo even threatened to issue a Terrorism Perppu in response to the prevention and prosecution of terrorism.

The obstruction in the discussion of the Bill on Amendment to Law Number 15 concerning Stipulation of Government Regulations instead of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law (Draft Bill on the Amendment of the Law on Terrorism) is the cause of the issuance of the President's threat.

Efforts to amend Law Number 15 concerning Stipulation of Government Regulations instead of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law (Terrorism Law) began since the bombing and attack in the Sarinah area, Jalan Thamrin, Central Jakarta, on January 14, 2016. However, the initial plan initiated by the government to amend the Terrorism Law was through the issuance of a Government Regulation instead of Law (Perppu). However, the plan to issue the Perppu has turned into a discussion of the Bill on Amendments to the Law.

Terrorism was agreed to be included in the National Priority Legislation Program or Prolegnas 2016 as a government initiative. However, efforts to amend the Terrorism Law have been going on since 2010. Ansyaad Mbai, the Head of BNPT urged the government and DPR to revise the Terrorism Law so that the police and other authorized institutions can take precautions early before the terror occurred.<sup>8</sup> Therefore, since 2011 the government has prepared an Academic Paper and a Bill on the Amendment of the Terrorism Law.

The process of discussing the Bill on the Amendment of the Terrorism Law between the government and the DPR began officially on January 18, 2017. However, previously the DPR had held several General Opinion Meetings (RDPU) with various parties. From 2017 until the enactment of the Revision of the Terrorism Law in May 2018, there are several substances in the Terrorism Law that have led to pros and cons among the community, namely as follows:

## **2. Legal structure**

The legal structure determines whether or not the law can be implemented properly. The legal structure based on Law Number 8 of 1981 includes: starting from the police, prosecutors, courts and criminal enforcement agencies (Penitentiary). The authority of law enforcement agencies is guaranteed by law. So that in carrying out their duties and responsibilities apart from other influences. There is an adage which states "*Fiat Justitia et pereat mundus*". Even though the world is collapsing, the law must be enforced. The law cannot work well or is tegal if there are no credible, competent and independent legal officers. How good is a statutory regulation if it is not supported by good law enforcement officials, then justice is only wishful thinking?

At the statutory level, law enforcement institutions in the context of eradicating terrorism are regulated in Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism. Institutionally, the eradication of criminal acts of terrorism is carried out by the National Counterterrorism Agency which was established based on Presidential Regulation Number 46 of 2010 concerning the National Counterterrorism Agency.

Article 2 states that:

(1) BNPT has the following duties:

- a. formulating national policies, strategies and programs in the field of counterterrorism
- b. coordinating related government agencies in implementing and implementing policies in the field of counterterrorism;
- c. implementing policies in the field of counterterrorism by forming a Task Force consisting of elements from related government agencies following their respective duties, functions and authorities.

In carrying out the tasks stipulated in Article 2 above, BNPT carries out the following functions:

- a. formulating national policies, strategies and programs in the field of counterterrorism;
- b. monitoring, analysis and evaluation in the field of counterterrorism;
- c. coordination in the prevention and implementation of activities against radical ideological propaganda in the field of countering terrorism;
- d. coordination of the implementation of deradicalization;
- e. coordinating the implementation of protection for objects that are potential targets of terrorist attacks;
- f. coordination of the implementation of enforcement, capacity building, and national preparedness;

Investigation of terrorism cases starting at the level of investigation, prosecution and examination at court proceedings is carried out based on the provisions in the Criminal Procedure Code, in this case, the Criminal Procedure Code (KUHP, Law Number 8 of 1981), unless there are provisions that deviate from the Perpu Number. 1 of 2002, has become a law based on Law Number 15 of 2003.

This means that investigations carried out by legal officials at the field level are carried out by Special Detachment 88 known as the Special Anti-Terror Detachment. This special detachment is part of the National Police to carry out actions related to operationalization in the field.

The problem now is the idea of involving the Indonesian National Army (TNI). The involvement of the TNI in efforts to counter terrorism must be put in a positive legal perspective in Indonesia today. One of the laws that must be considered is Law Number 34 of 2004 concerning the Indonesian National Army (TNI) in which the law states that the TNI acts as a state instrument in the defence sector in carrying out its duties based on state political policies and decisions. It is also stipulated in Article 7 that:

(1) The main task of the TNI is to uphold state sovereignty, maintain the territorial integrity of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution of the Republic of Indonesia, and protect the entire nation and all Indonesian blood from threats and disturbances to the integrity of the nation and state.

(2) The main tasks as referred to in paragraph (1) are carried out by:

a. Military operations for war.

b. Military operations other than war, namely to:

1. overcoming armed separatist movements;
2. overcoming armed rebellion;
3. overcoming acts of terrorism;
4. securing the border area;
5. securing vital national objects that are strategic;
6. carry out world peace tasks following foreign policy policies;
7. secure the President and vice president and their families;
8. early empowerment of defence areas and supporting forces following the universal defence system;
9. assisting government duties in the regions;
10. assisting the National Police of the Republic of Indonesia in the context of security and public order duties as regulated in law;
11. help secure state guests at the level of head and representatives of foreign governments who are currently in Indonesia;
12. help cope with the consequences of natural disasters, evacuation, and provide humanitarian assistance;
13. assist in search and rescue in accidents (search and rescue); and
14. assisting the government in securing shipping and aviation against piracy, piracy and smuggling.

Thus the main task of the TNI is to maintain the territorial integrity of the Republic of Indonesia and uphold the country's sovereignty. In Article 6 letter a and letter b it is emphasized that the TNI is the act of action and as a deterrent against all forms of military threats and armed threats from outside and within the country against the sovereignty, integrity and safety of the nation. To restore the state's security condition which was disturbed due to security chaos.

