



Policy in Combating Terrorism Crimes

Iwan Sardi¹; Amiruddin; Lalu Parman²

¹ Graduate Program Student in Notary, Faculty of Law, Mataram University, Indonesia

² Lecturer of Faculty of Law, Mataram University, Indonesia

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Abstract

Terrorism crimes will occur at any time where the target is unpredictable. Its actions cause fear to the public at large, take many lives, and cause property losses. It also has a very broad impact on the life of the nation and state. The research objective is to determine the legislative and applicative policies in combating terrorism crimes. This study uses secondary legal material in the form of official legal materials, books, research results in the form of reports, and opinions from legal experts. Research findings include: 1) legislative policy in combating terrorism crimes is to provide more responsive legal policies to the development of terrorism crimes that ensnare not only perpetrators who commit crimes directly but also investigate parties that collect, provide, or lend funds directly or indirectly with a view to using all or part of it to commit terrorism crimes, terrorist organizations, or terrorists, and 2) the applicative policies in combating terrorism crimes include 3 aspects, namely national preparedness, counter radicalization and deradicalization. This prevention aspect is strengthened by involving all stakeholders and all components of the nation to engage universally in combating terrorism. As a common enemy, cooperation is required to combat terrorism.

Keywords: Terrorism; Legislative; Organization

Introduction

The crime of terrorism is a form of international dimension crime that is very frightening to the public. In various countries in the world, terrorism crimes have occurred in developed and developing countries. These acts of terror have taken their victims indiscriminately. Terrorism crimes are organized crime and have national and international networks. It was very unsettling and was now a worldwide concern. Terrorism crimes will occur at any time where the target is unpredictable. Its actions cause fear to the public at large, take many lives, and cause property losses. It also has a very broad impact on the life of the nation and state. Terrorism crimes cannot appear by themselves. It arises because of other factors that can encourage terrorism crimes such as the development of the situation in the global world which has a very large influence.

The crime of terrorism uses one form of transnational crime that seriously threatens peace and world peace. The crime of terrorism has also taken place in Indonesia and has also taken its toll on

innocent people including Indonesian citizens and foreign nationals. The suicide bombing on October 12, 2002 in Legian, Kuta, Bali resulted in approximately 184 people being killed and hundreds of others seriously and lightly injured. The victims came from various countries such as Australia, the United States, Germany, Britain and others. Other actions related to the use of bombs also occurred in Indonesia; for instance the bombing at the Jakarta Stock Exchange Building, the Mc Donald Makassar fast food restaurant, the Jakarta J W Mariot Hotel, the Philippine Embassy, near the Australian Embassy, as well as several bombing incidents in conflict areas such as Poso, Aceh, and Maluku. All of that creates fear and is not peaceful for the community. In addition to demolishing public buildings and facilities, the bombings also caused fear for Indonesians and foreigners.

The Preamble of the 1945 Constitution of the Republic of Indonesia implies that the government of the Republic of Indonesia has an obligation to protect its citizens from any threat of crime on a national or international scale and is obliged to maintain the country's sovereignty and restore national unity and integrity from threats that come from inside and outside country.¹ During this time, terrorism crimes have disturbed the security and order of society and have become a serious threat to the sovereignty of the state. Thus, prevention and eradication of terrorism crimes needs to be carried out to maintain a safe, peaceful and prosperous life based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

In the subsequent development of the state administration, the two Government Regulations in lieu of Law (Perpu) were discussed after deliberations in the House of Representatives. It was finally approved as Law No. 15 of 2003 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2002 concerning the Eradication of Terrorism Crimes and Law No. 16 of 2003 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2002 concerning the Imposition of Government Regulation in Lieu of Law No. 1 of 2002 concerning Eradication of Terrorism Crimes during the bombing in Bali on October 12, 2002. According to Barda Nawawi Arief, "in essence, policies or efforts to combat crime (criminal politics) are an integral part of efforts to protect social defense and efforts to achieve social welfare" (Arief, 2010).

In January 2016, acts of terrorism occurred again, precisely in the Sarinah area, Jakarta. As a reaction to the incident, several parties stated that the revision of the Anti-Terrorism Law was necessary because the current Act was considered to be no longer in line with the needs of combating terrorism crimes in Indonesia. Draft Law on Amendments to Law No. 15 of 2003 concerning Stipulation of Government Regulation in Lieu of Law (Perpu) No. 1 of 2002 concerning the Eradication of Terrorism Crimes into Law (Draft Anti-Terrorism Law), has entered the Priority National Legislation Program in 2016. At present the Draft Anti-Terrorism Law has been prepared by the Government and has been accepted by the House of Representatives of the Republic of Indonesia. The House of Representatives is preparing to form a special committee to discuss the Draft Anti-Terrorism Law with the Government.

