

CRIMINAL LAW POLICY ON THE DERADICALIZATION OF CRIMINAL ACTS OF TERRORISM

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ABSTRACT

The criminal law policies currently being implemented in the context of combating terrorism in Indonesia include the implementation of the Law on Criminal Acts of Terrorism, the Law on the Eradication and Prevention of the Financing of Terrorism and the Emergency Law on Firearms. Policies for the formulation of criminal law in the future include making changes to the bill on counter terrorism, especially in article 1 by including deradicalization programs, deideology into the bill, as well as changing, adding and inserting several articles into several Laws for Combating Criminal Acts of Terrorism. , which can be applied through a political approach that focuses on the factors causing terrorism. The obstacle to the implementation of deradicalization as an effort to prevent terrorism in Indonesia is that deradicalization is a preventive effort to tackle terrorism. In carrying out the deradicalization, the main actors face obstacles, including: Facilities and Infrastructure Factors, Minimal Officers and the uncooperative nature of prisoners, ex-convicts or radical community groups.

Keywords: Legal Policy, Deradicalization, Terrorism

A. PRELIMINARY

The history of radicalism in Indonesia has developed in the New Order and Reformation eras with different patterns, in the Reformation era the emergence of radicalism was motivated by political interests in the name of religion, while in the Soeharto era radicalism was carried out with political engineering that recruited former DI/TII members to become members of jihad and cornering Islam. The radicalism movement then emerged in the Poso and Ambon areas. An understanding of radicalism as an understanding that requires a drastic change movement that is carried out roughly without a systematic and gradual process can cause friction in the social environment.

Religious radicalism that has been rife in recent times is an act that is contrary to the Shari'a with a violent and violent change movement to achieve certain goals according to their perception of religion. The desire to implement an Islamic State is one of the special motives of radicalism and terrorists because of disappointment with the implementation of the system that is applied in Indonesia, but this is impossible to realize because Indonesian society consists of various religions, ethnicities and races, so it is too premature to generalize by equating the

times. The Messenger of Allah and Khulafaurasyidin who enforced the Islamic State became the basis for the enforcement of the religious state.

The optimistic thing that can be done to achieve a good government is to apply Islamic values in every system in Indonesia, such as applying the values of Islamic law in positive law in Indonesia, both normatively and contextually.

Understanding radicalism is carried out with two strategies, namely the hard approach and the soft approach. The strategy is carried out by combining prosecution and prevention and carried out simultaneously by taking a "proactive law enforcement" approach without neglecting the "rule of law" and "legal principle" principles.

With this approach, efforts can be made to prevent acts of radicalism that lead to terrorism without having to (wait) for an act and its consequences.

Obstacles to the Implementation of Deradicalization as an Effort to Prevent Terrorism Crimes in Indonesia Linked to Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism is an internal factor that affects the disclosure of terrorism crimes committed by radical groups is the factor of law enforcement officials.

External influence factors that are intended in disclosing cases of criminal acts of terrorism committed by radical groups consist of legal substance factors, legal culture factors and community factors.

The development of Radicalism in the era of globalization is increasing coupled with the rapid development of technology which makes many radical movements appear, especially in social media. This is an opportunity for terrorism to recruit radical groups through the internet.

The government's efforts in developing the ideology of nationalism to reduce radicalism in the midst of the emergence of recruiting members of terrorism on social media, the government eventually formed the National Counterterrorism Agency (BNPT) which is the leading sector authorized to formulate and make policies and strategies as well as become a coordinator in the field of countermeasures. terrorism such as running deradicalization and counter-radicalization programs.

National Counter Terrorism Agency (BNPT) push program deradicalization for prisoners and sympathizers of terrorism in Makassar, South Sulawesi. The plan was carried out in the aftermath of an action, a suicide bombing that occurred at the Makasar Cathedral Church on Sunday, March 29, 2021.

In the program deradicalization In this case, his party cooperates with a foundation that accommodates prisoners and sympathizers of terrorism. This aims to neutralize the thoughts of

those who have been exposed to the notion of radicalism, the targets of which are the terrorists inside and outside prisons.¹

National Counter Terrorism Agency (BNPT) prepare a program plan deradicalization against the former convict of the terrorism case Abu Bakar Ba'asyir (ABB). BNPT open the door wide to receive a visit. The existence of ABB as a partner deradicalization outside the prison, forgotten in the prison, if in the prison they have not followed the program deradicalization," in the program deradicalization, there are three keywords that will be applied to Abu Bakar Ba'asyir. In fact deradicalization There are three keywords, coaching, mentoring, and empowerment.