From the summary of several articles in the TNI Law mentioned above, it can be concluded that the involvement of the TNI in the context of eradicating criminal acts of terrorism is an assistance to the police as happened during the raids against suspected terrorists in Solo several years ago, also when the terrorist threats that occurred in front of the Sarinah Mall were several years ago. time ago, as well as the action, carried out by the Santoso group in Palu, Central Sulawesi. The TNI was included in the framework of working together with the Police, considering that the terror committed by Santoso had become a national and even international issue. Sectoral interests must be put aside, and national interests must take precedence.

Thus, the involvement of the TNI in the context of eradicating terrorism has the character of supporting or supporting the National Police in the context of law enforcement operations, not military operations other than war (OMSP) as stipulated in the TNI Law, unless the spectrum or escalation of terrorism is so widespread and has threatened the existence of the integrity of the situation. which is so severe.

As long as extraordinary conditions have not occurred, the role of the military can be postponed by optimizing the function of the Police in the context of law enforcement. Eradicating terrorism by making the National Police at the forefront of combating terrorism is to see terrorism as a matter of law enforcement. If the escalation has become so widespread and the state's existence is in danger, the TNI can be "summoned" together with the Police and even with all levels of society to deal with it. The criminal act of terrorism is a problem faced by the Indonesian nation at this time, therefore the prevention must be carried out comprehensively by involving all government agencies

### **3. Legal Culture**

The presence and existence of law in the form of laws and regulations amid society have no purpose and other functions except to protect, protect and create stability, order, peace and order. That is the theory put forward by Anthony Anot, as has been strengthened by Soerjono Soekanto, that law is a means that can change people's behaviour towards the goals and functions of the law itself.<sup>[10]</sup> No matter how good the legal structure is to carry out the stipulated legal rules and no matter how good the quality of the legal substance made without the support of legal culture by people involved in the system and society, including in this case are law enforcement officials, in this case, Densus 88, law enforcement against perpetrators of terrorism will not run effectively and will even lead to violations of human rights.

The performance of Densus 88 in eradicating terrorism in Indonesia cannot be doubted, this special force managed to catch the most wanted terrorists in Indonesia such as Noordin M Top, Dr. Azhari, Abu

Dujana, Santoso. It was recorded that 121 people died, including the Siyono case, a stronger understanding of the irregularities in handling terrorists. Also, acts of violence during the investigation process and victims of wrongful arrests often occur, this shows that in the handling of acts of terrorism, authorities often do not pay attention to the rights possessed by terrorism suspects.

Based on the recognition of a suspect's rights from various instruments of international human rights law and national law, a person who is suspected of being a suspect in a criminal act of terrorism is also entitled to receive guarantees and protection of his / her rights. This is inseparable from the characteristics of human rights which adhere to the principles of equality, universal, non-discrimination so that even though the crime of terrorism is specific and threatens the peace and security of the state, this situation does not change the rights possessed by terrorism suspects, especially those that cannot be derogated under any circumstances. Therefore, it is very important to understand the security apparatus, in this case, Densus 88, regarding human rights.

Detachment 88 as a special police unit is structurally under the police which is specifically engaged in the eradication of criminal acts of terrorism, so in carrying out its duties it has the same authority as other members of the police, as explained in Article 16 paragraph (1) of Law Number 2 of 2002 Regarding the Police, it is explained that the Republic of Indonesia National Police is given the authority to carry out response actions according to the law. So in carrying out its duties Densus 88 can take repressive actions or use force outside the procedure, but the force exercised must be following the conditions required while on duty based on the principle of proportionality and the principle of necessity.

However, the reality that occurs in the field of actions carried out by Densus 88 is often not according to the procedures applied, for example in the case of Siyono, a suspected terrorist from Klaten who died while travelling from Klaten to Jakarta, it was found that he was tortured while on the way which resulted in death. Members of Densus 88 stated that the maltreatment was carried out because Siyono was tired of assaulting police officers but from the results of the autopsy carried out by Komnas HAM, he found blunt (intravital) injuries and fractures of both right and left ribs, the cause of death of the victim due to great pain due to sternum fracture, 5 left rib fracture (closed), right rib fracture (open) through the heart. the absence of resistance by the victim with evidence that there is no block/injury to the bone in the hand, it can be ascertained that this action is not following the procedure for using force in carrying out the task based on the necessary circumstances.

### **III. CONCLUSION**

Law enforcement carried out by Densus 88 tends to prioritize the presumption of guilt in arresting terrorism suspects, this is contrary to the right to the presumption of innocence of every individual involved in a legal case. as stated that every person accused of a crime has the right to be presumed innocent until his guilt is proven according to law. then the suspect of a criminal act of terrorism must be treated as an innocent individual because if this right is not fulfilled it will result in the neglect of other rights. The obligation to pay attention to the presumption of innocence is closely related to the fulfilment of the human rights of terrorism suspects, especially the neglect of the right to life and free from cruel and inhuman treatment which cannot be reduced under any circumstances. Against the criminal act of terrorism in Indonesia, it is far from the principles of human rights, namely, the substance of the law, the legal structure and the legal culture. These three things are very influential in the implementation of law enforcement against the crime of terrorism in Indonesia.

### **IV. SUGGESTION**

It is recommended that the government, in this case, Special Detachment 88, have to implement the principle of respect for human rights, including suspects of criminal acts of terrorism, because Indonesia adheres to the principle of a rule of law where one of the characteristics of the rule of law that we adhere to is the recognition of human rights, as long as our constitution recognizes protection, fulfilment and respect for human rights, so long as it is also all state institutions must carry out these obligations

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