

LAW ENFORCEMENT ON TERRORISM CRIMINAL ACTS COMMITTED BY TNI SOLDIERS FROM THE PERSPECTIVE OF CRIMINAL JUSTICE SYSTEM

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ABSTRACT

The crime of terrorism does not only involve civilians but also involves TNI personnel such as the case of selling ammunition to the Free Papua Movement (OPM). The formulation of the problem in this study is how the legal regulation of criminal acts of terrorism carried out by TNI personnel in the perspective of the criminal justice system, how to enforce the law against TNI personnel who carry out terrorism, how are the obstacles to law enforcement against TNI personnel who carry out terrorist acts. The results of the study are obstacles to law enforcement against TNI personnel who carry out terrorist acts, namely the police always have difficulty in finding initial evidence, examining perpetrators who feel they are in the right position, perpetrators are suspected of having mental disorders, low education of perpetrators, and the attitude of perpetrators of terrorist acts who insist on not carrying out terrorist acts.

INTRODUCTION

The Unitary State of the Republic of Indonesia is a state of law (rechtsstaat) not power (machstaat). As enacted in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) which states that: "The State of Indonesia is a state of law." The logical consequence of a state of law is that every action taken by both the community and law enforcement officers must be in accordance with the essential norms contained therein. The norms in question are the legal norms that apply in Indonesia.

The ideals of the Indonesian nation as stated in the Preamble The 1945 Constitution of the Republic of Indonesia is to protect all the Indonesian

people and all of Indonesia's territory and to advance general welfare, to improve the life of the nation and participate in implementing a world order based on freedom, eternal peace, and social justice. To achieve these ideals and maintain the continuity of national development in a safe, peaceful, and dynamic environment, both nationally and internationally, it is necessary to strengthen prevention efforts against anything that could disrupt national stability.

As a nation based on law, Indonesia must comply with all applicable regulations, both by the public and law enforcement officials. This is to prevent human rights violations against any individual. Law enforcement officials, specifically the police, as part of the law enforcement apparatus whose function is to protect, serve, and serve the public, are at the forefront of combating and preventing all forms of crime, including terrorism.

Terrorism is identified as the use or threat of physical violence by individuals or groups for political purposes, either in the interests of or against existing power, when the acts of terrorism are intended to shock, paralyze or intimidate a target group larger than the immediate victims. Characteristics of criminal acts of terrorism According to Black's Law Dictionary, it is an activity that involves elements of violence or that causes dangerous effects to human life that violates criminal law and is clearly intended to intimidate civilians, influence government policy, influence the administration of the state by means of kidnapping or murder.

Terrorism is not a new phenomenon, having existed in international politics since the 19th century. Initially, terrorism was small-scale and local, with select targets and within the framework of low-intensity conflict. Generally, acts of terrorism are closely linked to a country's domestic stability.

Terrorism in Indonesia has occurred many times and there were several terror incidents that occurred in 2002, for example the Bali Bombing

I on October 12, 2002 occurred at the Sari Club and Peddy's Club, the bomb explosion at the JW Marriot in 2003, the bomb in front of the Australian Embassy in 2004, the Bali bomb II in 2005, and a group of terrorist training in Nanggroe Aceh Darussalam. Until then the Special Detachment 88 anti-terror Police shot dead Noordin M. Top in Temanggung on August 8, 2009. Indonesia was again threatened with a bomb explosion that rocked two hotels JW Marriot and Ritz Carlton on July 17, 2009 in the Kuningan Business District of Jakarta. After that, in 2010, there was a robbery at the CIMB Niaga bank in North Sumatra on August 18 2010, where the perpetrators of the bank robbery were connected to a terrorist organization network in terms of funding terrorist operations.

Last January, the 2016 Jakarta Attack occurred. The 2016 Jakarta Attack was a series of events in the form of at least six explosions, and also shootings in the area around Plaza Sarinah, DKI Jakarta on January 14, 2016. Seven people were involved as perpetrators of the attack, and the Islamic State of Iraq and Syria or ISIS claimed responsibility for the attack. On February 2, 2016, a terrorist named Edi Santoso was arrested in the Bandar Lampung area. Edi had committed a robbery at BRI Gadingrejo, Pringsewu. The proceeds of the robbery were used to fund the terrorist activities of MIB (West Indonesia Mujahideen).

