



Analysis of Criminal Policy against Perpetrators of Terrorism Crimes: Perspectives on the Death Penalty and Human Rights in Indonesia

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Abstract

The extent of the terrorist network in Indonesia threatens the threat and integrity of the Republic of Indonesia, manifested in broad trends, organization and systematic networks. Terrorist attacks are increasingly brutal, targeting innocent civilians. The threat is increasingly complex with increasing radicalization and online recruitment, requiring comprehensive action, including cooperation with government agencies, security forces, intelligence, and civil society, as well as a comprehensive approach involving intelligence, community participation, and addressing the root causes of radicalization to eradicate terrorist networks. Eradicating criminal acts of terrorism is a serious challenge for the Indonesian government, with one of the complicated aspects being the implementation of the death penalty against perpetrators of terrorism. This article analyzes Indonesian criminal policy, explains the method of punishment, the Human Rights (HAM) perspective, and critical views on the death penalty. In conclusion, it is important to strike a balance between efforts to enforce the death law and the desire for the principles of human rights and justice in the context of eradicating terrorism. Continuous evaluation of the application of the death law and open dialogue involving various parties are the keys to reaching an agreement that upholds humanitarian values and justice in efforts to overcome criminal acts of terrorism in Indonesia.

Keywords: Terrorism Crimes, Death Penalty, Human Rights, Criminal Policy

1. Introduction

The extensive network of terrorism in Indonesia poses a grave threat that has the potential to disrupt the sovereignty and territorial integrity of the Unitary State of the Republic of Indonesia (NKRI). As highlighted by Winardi (2021), the terrorist movement in Indonesia has been witnessing a disturbing trend of increasing breadth, organization, and systematic networking. Additionally, these acts of terrorism have become more brutal over time, often targeting innocent civilians in their attacks.

According to data from the National Counterterrorism Agency (BNPT) in 2020, the period from 2000 to 2018 recorded a staggering 272 terrorist incidents in Indonesia, resulting in the tragic loss of more than 250 lives. These attacks not only led to casualties but also caused significant material losses and left deep psychological scars on the affected communities. The complexity of the terrorism threat in Indonesia is exacerbated by the rising incidents of radicalization and recruitment facilitated through online platforms. As noted by Mahyuddin et al. (2022), various websites and social media platforms are being exploited by terrorist groups to disseminate propaganda, recruit new members, and plan their nefarious activities. This shift towards online recruitment adds a layer of sophistication to their operations, making it imperative for authorities to monitor and counteract these activities in the virtual realm.

To address the menace of terrorism comprehensively, Indonesia has enacted legal measures, notably Law Number 5 of 2018, which serves as a comprehensive amendment to its predecessor, Law Number 15 of 2003 (Alusa, 2019). This legislation specifically addresses the eradication of criminal acts of terrorism, providing a robust legal framework for law enforcement agencies to combat terrorism effectively. However, the challenge of eradicating terrorism cells in Indonesia requires a concerted and cross-sectoral effort. It is essential for various stakeholders, including government

agencies, security forces, intelligence agencies, and civil society, to collaborate seamlessly (Scaife, 2018). A comprehensive approach that includes intelligence-sharing, community engagement, and addressing the root causes of radicalization is crucial to completely root out the networks and prevent future acts of terrorism. By fostering a united front against terrorism, Indonesia can strengthen its defenses and safeguard the well-being of its citizens.

The rise of acts of terrorism in Indonesia is a serious threat to the country, and data collected by the National Counterterrorism Agency (BNPT) reflects the significant impact that has occurred. From 2000 to 2018, at least 272 terrorist incidents were recorded in Indonesia, which resulted in the deaths of more than 250 people (BNPT, 2020). These incidents not only left casualties, but also left deep psychological trauma and substantial economic losses.

Even though the death penalty has been implemented for perpetrators of terrorism based on Law no. 5 In 2018, the number of terrorist incidents did not decrease significantly. El-Guyanien (2021) identified several factors that cause weak counter-terrorism efforts in Indonesia, including a lack of cooperation between relevant agencies, the lack of optimal use of technology for early detection, and the persistence of intolerance and radicalism in society. This shows the need for a new, more comprehensive approach in countering terrorism.