The Concept of Terrorism Crimes

Efforts to combat terrorism crimes require hard work from the Government of Indonesia through law enforcement officials and community participation. According to Rajagukguk and Khairandy, offense or criminal acts of terrorism are acts that are against the law in violation of the criminal provisions of terrorism; which is an act related to the crime of terrorism. There are two offenses in the Law on terrorism crimes consisting of material offenses and formal offenses. Material offense is offense or criminal offenses related to the formulation of prohibited acts aimed at the arising of consequences, while formal

¹ Government Statement concerning the issuance of Perpu No. 1 of 2002 concerning Eradication of Terrorism Crimes and Perpu No. 2 of 2002 concerning Enactment of Perpu No. 1 of 2002 concerning the Eradication of Terrorism Crimes at the Bomb Blasting Event in Bali on October 12, 2002.

offenses are offenses related to the technique of formulation of prohibited acts aimed at acts that clearly fulfill the offense elements.

Regarding the crime of terrorism, Muladi (2004) argues that terrorism is an extraordinary crime that requires treatment that utilizes extraordinary ways because of the following things:

1. Terrorism is an act that poses the greatest danger to human rights. In this case, it includes human rights to life and human rights to be free from fear.
2. The target of terrorism is random or indiscriminate which tends to sacrifice innocent people.
3. It has the possibility of using weapons of mass destruction by utilizing modern technology.
4. It has a tendency for negative synergy to occur between terrorism national and international organizations.
5. It has the possibility of cooperation between terrorist organizations and organized crime on a national or transnational scale.
6. It can endanger international peace and security.

According to Sudarto (1990), crime is a basic understanding in criminal law and also a judicial understanding. The term crime is used as a substitute for “*strafbaar feit*” and until now the legislators have always used the term crime in statutory regulations. Dogmatically, the main problems relating to Criminal Crimes include 3 (three) things: prohibited acts, people who commit prohibited acts, and crimes that are threatened with violators.

Terrorism itself has a long history. The Zealots-Sicarri, a Jewish terrorist group, fought against the Roman empire at noon in the middle of the city of Yerusalem which caused a great panic (Philips, 2003). The current terrorism is believed to have a history of linking up with the French Revolution where the term “terror” was first used in 1795 specifically referring to the terror policy carried out by Robespierre to defend the government of the new French Republic and was still young. Human history has been colored by acts of terror ranging from psychological warfare written by Xenophon (431-350 BC), Emperor Tiberius (14-37 BC) and Caligula (37-41 BC) of the Romans who had practiced terrorism in removal or exile, deprivation of the price of objects and punish political opponents. Robespierre (1758-1794) terrorized his enemies during the French Revolution. After the American civil war was bound, racist terrorist groups emerged known as the Ku Klux Klan and so did Hitler and Joseph Stalin.

As a social phenomenon, terrorism develops along with the development of human civilization. The methods used to carry out violence and fear are also increasingly sophisticated along with the development of modern technology. The process of globalization and mass culture are fertile ground for the development of terrorism. The ease of creating fear with high technology and the development of information through extensive media, facilitating networks and acts of terror to achieve their goals.

According to Muladi (2002), the forms of terrorism can be specified as follows:

- a. Before World War II, almost all acts of terrorism consisted of political assassinations of government officials.
- b. Terrorism in the 1950s that began in Algeria, was carried out by the *Front de Libération Nationale* (FLN) who popularized “random attacks” against innocent civilians. This was carried out to counter what they call (Algerian Nationalist) as “state terrorism”. According to them, killing is aimed at obtaining justice and not an issue that must be anxious even though the target is innocent people.
- c. Terrorism that emerged in the 1960s and is known by the term “media terrorism” in the form of random attacks against anyone for publicity purposes.

The difficulty in defining terrorism is the changing face of terrorism from time to time. At a certain moment, terrorism is an action taken by the state. At other times, terrorism is perpetrated by non-state groups, or both. Walter Laquer stated that there would never be a definition that could cover the variety of terrorism that has appeared in history.

Black Law Dictionary provides a definition of terrorism as the use of threat of violence to intimidate or cause panic; especially as a means of affecting political conduct. According to T. P. Thornton, in *Terror as a Weapon of Political Agitation* (1964), terrorism is defined as the use of terror as a symbolic act designed to influence political wisdom and behavior in extra-normal ways, especially with the use of force and threats of violence. Terrorism is a notion that holds that the use of violent means and fears is a legitimate way to achieve goals.