Several other terrorists have also been apprehended in the Lampung area. This may be due to Lampung's location on the Trans-Sumatra highway, making it easy for terrorists to travel and hide. Meanwhile, in North Sumatra, on August 28, 2016, a suicide bombing occurred at the St. Joseph Catholic Church on Jalan Dr. Mansur, Medan City, North Sumatra. The perpetrator suffered burns, while a priest suffered minor injuries.

Terrorist attacks can occur at any time and in any place. The numerous bombings in various regions of the world demonstrate that no country, whether developing or developed, is immune to terrorism.

Terrorism is considered one of the greatest threats to humanity and humanity in the future, and will continue to spread if not quickly countered. Not only developing countries like Indonesia, which are still developing their national security systems, but even modern countries with established security systems are not free from terrorist groups. Given such a dangerous situation, Indonesia urgently needs to be prepared and alert, encompassing institutional, legal, and social aspects, to effectively counter terrorism.

Based on the series of bombings and terrorist acts that occurred in the territory of Indonesia have resulted in the loss of life without regard to the victims. This means that the victims of the bomb explosions do not see ethnicity, religion, race and nationality, all are targets because generally terrorists detonate the bombs in crowded places, even bombs were also detonated inside the Mosque when carrying out Friday prayers at the Cirebon City Police Headquarters, West Java on April 15, 2011 and also the Attack on the North Sumatra Regional Police Headquarters which occurred on Sunday, June 25, 2017.

Terrorism is a major and real problem and threat to both the implementation of the Constitution's mandate and the welfare of the Indonesian people, including protecting the entire Indonesian nation and promoting public welfare. Therefore, it is appropriate to consider acts of terrorism a threat to national life and well-being that will impact national security and stability.

The realization of national stability is one of the keys to creating economic recovery to improve the quality of life of the Indonesian people and one of the approaches is a legal approach through law enforcement officers, especially the Indonesian National Police, which has a very significant role in uncovering and handling criminal acts of terrorism.

RESEARCH METHODS

Research methodology is a study that presents the methods, procedures, and steps to be taken in a study systematically and logically so that its accuracy can be verified. In research, the method is the most important element and is based on facts and logical thinking, ensuring that what is described is true.

Legal research is essentially divided into two types: normative research and empirical research. Normative research utilizes secondary data, and is therefore also called library research. Empirical research refers to direct community research, either through questionnaires or direct interviews.

The type of research in this paper uses normative juridical legal research, namely research that refers to legal norms, namely examining library materials or secondary materials. This research is descriptive analytical, which reveals laws and regulations related to legal theories that are the object of research. Descriptive analytical, is a method used to describe a condition or situation that is currently occurring or ongoing with the aim of being able to provide data as accurately as possible regarding the research object so as to be able to explore things that are ideal, then analyzed based on legal theory or applicable laws and regulations. In this paper, it describes matters regarding the crime of terrorism.

Data collection is a crucial stage in the research process, as it serves as the source of the research. Data collection focuses on the underlying problem, ensuring that the research avoids any deviations or ambiguities in its discussion. This study utilized both primary and secondary data.

To obtain objective results that can be proven to be true and whose results can be accounted for, the data in this study was obtained using data collection tools that were carried out using a method, namely library research, namely research carried out by collecting data by reviewing

library materials or secondary data which include primary legal materials, secondary legal materials and tertiary legal materials.

RESULTS AND DISCUSSION

The essence of criminal responsibility for a military member is essentially more of a deterrent or retaliatory measure, as the convict will be reinstated in military service after completing his sentence. A military member (former convict) who is reinstated must be a good and useful military member, both through his own efforts and through the educational activities he received while in military prison (military correctional facilities). If this is not the case, then the punishment has no meaning in terms of his reintegration into military society.

Military personnel involved in acts of terrorism can be punished if their actions meet the elements of the definition of a terrorist act. However, the capacity for responsibility is not taken into consideration because the perpetrator is a military member. The law considers the military member clearly capable of being responsible because the mental state of a military member at the time of committing the crime is considered healthy and normal.

Criminal responsibility involves accepting all punishments imposed on the perpetrator. In this case, punishment or sanctions can include dismissal, demotion, or revocation of certain rights. This is regulated in Articles 6 to 7. with Article 31 Chapter II Book I of the Criminal Code and Article 8 of the TNI Soldier Disciplinary Law Law which applies to all military/TNI, both regarding its norms and sanctions, unification was carried out.

