

Law Enforcement of Terrorism Criminal Performers in Indonesia

By Achmad Irwan Hamzani

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Abstract

The Indonesian state is firm against perpetrators of criminal acts of terrorism. Many perpetrators have been sentenced to death. Terrorism continues to be a threat that can occur at any time. The purpose of this study is to describe the basic concepts of law enforcement, examine law enforcement against criminal acts of terrorism in Indonesia, and analyze the problems and solutions of law enforcement going forward. This research uses a normative approach. Data were analyzed and presented qualitatively. The results showed that law enforcement is the implementation of applicable law. Without the enforcement of the law of justice, certainty and usefulness which are the objectives of the law will not be achieved. Laws with weak implementation will be distant and isolated from society. Law enforcement against terrorism in Indonesia refers to the Law of the Republic of Indonesia Number 15 of 2003 concerning the Eradication of Terrorism Crimes. The legal policy to eradicate terrorism is intended as a long-term policy and anticipatory measure. Law enforcement against terrorism is carried out through formal and informal channels. Formal path with the Criminal Justice System. The informal route is through a de-radicalization program. The absence of legal instruments to ensnare the spread of radical teachings is an obstacle. Ideally, the de-radicalization design should be carried out through four approaches, namely reduction, rehabilitation, resocialization, and reintegration.

Keywords: law enforcement, terrorism, Indonesia, deradicalization

1. Introduction

Indonesia is firm in upholding the law against terrorism. Perpetrators of criminal acts of terrorism in Indonesia have been convicted. Not even a few were sentenced to death. For example, Imam Samudra and Amrozi, perpetrators of the 2002 Bali Bombing terrorism act. Likewise, other terrorist perpetrators.

The decisive action was carried out because the criminal act of terrorism became a threat to the state. Terrorism greatly impacts social life, economy, politics, and international relations. Terrorism has also claimed many human lives, property, and caused trauma that is difficult to cure for victims and their families [1].

The Indonesian government makes a quick policy to deal with terrorism. After the Bali Bombing 1 of 2002, the Government issued Government Regulation instead of the Law of the Republic of Indonesia Number 1 of 2002, which on April 4, 2003, was passed into Law of the Republic of Indonesia Number 15 of 2003 concerning Eradication of Terrorism Criminal Acts, subsequently revised by Law of the Republic of Indonesia Number 5 the Year 2018. The Government of Indonesia also issued Presidential Regulation of the Republic of Indonesia Number 46 of 2010 concerning the Establishment of the National Counterterrorism Agency

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(BNPT) which in 2012 was amended by Presidential Regulation of the Republic of Indonesia Number 12 of 2012.

The existence of the law is very urgent to tackle terrorism in Indonesia. Existing law, namely the Criminal Code (KUHP) does not completely regulate terrorism [2]. The criminal act of terrorism is called a special crime. At first, the opinion that terrorism developed was quite regulated in the Criminal Code as a crime against public order, a crime against life, and a crime of destruction. This refers to the Netherlands which also does not have a Law on terrorism but enough with the Criminal Code.

To realize a national law that aims to prevent and eradicate terrorism as a whole, it is necessary to agree on the paradigm to be developed in advance. There are 3 (three) paradigms in combating terrorism in Indonesia, namely the protection of state sovereignty, protection of victims, and protection of criminal offenders.

The Indonesian government has adopted a law enforcement policy against acts of terrorism through statutory regulations. The policy is also a means to anticipate the growth and development of terrorism both internally and externally. Although in practice, the crimes that have been handed down have not been able to provide a deterrent effect. Acts of terrorism in Indonesia remain.

Indonesia is among the countries affected by the excesses of the September 11, 2001 Terrorism tragedy in the United States. Its excess is even greater after being targeted by acts of terrorism such as the Bali Bombing I in 2002. Since then, acts of terrorism exist every year. There are Marriot Hotel Bombs and Ritz Charlton, Kuningan Bombs, Jakarta Stock Exchange (BEJ), Marriot Hotels, Australian Embassy, Bali Bomb II, 2005, and so on.

Terrorism is a threat to the state in the era of democracy, although to spread terrorism is not a new problem [3], but a classic problem that has long existed. The terrorist phenomenon is rife after the attack on the World Trade Center (WTS). Terrorism is increasingly becoming a global issue after 2014 the Islamic State of Iraq and Syria (ISIS) and is considered an enemy of all countries.