To overcome this challenge, the government needs to strengthen international cooperation in eradicating transnational terrorism networks. Many terrorism networks in Indonesia have affiliations or receive funding from global terrorist organizations such as Al-Qaeda and ISIS (IPAC, 2018). Therefore, cooperation with other countries is very important, especially in exchanging intelligence and financial investigations into terrorism financing. This approach will help cut resources and financial support for terrorist groups, thereby providing a more effective impact in combating the rise of acts of terrorism in Indonesia.

One of the important additional efforts in overcoming the threat of terrorism in Indonesia is through deradicalization activities to prevent the spread of radical ideas. Research conducted by the Setara Institute in 2019 revealed that as many as 43% of terrorism convicts who had been released were again involved in radical networks. This shows that deradicalization efforts in correctional institutions are still not completely successful. Therefore, it is necessary to involve religious and community leaders in rehabilitation and reintegration programs, so that former terrorist convicts can be rehabilitated properly and not become involved again in radical networks (Thanh-Luong, 2022).

From a technological perspective, Indonesia also needs to immediately build an early detection system for the threat of terrorism by utilizing big data and artificial intelligence. Developed countries such as the United States have succeeded in implementing systems capable of real-time data analysis, which is very useful for preventing terrorist attacks early (Hafrizal, 2019). Utilizing this technology can help authorities detect suspicious behavioral patterns, monitor suspicious online activity, and respond quickly to potential threats. Advanced technology-based early detection systems can be an effective tool in responding to changing dynamics in terrorist group tactics and strategies. By implementing this technological solution, the government can be more proactive in overcoming the threat of terrorism, maintaining public security, and minimizing the potential negative impacts that could be caused by acts of terrorism in Indonesia.

2. Materials and Methods

This research uses normative legal research methods. The normative legal research method is an approach taken by examining legal materials, both primary legal materials and secondary legal materials. The definition of this method can be taken from the work of H. Ishaq which is quoted in the book entitled "Legal Research Methods" by Soerjono Soekanto and Sri Mamudji.

According to Soerjono Soekanto and Sri Mamudji, normative legal research is a form of legal research carried out by examining library materials or secondary data. Thus, the focus of this research lies in the analysis and interpretation of existing legal documents, such as laws, statutory regulations, court decisions, legal literature, and other legal sources.

The normative approach allows researchers to understand and explore legal concepts, principles and norms contained in legal materials. Analysis is carried out in depth to draw legal conclusions and understand the normative implications of existing regulations. The advantage of normative legal research methods is their ability to provide a deep understanding of legal structures and concepts. However, this method also has limitations, especially in involving social perspectives and practical factors that may not be covered in written legal materials.

3. Results and Discussion

3.1 Efforts to Overcome Criminal Acts of Terrorism in Indonesia

Law enforcement is an activity that aims to harmonize the relationship between the values contained in legal norms and the attitudes or actions of society. The aim is to create, maintain and maintain peaceful life in the community. If

there are violations or community actions that conflict with legal norms, the government will take firm action through the law enforcement process in accordance with the provisions of the law.

The criminal act of terrorism in Indonesia is a serious threat that must be faced by the nation and state of the Republic of Indonesia. Every action carried out by terrorists is contrary to the norms of Pancasila and the 1945 Constitution. There are several reasons why terrorism must be faced seriously, both by Indonesia and the international community, including:

1. Utilization of Technology: Terrorist groups utilize advances in technology and communications to achieve their goals. With technological developments, acts of terrorism have the potential to create far greater damage and loss of life than similar acts in the past.
2. Indiscrimination: Acts of terrorism apply indiscriminately to ordinary citizens who are not directly related to the objectives of the terror act, as well as to state installations that are considered legitimate targets in the conventional understanding of the conception of war.
3. Linkages to International Crime: Terrorist groups do not operate in isolation, but are linked to international organized crime organizations in various forms, such as money laundering, drug trafficking, and illegal weapons trafficking.