Criminal liability for military personnel who commit crimes can be resolved through disciplinary law or through the imposition of criminal sanctions through Military Justice. Military disciplinary punishment is an educational measure for a military member who is sentenced, intended as

a form of military discipline. Military punishment, on the other hand, is more of a combination of military education and deterrence, as long as the convict is not dismissed from military service.

Settlement according to disciplinary law is carried out in cases where the crime committed is so minor in nature and does not constitute a criminal act, but is contrary to official orders or an act that is not in accordance with the rules of soldier's life (disciplinary violation), so that the case can be resolved outside the court, for example: arriving late for roll call, not respecting superiors and dressing untidily.

A military person who has committed the violations mentioned above can be held accountable for criminal responsibility in the form of disciplinary punishment as stated in Article 8 of the Indonesian National Armed Forces Disciplinary Law, namely: (a) a warning, (b) light detention for a maximum of 14 (fourteen) days, (c) heavy detention for a maximum of 21 (twenty one) days.

Terrorism is a mixed military crime committed by a soldier because it is unlawful and contrary to law. Therefore, terrorism is a crime that requires criminal punishment, and the form of responsibility for terrorism is regulated in Article 6 of the Criminal Code.

Military punishment aims to provide military education and deter perpetrators of crimes, where crimes are generally perceived as disrupting social balance. Imposing a sentence in criminal acts is considered necessary as a last resort or ultimate weapon against the perpetrator.

In relation to the crime of terrorism, the Criminal Code provides specific provisions for crimes against state security. The actions of individual soldiers who sell weapons and ammunition from the Army's armory without proper documentation or permission from authorized superiors and use deception constitute a crime against state security.

Furthermore, military personnel who commit crimes may be subject to increased penalties, namely additional military penalties.

Illegal arms trafficking is often associated with acts of terrorism or separatism, resulting in numerous casualties. This cross-border firearms trafficking involves certain individuals. In national life, one of the primary concerns is the nation's interests, which include, among other things, the integrity of the nation's territory, the nation's philosophical foundations, and so forth. This importance is evident in the fact that, throughout history, a nation has never been free from disruption and danger, both external and internal. Therefore, the nation's interests are among those protected under criminal law.

Every member of the Indonesian National Armed Forces (TNI) is required to obey and comply with applicable laws and regulations specifically for the military, such as the Military Criminal Code (KUHPM), Law of the Republic of Indonesia Number 25 of 2014 concerning Military Disciplinary Law, the Military Disciplinary Regulations (PDM), and other relevant military regulations within the military environment. When carrying out their responsibilities, the TNI is bound to make mistakes, one of which is violating military disciplinary law.

The Criminal Code regulates various types of criminal acts against state security. The actions of certain soldiers violate the provisions of Article 124 paragraph (1) of the Criminal Code. The actions of certain soldiers who sell ammunition and weapons to terrorists can be subject to Article 124 paragraph (1) of the Criminal Code, which stipulates that "Anyone who, during wartime, intentionally provides assistance to the enemy or causes harm to the state against the enemy, is threatened with a prison sentence of 15 (fifteen) years." Therefore, the element of providing assistance to the enemy or causing harm to the state against the enemy is not fulfilled. The actions of certain soldiers who are proven to have committed crimes against

the state in the war zone in Papua still need to be linked to the elements of guilt so that in the consideration of whether or not criminal responsibility can be held. According to Moeljatno, for there to be guilt, the defendant must have committed a criminal act (unlawful in nature), be able to take responsibility; have a form of fault, namely intentional (*dolus*) and negligence (*culpa*); and there is no reason for forgiveness.

The existence of a series of events involving certain members of the Indonesian National Armed Forces (TNI) as Indonesian citizens joining certain radical organizations that have been designated as terrorist organizations or groups, or other organizations that intend to carry out evil conspiracies that lead to acts of terrorism, both at home and abroad, has caused fear in society and has had an impact on political life, economy, socio-culture, security and public order, national resilience, and international relations. Certain radical organizations that lead to acts of terrorism are transnational, organized crimes, and have a wide network that has clearly given rise to massive acts of terrorism if not immediately addressed, threatening peace and security, both nationally and internationally.

The government issued Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism. International terrorism is an organized crime, so the Indonesian government is increasing vigilance in maintaining the integrity of the Unitary State of the Republic of Indonesia. Legal sanctions for criminal acts of terrorism are stated in several articles in Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, including:

Article 13 of Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism states: any person who has a relationship with a terrorist organization and intentionally disseminates statements, attitudes or behavior, writings, or displays with the aim of inciting people or groups

of people to commit violence or threats of violence that can result in criminal acts of terrorism shall be punished with a maximum prison sentence of 5 (five) years.