Terrorism is classified as an extraordinary crime and crime against humanity, and legally, it is categorized as a crime against state security (Pradityo, 2016: 18). The characteristics of terrorism are extreme crimes deliberately designed to spread terror, threats, fears, worries, and insecurities during society, giving rise to instability and instability both economically, socially and politically [4].

Law enforcement against terrorism is not enough to use ordinary methods. Repressive actions alone are not enough. An extraordinary, conceptual, comprehensive, and preventive extraordinary way is needed to be able to break the chain of terrorism networks to its roots. The government must ensure that the country is safe from terrorism so that the security, political and economic situation is stable.

The problems that will be examined in this study are the basic concepts of law enforcement, law enforcement against terrorism in Indonesia, problems, and solutions for law enforcement against terrorism in the future.

2. Research methods

This type of research is library research. Literature research is research conducted by examining library materials or secondary data. This research is included in library research because the data used is secondary data in the form of law documents. The approach used in this research is philosophical. The philosophical approach in law research is to study the law from the ideal side. This study uses a philosophical approach because it is examined by law at an ideal level. The data source used in this study is secondary data. Secondary data is data that is obtained indirectly or has been provided by another party. Secondary data is used as the main reference which is already available in written form in books, scientific journals, and other written sources. Data collection techniques are done through a conventional and online search. Conventional literacy is the activity of searching for library resources for data storage. While online graduation is an activity to find library resources in cyberspace through the internet network. Conventional literature searching is carried out by searching library materials, purchasing books, journals and attending scientific activities. While searching online is done by searching on the internet. The data analysis method used is qualitative. Qualitative data analysis is the process of organizing and sorting data into basic patterns, categories and description units so that themes can be found presented in narrative form. This study uses qualitative data analysis because the data will be presented in a narrative-descriptive manner, not in numerical or numerical form.

3. Discussion

a. Basic Concepts of Law Enforcement

The concept of law enforcement is an activity to harmonize the relationships of values that are set out in solid rules and embody them and act as a series of translations of values aimed at creating, maintaining and maintaining peace of life [5]. Law enforcement must be carried out firmly indiscriminately against violators of the law. The implementation is carried out with full dedication and a strong sense of responsibility and moral integrity. Because of the phenomena that exist, due to lack of firmness or because of uncertainty in dealing with violations of the law, many lawbreakers escaped the snares of the law.

Law enforcement can be interpreted within the framework of three concepts, namely the concept of total law enforcement that demands that all values behind the law norms are upheld without exception. A full concept that realizes that the total concept needs to be limited by procedural law and so on for the protection of individual interests. The concept of actual law enforcement that emerged after the belief in the existence of discretion in law enforcement due to limitations, both relating to facilities and infrastructure, the quality of human resources, the quality of legislation and the lack of community participation [6].

In other words, law enforcement is the administration of law by law enforcement officials and by everyone who has an interest under their respective authorities according to applicable law [7]. The effective operation of the law system is law enforcement. Without law enforcement, law certainty, usefulness and justice will not be fulfilled.

The essence and meaning of law enforcement lie in the activity of harmonizing the relationships of values that are set out in solid rules and manifesting them as well as the attitude of action as a series of translation of values aimed at creating, maintaining and

maintaining peace of life [5]. As a means to achieve legal objectives, both as regulators of public order and to realize social and spiritual justice, law enforcers must mobilize all personnel so that the law can work to realize moral values in law.

Law enforcement as a process, in essence, is the application of discretion that involves making decisions that are not strictly governed by legal principles but have an element of personal judgment. Real consideration can only be applied selectively in the repetition of the crime. No less important, in the process of discretion must harmonize the consistent application of the law with human factors. Law enforcement as an effort to bring law ideas into reality [8]. The law enforcement component in implementing repressive sanctions in law enforcement efforts must be based on legal instruments and respect basic human rights. You do this by striving for community self-obedience to the law, implementing criminal justice processes, and preventing the emergence of community diseases that can cause crime [9].

As a means to achieve law goals both as regulators of public order and to realize social and physical justice, law enforcement should be maximized so that the law can work to realize law goals. Failure to realize law objectives can be bad for the law order. Weak law implementation will be distant and isolated from the community. The success of law enforcement will determine and become a barometer of law legitimacy amid social reality.

The law enforcement component in implementing repressive sanctions in law enforcement efforts must be based on law instruments or regulations and respecting basic human rights. You do this by striving for self-obedience of the citizens of the law and regulations, implementing the criminal justice process, and preventing the emergence of community diseases that can cause crime [9].