Terrorism crimes are pure crime (*mala per se*) which is distinguished from administrative criminal law (*mala prohibita*) (Syafaat, 2003). To understand the meaning of terrorism from several institutions in the United States, different understandings are also given, for example as follows:

1. United States Central Intelligence Agency (CIA).
International terrorism is terrorism carried out with the support of foreign governments or organizations and/ or directed against foreign countries, institutions or governments.
2. United States Federal Bureau of Investigation (FBI)
Terrorism is the use of unauthorized or violent power over a person or price to intimidate a government, civilian population and its elements to achieve social or political goals.
3. United States Department of State and Defense
Terrorism is politically motivated violence carried out by state agents or subnational groups against non-combatant targets. International terrorism is terrorism that uses and involves citizens or regions of more than one country.
4. The Arab Convention on The Suppression of Terrorism (1998)
Terrorism is an act or threat of violence with any motives and goals carried out to carry out an agenda of individual or collective crime, which causes terror in the community, fear that hurt them or threatens life, freedom, safety or aims to cause damage to the environment or public prices or personally or control over or seize it, or aim to threaten national resources.
5. Convention of The Organization of The Islamic Conference on Combating International Terrorism, 1999
Terrorism means acts of violence or threats of violence regardless of existing motives or intentions to carry out individual or collective crime plans with the aim of terrorizing others or threatening to harm them or threaten their lives, honor, freedom, security and rights or exploit the environment or facilities or the price of private or public property, or control over it or seizure of it, endanger national sources or international facilities, or threaten the stability, territorial integrity, political unity or sovereignty of independent states.
6. United Kingdom, Terrorism Act, 2000
The United Nations (UN) has been paying close attention to the issue of terrorism. This attention can be seen from the efforts it does in an integrated manner through legal and political efforts. Through legal efforts, the UN has produced a number of conventions related to the issue of terrorism, including the following:²
 - a. Convention on Offenses and Certain Other Acts Committed on Board Aircraft. Signed in Tokyo on September 14, 1963 and entered into force on December 4, 1969.

² <https://www.academia.edu/25886539/Terrorisme>, accessed on December 25, 2018, at 3:31 pm.

- b. Convention for the Suppression of Unlawful Seizure of Aircraft. Signed in Hague on December 16, 1970 and entered into force on October 14, 1971.
- c. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. Signed in Montreal on September 23, 1971 and entered into force on January 26, 1973.
- d. Convention on the Prevention and Punishment of Crimes against International Protected Persons, Including Diplomatic Agents. Received by the General Assembly with Resolution 3166 (XXVIII) on December 14, 1973 and entered into force on February 20, 1977.
- e. International Convention against the Taking of Hostages. Received by the General Assembly with Resolution 34/46 on December 17, 1979 and entered into force on June 3, 1983.
- f. Convention on the Physical Protection of Nuclear Materials. Signed in Vienna and New York on March 3, 1980, approved in Vienna on October 26, 1979, and entered into force on February 8, 1987.
- g. The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation. Additional to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. Signed in Montreal on February 24, 1988 and entered into force on August 6, 1989.
- h. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. Received in Rome on March 10, 1988 and entered into force March 1, 1992.
- i. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platform Located on the Continental Shelf. Received in Rome on March 10, 1988 and entered into force March 1, 1992.
- j. Convention on the Marking of Plastic Explosives for the Purpose of Detection. Done in Montreal on March 1, 1991 and entered into force on June 21, 1998.
- k. International Convention for the Suppression of Terrorist Bombing. Accepted by the General Assembly with Resolution 52/164 of 15 December 1997 and entered into force on May 23, 2001.
- l. International Convention on the Suppression of Financing of Terrorism. Received by the General Assembly with Resolution 54/109 of 9 December 1999 and entered into force on 10 April 2002.

After the terrorist attack on the United States on September 11, 2001, the UN paid more attention to the issue of terrorism. This was carried out as a reasonable response because the terrorist attack incident at the heart of US business and defense was categorized as the biggest terrorist attack in the history of modern terrorism. Related to this event, through the Security Council, the UN has issued Resolutions 1368 and 1373. Meanwhile, the General Assembly has also adopted consensus Resolution 56/1. The resolution underlines the importance of multilateral and effective cooperation to overcome the problem of terrorism.