This article defines the perpetrator of a terrorist act as someone who facilitates or provides assistance. After the crime has been committed, the intellectual actor is also mentioned, meaning the person who plans it. This includes preparing themselves physically, financially, and humanly. Also included are acts of incitement and provocation, gifts, money, or promises. Incitement can also be done through incitement.

Based on the provisions above, perpetrators of terrorist acts must be sanctioned for their actions, or in other words, law enforcement must be carried out against the perpetrators. Sanctions are a coercive tool, where sanctions force law enforcement or enforce compliance with legal norms. Sanctions as a law enforcement tool can also include the cancellation of acts that constitute violations. **law.**

Conceptually, the essence and meaning of law enforcement lies in the activity of harmonizing the relationship between values outlined in solid rules and attitudes as a series of final stage values to create, maintain and defend peace in social life.

Law is the foundation of societal hope and trust for regulating social interactions. Law is the embodiment or manifestation of these values. Therefore, law enforcement is expected to be trustworthy and uphold the authority of the law, which essentially means upholding the values of trust within society.

The policies to be implemented will primarily encompass law enforcement activities aimed at improving order and legal certainty in society. To this end, coordination and harmonization of the duties of law enforcement agencies will be strengthened. This will be achieved, among other things, by streamlining the functions, duties, powers, and authorities

of law enforcement agencies according to their respective professional areas and based on a sound cooperative system.

Crimes that are increasingly increasing and frequently occurring in society are a matter of great concern, so that it invites the government (state) as a servant, protector of society to overcome the spread and increase of crimes that violate the values and norms that live and apply in a society so that these crimes are made by the state as criminal acts for criminal acts. Criminal law is an important tool in overcoming crime or perhaps as a remedy in eradicating crimes that disturb and harm society in general and victims in particular.

Crime prevention can be carried out through preventive and repressive means. This form of prevention involves imposing sanctions on perpetrators. Criminal sanctions are the best available tool we have to deal with threats of harm. Criminal sanctions are sometimes the primary guarantor, and ethics are the primary threat to human freedom.

Legal policies that will be or have been implemented nationally by the government also include an understanding of how politics influences law by looking at the configuration of forces behind the creation and enforcement of the law. Here, law cannot be viewed solely as articles that are imperative or mandatory, but rather must be viewed as a subsystem that in reality is not impossible to be greatly determined by politics, both in the formulation of its material and articles as well as in its implementation and enforcement.

Criminalization policy is defined as the process of determining whether an act is punishable or prohibited. Determining a crime is achieved through criminal law policy or penal policy. Implementing criminal law policy means selecting the best criminal legislation, in the sense of fulfilling the requirements of justice and effectiveness, or attempting to create

criminal legislation that is appropriate to the circumstances and situations at a given time and for the future.

Based on the above understanding, implementing criminal law policy means holding elections to achieve the best criminal law regulations, in the sense of fulfilling the requirements of justice and efficiency. Implementing criminal law policy means an effort to realize criminal law regulations that are appropriate to the circumstances and situations at a given time and for the future.

CONCLUSION

The legal regulations for criminal acts of terrorism committed by TNI soldiers from the perspective of the criminal justice system are regulated in Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism which is *Lex specialis derogat legi generali* is a principle of legal interpretation which states that special laws (*lex specialis*) override general laws (*lex generalis*). Military members who have sold ammunition to the OPM terrorist group when reviewed from the Criminal Code can be concluded as the actions of military personnel can be qualified as having committed crimes against state security so that these military personnel can be sentenced according to Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism

Law enforcement against certain members of the TNI those who carry out terrorism are viewed from a justiciable perspective, in this case the military (and those equated), then Military Criminal Law is one of the criminal laws that specifically applies to the military (and those equated) in addition to the application of other criminal laws (general and special in the sense of the first division, because what applies to a military person (or military justice) is not only military criminal law, but also general criminal law and provisions in general criminal law (which are basically also used by military criminal law with several exceptions).

Obstacles to law enforcement against TNI members who commit terrorism namely the police always have difficulty in finding initial evidence, examining perpetrators who feel they are in the right position, perpetrators are suspected of having mental disorders, low education of perpetrators, and the attitude of perpetrators of terrorist crimes who insist on not committing acts of terrorism.

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