Problems in law enforcement become one of the big problems that occur in every country, especially for developing countries. The problems of law enforcement in Indonesia are numerous and varied, both in terms of their qualifications and the mode of operation. One of the problems of law enforcement is law enforcement which is still interpreted as law enforcement only so that procedural justice is used as a reference in law enforcement processes. Law enforcers are required to be able to implement and apply the law properly, with the art owned by each officer so that the legal function runs well.

Terrorism as an extraordinary crime, law enforcement must also be done extraordinary. Terrorism with all its manifestations is a serious crime and threatens human values. Terrorism interferes with the public safety of people and goods. Even acts of terrorism are often directed at state or military installations, defense, and security, as well as personifications that run state institutions as directed at heads of state, the government in general, vital and strategic objects as well as other public centers [10].

If law enforcement has a problem, the law goals of justice, usefulness and certainty will not be realized. Law enforcement is problematic; the law also loses its function. In short, law enforcement will greatly affect the purpose and function of law. The law will lose its functional power if it is weak in implementation.

b. Law Enforcement of Terrorism Crimes in Indonesia

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Law enforcement against terrorism in Indonesia refers to the Law of the Republic of Indonesia Number 15 of 2003 concerning the Eradication of Terrorism Crimes. This law is

motivated by noble intentions and objectives, namely to realize the national goals as referred to in the Preamble of the 1945 Constitution of the Republic of Indonesia. The national goal is to protect all Indonesians and all Indonesian bloodspots, promote public welfare, improve life nation and participate in maintaining world order based on freedom and eternal peace and social justice.

To realize the national goal, law enforcement must be treated consistently and continuously. Philosophically, the legal policy to eradicate criminal acts of terrorism is intended as a policy and anticipatory measures that are proactive based on the principle of prudence and are long-term [11].

The purpose of establishing Law of the Republic of Indonesia Number 15 of 2003 concerning Eradication of Criminal Acts of Terrorism is:

- a. provides a strong and comprehensive law basis for achieving low certainty in the process of investigation, investigation, prosecution, and examination in a court of terrorism criminal cases;
- b. creating a safe, orderly and peaceful atmosphere that encourages the realization of a prosperous life for the Indonesian people;
- c. preventing the negative impact of widespread terrorism on people's lives and preventing the abuse of the authority of state apparatuses given the task of preventing and eradicating terrorism;
- d. Implement the principle of transparency and accountability in law enforcement against criminal acts of terrorism; and
- e. Protect the sovereignty of the territory of the Republic of Indonesia and all its contents from terrorism activities that have a background on local, national, or international issues or problems, as well as prevent harassment and pressure from powerful countries under the pretext of combating terrorism.

The significance of the establishment of the Law on the Eradication of Terrorism is a strategic step to strengthen public order and public safety while upholding law and human rights. This law is also not discriminatory, whether based on ethnicity, religion, race, or between groups.

Law enforcement against terrorism must be directed at three concepts: *First*, the concept of total law enforcement demands that all values behind the legal norms are upheld without exception. Law enforcement against criminal acts of terrorism must be carried out following the sound of the law. *Second*, the concept that is fully aware that the total concept needs to be limited by procedural law and so for the protection of individual interests. In this concept, there are often administrative, financial and priority constraints. *Third*, the concept of actual law enforcement that emerged after the discretion in law enforcement was believed to be due to limitations, both related to facilities and infrastructure, the quality of human resources, the quality of legislation and the lack of community participation. This third concept is considered ideal because it refers to positive law provisions and the factual conditions encountered [6].

In general, law enforcement against criminal acts of terrorism can be done through formal and informal methods.

1). The formal methods

Through formal methods, law enforcement against criminal acts of terrorism can be done with the Criminal Justice System (SPP). The criminal justice system is defined as a system in society to tackle crime. Tackling means an effort to control crime so that it is within the limits of community tolerance. The aim is to: a). prevent people from becoming victims of crime; b). resolve cases of crimes that occur so that the community is satisfied that justice has been upheld and the guilty convicted, and c). damage so that those who have committed a crime never repeat their crime.

Judicially and factually, the Criminal Justice System as a bearer of law enforcement powers does not take shelter under one roof of judicial power. Police and Attorney General's two pillars of law enforcement in the function of investigation and prosecution in addition to Correctional Institutions as criminal implementers under the control of Government authority [12].