The United States government itself considers terrorism as a political crime. The United States Government defines terrorism as “the unlawful use or threat of violence against people or property to further political or social objectives”. Since the events of September 11, 2001, the United States Government has been firm in not compromising and refusing to negotiate with terrorist groups because negotiations will only strengthen the position of terrorist groups. The attitude of the United States is explicit in the words of President George W. Bush “If you are not with us, you are against us”. Furthermore, the American allies followed the steps of the United States to fight terrorism.

Those who oppose the United States policy in combating terrorism are of the opinion that the 11 September 2001 incident was an event that could occur because the security system in the Pentagon building was intentional not to act or omission did occur. It is impossible for Al-Qaeda to have such sophisticated devices because only state terrorism can carry out such actions by the United States itself with its CIA and USIA (United State Information Agency) terror machines.

The Indonesian state which has also empirically experienced terrorism with devastating consequences on the Bali Bombing on October 12, 2002 with approximately 200 people killed and hundreds injured, also cooperated with neighboring countries such as Australia. The sad thing is that measures to combat terrorism at the national level are often identified and labeled as US intervention that invites various countries to fight international terrorism especially Al-Qaeda/ Osama bin Laden since September 11, 2001 (Nainggolan, 2002).

Research Method

This analysis utilizes legal materials in the form of official legal materials, books, research findings in the form of reports, and opinions of legal experts (Amirudin & Asikin, 2003), Types of legal materials in this research consisted of:

- a. Primary legal materials, obtained from legal research in the form of laws and regulations, consisting of:
 - 1) Law No. 15 of 2003 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2002 concerning the Eradication of Terrorism Crimes into Law.
 - 2) Law No. 5 of 2018 concerning Amendments to Law No. 15 of 2003 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2002 concerning the Eradication of Terrorism Crimes into Law.
 - 3) Government Statement concerning the issuance of Perpu No. 1 of 2002 concerning Eradication of Terrorism Crimes and Perpu No. 2 of 2002 concerning the enactment of Perpu No. 1 of 2002 concerning the Eradication of Terrorism Crimes at the Bomb Blasting Event in Bali on 12 October 2002.
 - 4) General Explanation for the Lieu of Law of the Republic of Indonesia No. 1 of 2002 concerning the Eradication of Terrorism Crimes.
 - 5) Draft of the Criminal Code. 2008
 - 6) Decision of the Supreme Court Number: 629/PID/Sus/2014/PN.JKT.TIM.
- b. Secondary legal materials include official documents, books, research results in the form of reports, and opinions of legal experts.
- c. Tertiary legal materials, namely legal materials that provide instructions and explanations for secondary and tertiary data, include: legal dictionaries, and so forth.

Collection of legal materials adjusted to the method of legal approach. This research uses a law approach, document study, and concept. So, in gathering legal materials, it first collects primary legal materials as study material in normative research, then searches secondary legal and tertiary legal materials related to the legal issues raised in this research.

Legislative Policy in Combating Terrorism Crimes

Terrorism is an act that uses violence or threat of violence that generates an atmosphere of terror or widespread fear, which can cause mass victims, and/ or cause damage or destruction to vital strategic objects, the environment, public facilities, or international facilities with ideological motives, politics, or security disturbances.

The elements of terrorism in Article 1 Number 2 are as follows:

1. Violence is any act of abuse of physical force with or without the use of facilities that violates the law and poses a danger to the body, life and independence of people, including making people faint or helpless.
2. The threat of violence is any act against the law in the form of speech, writing, images, symbols, or bodily movements, with or without the use of electronic or non-electronic means that can cause fear of people or society at large or curb the intrinsic freedom of a person or society.
3. Strategic vital objects are areas, places, locations, buildings, or installations which:
 - a. concern the lives of many people and the nation's dignity,
 - b. are a source of state revenue that has political, economic, social and cultural value or
 - c. concern very high defense and security.

Policy in the Law of the Republic of Indonesia No. 5 of 2018 concerning Amendments to Law No. 15 of 2003 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2002 concerning the Eradication of Terrorism Crimes into Law. Policy in Law No. 1 of 2002 concerning the eradication of terrorism crimes, namely Article 2, Article 5, Article 43, and Article 44. Policy in Law No. 15 of 2003 concerning the establishment of government regulations in Lieu of Law No. 1 of 2002 concerning the Eradication of Terrorism Crimes into Law which includes Article 1, Article 2, and General Section.