The existence of laws in force in Indonesia, the government is responsible for providing a sense of security to the community. Therefore, various efforts made by the government to create a sense of security include efforts to prevent the emergence of Radical and Intolerance groups.

The deradicalization carried out by the government is considered less effective, because it has only reached the stage of changing behavior from radical to non-radical by not removing it to the embedded ideology, so that often groups that have a high understanding of radicalism will return to their original radical ideology.

The program from BNPT is Counter Radicalization, which is an effort to inculcate the values of nationalism and non-violent values, with a strategy of approach through education, both formal and non-formal. Counter radicalization directs the general public with the cooperation of religious leaders, educational leaders, community leaders, traditional leaders, youth leaders and other stakeholders in providing national values. Further than that is the criminal law policy regarding deradicalization.

Based on the description above, the formulation of the problem is:

1. How criminal law policy on the deradicalization of criminal acts of terrorism?
2. how obstacles to the deradicalization of criminal acts of terrorism?

¹<https://www.minded-rakyat.com/nasional/pr-011696743/bnpt-gandeng-yayasan-maximizing-deradicalisasi-narapidana-dan-simpatian-teroris/> accessed June 30, 2021

B. THEORY REVIEW

A. Radicalism

The term radicalism is often interpreted differently among interest groups. Within the scope of religious groups, radicalism is a religious movement that seeks to completely overhaul the existing social and political order by using violence.²

Religious radicalism departs from a political movement that is based on the most fundamental religious doctrine completely and literally free from compromise, taming and reinterpretation (interpretation).³ Meanwhile, in the study of social science, radicalism is defined as a view that wants to make fundamental changes in accordance with its interpretation of social reality or the ideology it adheres to.

Based on the study of the meaning of radicalism, radicalism is actually a neutral concept and is not pejorative (harassing). Because radical change can be achieved through peaceful and persuasive means, but it can also be done by force.⁴

B. Terrorism Crime

Terrorism is an act that uses violence or threats of violence that creates an atmosphere of terror or widespread fear, which can cause mass casualties, and/or cause damage or destruction to strategic vital objects, the environment, public facilities, or international facilities by ideological, political, or security disturbances.

C. Terrorism Type

According to Wilkinson, there are several typologies of terrorism, including:⁵

- a. Epiphenomenal terrorism (terror from below) with unplanned characteristics, occurred in the context of a fierce struggle;
- b. Revolutionary terrorism (terror from below) which aims at revolution or radical change to the existing system with the characteristics of always being a group

²A. Rubiadi, *Islamic Radicalism, Nahdatul Ulama The Future of Islamic Moderatism in Indonesia*, Logung Pustaka, Yogyakarta, 2007, p. 33.

³Azyumardi Azra, *Understanding the Symptoms of Fundamentalism*, *Journal of Ulumul Qur'n*, No. 3 Vol. IV 1993, p. 5.

⁴Ismail Hasani and Bonar Tigor Naipospos, *Religious Radicalism in Greater Jakarta and West Java: Implications for Guaranteeing Freedom of Religion/Belief*, Stara Society Library, Jakarta, 2010, p. 19.

⁵ start, *Countering Terrorism as a Special Crime*, seminar material on Security of Terrorism as a Special Crime, Gramedia, Jakarta, 2004, p. 173.

phenomenon, leadership structure, ideological program, conspiracy, para-military element;

- c. Sub-revolutionary terrorism (terror from below) that is politically motivated, pressures the government to change policies or laws, political wars with rival groups, gets rid of certain officials who have the characteristics of being carried out by small groups, can also be individuals, difficult to predict, sometimes difficult to distinguish whether psychopathological or criminal; and
- d. Repressive terrorism (terror from above or state terrorism) with the motive of oppressing individuals or groups (opposition) that is not desired by the oppressors (authoritarian or totalitarian regimes) by means of liquidation with the characteristics of developing into mass terror, there are terror apparatus, secret police, technical persecution, the spread of suspicion among the people, a vehicle for paranoid leaders.

D. Terrorism as an Extraordinary Crime

The crime of terrorism is one form of crime with an international dimension that is very frightening to the public.