The operation of the criminal justice system starts from the level of investigation/investigation continued prosecution until the trial of the perpetrators of crimes in court proceedings and ends with the decision of the implementation of the decision in the Penitentiary. The Criminal Justice System is seen as a unique social factor because it involves a variety of organizational subsystems such as the police, prosecutors, courts and penal and also includes advocates. Thus the operation of the criminal justice system involves a complex structure and system called the administration of justice [8].

Law enforcement in the criminal justice system starts with a mechanism that includes phased activities that begin with investigations, prosecutions, hearings in court hearings, and the implementation of judges' decisions by prison institutions. This system applies to all criminal law enforcement in Indonesia regardless of the case.

Law enforcement against terrorists also needs to recognize the rights of terrorism suspects. Law enforcement cannot damage the rule of law itself. To produce the value of justice, law certainty and law benefits not only for terrorists but also victims and do not violate human rights. These three values are needed for law enforcement in terrorism cases.

Value is a fundamental requirement in law. Every human longing for justice he may be an unjust person. The value of legal certainty is a guarantee that the law can be carried out properly. The usefulness of law is a legal objective that has a role in the adjudication process.

Law enforcement through formal channels is indeed conventional, as an effort to combat terrorism through criminal law enforcement approaches. The formal line approach in its development is not just about criminal law enforcement, but positioning terrorism as a common enemy and must be fought. As a result, it is not uncommon for military action to hunt down terrorists and attack countries identified as related to terrorism [13].

Until now, the war against terrorists cannot be won by simply killing and capturing terrorists, gathering intelligence or securing borders. There is also a need for a war of ideas which is the source of terrorist violence. One of them is a strategy that is a soft approach through the deradicalization approach [14]. However, this strategy can also be trapped in generalizations which lead to mutual suspicion towards groups or elements that are considered to have radical ideas.

2). The informal methods

Law enforcement through informal methods that is law enforcement against criminal acts of terrorism without using criminal channels. One of them is through a de-radicalization program to cut the seeds of radicalism in an integrated way. Indonesia made a policy of deradicalization program for prisoners or ex-convicts of terrorism.

Deradicalization is claimed by the Indonesian government as an effective means of combating terrorism. Deradicalization is a softening of views in the sense of accepting the view that an individual's way of achieving his goals by using terrorism is something that is illegal, immoral and cannot be justified.

Academics, practitioners, and theorists of terrorism tend to hold that deradicalization is a difficult job because terrorists are motivated by an ideology that is rooted in religion and is always related to their responsibilities towards their religion. However, de-radicalization is needed to neutralize the threat of terrorism from individuals who are motivated by religious ideology [15].

Deradicalisation is all efforts to transform radical beliefs or ideologies into non-radical ones with multi and interdisciplinary approaches. Deradicalization is a prevention strategy that becomes an alternative to counter-terrorism strategies that tend to use violence or a hard measure approach [16]. Deradicalization as further work after the root of radicalism is known. Deradicalization can also be intended as an anticipatory step before radicalism is formed.

The implementation of deradicalization starts from the understanding that terrorism starts from the process of radicalization so that to combat terrorism, it is more effective by breaking the process of radicalization. Deradicalization can be started directly from the elements and roots of radicalism which are intended as the deradicalization of prevention and maintenance and are done after someone becomes radical.

Deradicalization arises with the assumption that the process of radicalization is a process of understanding or mindset that validates the application of violence. The effort that must be done is to improve the thinking under the background that shaped it through different approaches based on the respective cause factors [17].

This informal law enforcement naturally invites an active role from the BNPT in collaboration with the police, correctional institutions, the Ministry of Religion, and social institutions such as schools, pesantren to universities. Likewise, community leaders such as religious leaders, political figures and citizens, in general, can contribute in their respective fields to be an antidote to various forms of terrorism [18].

The settlement of criminal acts of terrorism with an informal approach is a non-penal effort in which criminal law is the last tool that can be used to resolve criminal cases. Non-penal efforts are essentially more focused on preventive action before the crime occurs.

Nevertheless, the efforts referred to here are broader than just preventive measures but they have entered the repressive realm without using criminal law channels such as de-radicalization and ideologization. Non-penal efforts need to be seen as an effort to uncover the underlying factors and foster terrorism. These factors are the background and social conditions which can directly or indirectly cause or lead to the fertility of crime. These factors include narrow religious ideology.

The existence of social inequality that is not handled systematically can also trigger dissatisfaction with government policies. Dissatisfaction that will increasingly peak if there are triggers in the form of narrow understandings that want to replace all the existing order to be replaced with a new order which in the view of this group is an ideal order to realize social welfare [19].