Policy in Law No. 9 of 2013 concerning the prevention and eradication of terrorism crimes are found in Article 1, Article 9, Article 10, Article 13. Policy in Law No. 5 of 2018 concerning Amendment to Law No. 15 of 2003 concerning Stipulation of Government Regulation in Lieu of Law No. 1 of 2002 concerning the Eradication of Terrorism Crimes into Laws are found in Article 1, Article 5, Article 6, Article 10A, Article 12A, Article 12B, Article 31 and Article 31A.

Applicative Policy in Combating Terrorism Crimes

Understanding the policy or politics of criminal law can be seen from legal politics or from criminal politics. According to Sudarto, Political Law is:

1. an effort to realize good regulations in accordance with the circumstances and situations at a particular time.
2. State policy through authorized institutions to establish the desired regulations which are expected to be used to express what is contained in society and to achieve what is aspired by society.

The Head of the National Counterterrorism Agency (BNPT) claims that the Terrorism Law is the most comprehensive in the world because it contains 3 aspects which include prevention, law enforcement or prosecution and protection including victims and compensation. After the stipulation of the new Terrorism Law, the government must move quickly so that it can be applied immediately. Various Government Regulations and downward derivatives must be issued immediately. Socialization is very important to be intensified in a short time. The key to enforcement is synergy. The government as the coordinator and facilitator must immediately hold, coordinate and facilitate all parties. One important thing is that the internal government itself must be prioritized in one voice and action.

A number of parties are concerned about human rights violations in efforts to tackle terrorism. The law has affirmed all parties to uphold human rights. Officials who violate these provisions are threatened with criminal sanctions in accordance with the provisions of the legislation.

It was important for the government to sit with those who were opposed to the revision of the Terrorism Law since the beginning. The aim is to equalize perception. Although it is then the right of all citizens if anyone submits a judicial review test, the government must prepare an appropriate argument to deal with it.

Prevention is the first priority mandated in this Law. Prevention in the Law covers 3 aspects: national preparedness, counter radicalization and deradicalization. This prevention aspect is strengthened by involving all stakeholders and all components of the nation to engage universally in combating terrorism. As a common enemy, combating terrorism requires cooperation. The development of the seeds of terrorism must be prevented early on. All sectors must move together in implementing this.

Article that prolongs the ratification of the Terrorism Law is part of the definition (Article 1). The agreed definition finally defines terrorism as an act that uses violence or threat of violence that generates a widespread atmosphere of terror or fear, causes mass victims, and/ or causes damage or destruction to strategic vital objects, the environment, public facilities, or international facilities with ideological, political motives, or security disturbances.

Second is the article related to terrorist organizations (Article 12A). This article stipulates that anyone who deliberately becomes a member or recruits a person to become a member of a corporation determined by the court as a terrorism organization shall be sentenced to a maximum of 2 years and a maximum of 7 years. Founders, leaders, management, or people who control corporate activities can also be sentenced to a maximum imprisonment of 3 years and a maximum of 12 years.

Third is the article on sedition (Article 13A). This article regulates that any person who is related to the Terrorism organization and intentionally spreads words, attitudes or behaviors, writings, or displays with the aim of inciting people or groups of people to commit violence or threats of violence that can result in terrorism crimes, a maximum sentence of 5 years.

The fourth is regarding the involvement of children (Article 16A). This article regulates that for every person who commits terrorism crimes involving children, the threat of crime is added one third of the time.

The fifth is about the time of detention (Article 25). This article stipulates that terrorist suspects can be detained for longer periods of time. If previously the detention of a suspect for the purposes of investigation and prosecution could only be carried out within 180 days or 6 months, now it has become 270 days or 9 months.

The sixth is related to arrest (Article 28). This article stipulates that the police have more time to make arrests of suspected terrorists before establishing them as suspects or releasing them. If previously the police only had 7 days, now it can be extended to 21 days.

Seventh is about wiretapping (Articles 31 and 31A). This article stipulates that under urgent circumstances, police investigators can directly conduct wiretapping of suspected terrorists. After the wiretapping is carried out, within a maximum of three days, the investigator is obliged to request the determination of the chair of the local district court.

Conclusion

Legislative policy in combating terrorism crimes is to provide more responsive legal policies to the development of terrorism crimes that ensnare not only perpetrators who commit crimes directly but

also investigate parties that collect, provide, or lend funds directly or indirectly with a view to using all or part of it to commit terrorism crimes, terrorist organizations, or terrorists. The applicative policies in combating terrorism crimes include 3 aspects, namely national preparedness, counter radicalization and deradicalization. This prevention aspect is strengthened by involving all stakeholders and all components of the nation to engage universally in combating terrorism. As a common enemy, cooperation is required to combat terrorism.

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