In various countries in the world there have been crimes of terrorism, both in developed and developing countries, the acts of terror that have been carried out have taken victims indiscriminately. This caused the United Nations (UN) in its congress in Vienna Austria in 2000 to raise the theme The Prevention of Crime and The Treatment of Offenders, among others, to mention terrorism as a development of acts of violence that need attention.

According to Muladi, terrorism is an extraordinary crime (extraordinary crime) which also requires handling by utilizing extraordinary measures for various reasons:⁶

- a. Terrorism is an act that creates the greatest danger to human rights. In this case the human right to life (the right to life) and the human right to be free from fear;
- b. The target of terrorism is random or indiscriminate which tends to sacrifice innocent people;
- c. Possibility of using weapons of mass destruction using modern technology;
- d. Tendency to create negative synergies between national terrorist organizations and international organizations;

⁶ Ibid, p. 29

- e. Possibility of cooperation between terrorist organizations and organized crime, both national and transnational;
- f. May jeopardize international peace and security. Terrorism as a crime has grown to be transnational

E. Deradicalization of Combating Criminal Acts of Terrorism

Deradicalization comes from the word radical which basically means "change". Meanwhile, deradicalization is a preventive measure taken so that inmates and former convicts as well as other parties who are potentially involved in criminal acts do not commit or do not commit violence or acts of terrorism again.

Experience shows that being arrested, detained and sentenced through a court trial does not deter or stop terrorists from committing acts of violence or terrorism again, and vice versa by taking action or law enforcement activities and accompanied by deradicalization activities against prisoners and ex-convicts and other parties who have the potential to be involved, showing positive (significant) results in order to prevent the reoccurrence of acts of violence or terrorism because they are aware of returning to their real lives.⁷

The deradicalization of terrorism seeks to open insight, that in order to eradicate terrorism, a more serious, integrated, comprehensive and sustainable handling of multi-stakeholders is required with an interdisciplinary approach. The approach is through:⁸

- a. Humanist means that efforts to eradicate terrorism must be in accordance with efforts to uphold human rights. In addition, the eradication of terrorism, according to him, must be able to create prosperity, equality, and justice for the whole community, for suspects, or convicted of terrorism;
- b. Soul approach means that the eradication of terrorism is carried out through a good and educational communication between law enforcement officers and terrorism suspects or convicts, not by means of violence and intimidation; and
- c. Touching the grassroots, is a program that is not only aimed at terrorism suspects or convicts, but this program is also directed at sympathizers and community members who have been exposed to radical ideas, as well as instilling multiculturalism in the wider community.

⁷ Romli Atmasasmita, *Cases of Terrorism in Indonesia Based on Law Number 15 of 2003 concerning Eradication of Criminal Acts of Terrorism*, Seminar on Handling Terrorism as a Special Crime, Mariot, Jakarta, 2004, p. 78.

⁸ AS Hikam, Muhammad, *The Role of Indonesian Civil Society in Stemming Radicalism (Deradicalization)*. PT. Kompas Media Nusantara, Jakarta, 2016.p. 163-165.

C. RESEARCH METHODS

The research method is descriptive analytical, which describes the problems and facts that occur based on positive legal norms, namely the laws related to this research.

Method Approach with normative juridical that is using positive legal norms related to criminal law policy against the deradicalization of criminal acts of terrorism.

Data analysis was carried out qualitatively, meaning without using numbers and statistical formulas.

D. DISCUSSION CRIMINAL LAW POLICY ON THE DERADICALIZATION OF CRIMINAL ACTS OF TERRORISM

The criminal law policies currently being implemented in the context of combating terrorism in Indonesia include the implementation of the Law on Criminal Acts of Terrorism, the Law on the Eradication and Prevention of the Financing of Terrorism and the Emergency Law on Firearms.

Policies for the formulation of criminal law in the future include making changes to the bill on counter terrorism, especially in article 1 by including deradicalization programs, ideology in the bill, as well as changing, adding and inserting several articles into several laws against terrorism. , which can be applied through a political approach that focuses on the factors causing terrorism.

Beginning with the Bali Bombing incident on October 12, 2002, the handling of criminal acts of terrorism began to be carried out seriously in Indonesia. The handling process starting from the investigation, investigation, prosecution and judicial process was a juridical challenge for law enforcement officers, because at that time there were no standard and standard regulations that could be used to handle the terrorism crime case.