Criminal acts of terrorism usually grow and develop in the seeds of radicalization that arise in situations of economic, political injustice, weak law enforcement and so on. As long as justice and prosperity have not been realized, radicalization will always appear in the community. Justice involves many aspects, both legal, political, educational, social, human rights, and cultural aspects. The law is with justice. Law is a certain aspect, whereas justice is the character of that law.

c. Problems and Solutions Ahead

There are challenges in the context of deradicalization in the enforcement of criminal acts of terrorism. One of them is the inadequacy of law instruments that can ensnare someone who spreads radicalism. This weak law instrument becomes a loophole for terrorist groups to carry out propaganda or provocation through the spread of hatred such as disbelief, defamation, and banning other groups so that it triggers intolerance and anger that can lead to acts of terrorist violence.

Easy access to information through the internet or print media and books containing radical teachings of terrorism is also a continuing problem. Access to this radical material can accelerate the process of radicalization both independently and in groups through discussion and or learning. Besides, the distortion of understanding *jihad* and martyrdom as the highest practice in religious teachings (example: Islam). The distortion of these two important terms in Islam is used to recruit someone into terrorism and sacrifice his life in return for heavenly pleasure [15].

Deradicalization design can be done through 3 (three) approaches, namely:

- 1) reduction, namely deterrence by teaching prevention to the public about radical understanding, so that there is no omission to develop such understanding. The prisoners are aware that overcoming violence such as suicide bombing is not *jihad*;
- 2) rehabilitation, namely the fostering of the independence and personality of ex-terrorist inmates so that after they leave prison, they have the expertise and can open jobs and have good personalities and mindset, especially in seeing parties who are different from them; and
- 3) resocialization and reintegration, namely guiding ex-terrorist prisoners in socializing and reuniting with the community [14].

Law enforcement against terrorism must be able to fulfill three basic values of the law, namely the value of justice, law certainty and expediency. Both in terms of theoretical and practical, the three basic values are not easy to realize harmoniously. Fulfilling the value of law certainty, sometimes it has to sacrifice the value of justice and expediency. Likewise, the value of justice and expediency on the one hand, on the other hand, will be able to result in the sacrifice of the value of legal certainty [20].

Law enforcement policies against terrorism that focus on preventive measures should be prioritized. This is important to understand the urgency of social issues that are the main problem in acts of terrorism. Part of social policy is to improve public education to support the delivery of religious messages and public acceptance of multiculturalism and the dangers of religious violence [17].

Deradicalisation in persuasive law enforcement is expected to be able to overcome the limitations of criminal law and not clash with human rights protected by international law. This approach is also part of the legal certainty for perpetrators of criminal acts of terrorism to obtain justice and benefit of the law. The existence of justice, certainty and usefulness is a form of basic legal values. The law is also able to play its functional role as a balance, determination, and happiness.

4. Conclusion

Based on the above discussion it can be concluded that law enforcement is the administration of law by law enforcement officers and by everyone concerned following applicable law. The operation of the legal system will be seen by law enforcement. Without law enforcement, justice, certainty, and legal benefits will not be fulfilled. Law enforcement must be maximized so that the law can work to realize legal objectives. Weak law implementation will be distant and isolated from the community. The success of law enforcement will determine and become a barometer of law legitimacy in social reality. Law enforcement against terrorism in Indonesia refers to the Law of the Republic of Indonesia Number 15 of 2003 concerning the Eradication of Terrorism Crimes. The law policy to eradicate terrorism is intended as a long-term policy and anticipatory measure. Law enforcement against terrorism can be done through formal and informal methods. Law enforcement through formal methods with the Criminal Justice System. Through informal methods without using criminal methods, one of which is through the deradicalization program. Indonesia made a policy of deradicalizing steps towards prisoners or ex-convicts of terrorism. Deradicalization is an effective means of combating terrorism. The challenge in upholding criminal acts of terrorism is the inadequacy of law instruments that can ensnare someone who spreads radicalism. This has become a loophole for terrorist groups to carry out propaganda or provocation. Deradicalization design can be done through four approaches, namely reduction, rehabilitation, resocialization, and reintegration. Law enforcement against terrorism must be able to fulfill three basic values of the law, namely the value of justice, legal certainty and expediency. The existence of justice, certainty and usefulness is a form of basic legal values. The law is also able to play its functional role, namely balance, permanence, and happiness.

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