Anticipating the legal vacuum to handle the terrorism case, the Government of Indonesia on October 28, 2002 or 6 (six) days after the Bali Bombing incident, issued 2 (two) government regulations in lieu of law, namely Government Regulation in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism, then ratified into law through Law Number 15 of 2003 and Government Regulation in Lieu of Law Number 2 of 2002 concerning the Enforcement of Government Regulation in Lieu of Law Number 1 of 2002 in the Bali Bombing Incident on October 12 2002 (later ratified into law through Law No. 16 of 2003. Although both government regulations in lieu of law exist, the handling of criminal acts

of terrorism in the Bali Bombing case is still very troublesome for the police officers on duty in the field.

Religious-based radicalism (SARA) is often considered the forerunner of various acts of terrorism in Indonesia. In fact, history records several incidents that can be classified as acts of terror that have occurred in Indonesia in recent years. Responding to the development of terrorism crimes in Indonesia, the government made efforts by issuing regulations in the form of Perpu No. 1 of 2002 which was passed into Law No. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism.

Criminal sanctions are applied to the perpetrators of terrorism who are caught, but the presence of parties with radical understanding remains a frightening specter for the community. In addition to efforts in the form of implementing criminal sanctions (penal), the government also needs to implement non-penal measures to complement the shortcomings of the penal efforts carried out.

BNPT's steps together with the Terrorism Prevention Coordination Forum (FKPT) network in the regions require awareness and joint movement in countering the flow of radicalism targeting the younger generation, among others, first, the younger generation is active in media literacy activities, digital literacy both held by BNPT and other institutions. non-government. The goal is that young people can have adequate skills in sorting various digital information and combating hoax content, radicalism, and other negative content.

Violence is the main characteristic of radical groups carrying out their actions. Violence that occurred over several years seen from the causal factors can be grouped as follows:

1. Political Factor

Regarding the demands of the people of Papua, Nanggroe Aceh Darussalam, Central Kalimantan regarding the distribution of resources, the lack of clarity in law enforcement efforts, etc.

2. Religion

In relation to the pressure of the majority group on the minority in terms of granting permits for places of worship, swaaoping carried out by the Islamic Defenders Front (FPI) to areas perceived as immoral, swapping carried out by FPI at places of worship for Ahmadiyah, etc.

3. Socio-Economic

Persecution of ethnic/religious/ racial/minority groups by the majority group, cases of conflict related to the election of regional heads, expulsion of street vendors (PKL) by

government officials, the growth of large-scale supermarkets/modern markets, public intimidation by government officials /entrepreneurs on land tenure, etc.

Obstacles to the Implementation of Deradicalization as an Effort to Prevent Criminal Acts of Terrorism in Indonesia Linked to Law Number 5 of 2018 concerning Eradication of Criminal Acts of Terrorism is that Deradicalization is a preventive effort to tackle terrorism. In carrying out the deradicalization, the main actors face obstacles, including: Facilities and Infrastructure Factors, Minimal Officers and the uncooperative nature of prisoners, ex-convicts or radical community groups.

E. CLOSING

Conclusion

1. The criminal law policies currently being implemented in the context of combating terrorism in Indonesia include the implementation of the Law on Criminal Acts of Terrorism, the Law on the Eradication and Prevention of the Financing of Terrorism and the Emergency Law on Firearms. Policies for the formulation of criminal law in the future include making changes to the bill on counter terrorism, especially in article 1 by including deradicalization programs, deideology into the bill, as well as changing, adding and inserting several articles into several Laws for Combating Criminal Acts of Terrorism. , which can be applied through a political approach that focuses on the factors causing terrorism.
2. The obstacle to the implementation of deradicalization as an effort to prevent terrorism in Indonesia is that deradicalization is a preventive effort to tackle terrorism. In carrying out the deradicalization, the main actors face obstacles, including: Facilities and Infrastructure Factors, Minimal Officers and the uncooperative nature of prisoners, ex-convicts or radical community groups.

Suggestion

1. It is hoped that the Government through the BNPT and the National Police will promote efforts to deradicalize terrorism with this deradicalization effort aimed at balancing efforts to eradicate terrorism through conventional means, such as raids, arrests, and ending terror acts..

2. The deradicalization program carried out by BNPT so that it can be immediately put into a blueprint for the sustainability of the program, the deradicalization program no longer relies on certain people and is not implemented partially.

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