Based on these reasons, the government and related elements must work together in efforts to overcome criminal acts of terrorism in Indonesia. More extensive and systematic prevention policies are needed than dealing with ordinary crime. One policy that can be implemented is a criminal policy. Criminal policy is part of social policy to overcome the problem of crime in society, both through penal and non-penal means. According to Muladi, the most important role of criminal policy is to mobilize all rational efforts to control or overcome crime, not only through penal but also non-penal means, even through mass media as an effective means of communication. Implementing effective criminal policies in overcoming criminal acts of terrorism requires inter-agency cooperation and a holistic approach. It is hoped that this effort can make a positive contribution in maintaining public security and order and preventing the threat of terrorism in Indonesia.

The use of penal means, or criminal law, involves the provisions of material criminal law and formal criminal law. Combating crime with penal means has become a method commonly applied in society. The aim is to provide a deterrent effect to criminals through a criminal justice system that involves state institutions such as the police, prosecutor's office, courts and prisons for convicts.

Criminal law, according to Wirjono, has the main aim of fulfilling a sense of justice. Apart from that, criminal law is also directed at scaring people from committing crimes, either by scaring many people or perpetrators of certain crimes so that they do not repeat their actions in the future. The threat of the death penalty for perpetrators of criminal acts of terrorism has been regulated in the Law on the Eradication of Criminal Acts of Terrorism (UU No. 5 of 2018). However, there is criticism of the effectiveness of the death penalty in stemming the movement or development of terrorist networks in Indonesia.

In essence, criminal policies with penal means are only a temporary remedy to overcome the symptoms of crime, and are not a complete solution tool that eliminates the source of the causes of crime. Criminal law functions after a crime has occurred, so it does not provide a preventive effect before the crime occurs. Therefore, the use of criminal law has limitations in reaching the root causes of crime in society.

Criminal policy using non-penal means involves efforts to provide assistance, social education, development of social responsibility of community members, improvement of morals and religion, as well as patrol and surveillance activities by security forces. In contrast to penal policies, non-penal approaches are more preventive in nature and prioritize efforts to prevent crime before it occurs.

The facts show that criminal policies using penal means are unable to reach all the roots of crime. Therefore, policies are needed with non-penal means that are able to reach all factors that cause crime, such as economic factors, family, living environment and religion. These various factors are considered to be the root of all crime because they have a significant role in the birth of criminal behavior in society. Through this approach, it is hoped that criminal policy using non-penal means can become a more holistic and effective solution in tackling criminal acts of terrorism, as well as overcoming the causal factors that can encourage people to become vulnerable to criminal acts.

3.2. Application of the Death Penalty to Perpetrators of Criminal Terrorism: Challenges and Human Rights Perspectives in Indonesia

Human Rights (HAM) are the main focus in legal action, especially in the context of implementing the death penalty against perpetrators of criminal acts of terrorism in Indonesia. Human Rights principles, which were born from the Universal Declaration of Human Rights, serve as a guide for UN member countries, including Indonesia, to protect the basic rights of every individual. Although this declaration is not legally binding, many of its principles were adopted into the constitutions of member countries, including Indonesia.

Indonesia, as a member of the UN Human Rights Council, has an important role in promoting and protecting human rights, especially in the context of implementing the death penalty. Although the right to life is recognized as inherent in every human being, challenges arise in implementing human rights principles in criminal law practice. Article 6 of the ICCPR is an important benchmark in the context of the death penalty. Although it does not explicitly reject or recognize the death penalty, this article provides limitations that need to be taken into account by countries that still apply the death penalty. A fair trial process, imposing the death penalty only for the most serious crimes, and the right to seek forgiveness are key principles that need to be upheld.

In the Indonesian context, the application of the death penalty often faces human rights challenges. An open, transparent and fair judicial process is key to ensuring that individual rights remain protected. Article 6 paragraphs 4 and 5 of the ICCPR gives perpetrators sentenced to death the right to request pardon or reduction of sentence, but the final decision remains in the hands of the state. When looking to the future, Indonesia, as a member country of the UN Human Rights Council, must ensure that the application of the death penalty remains in line with international human rights principles. Concrete steps, such as increasing transparency in the judicial process and ensuring that the death penalty is not imposed on vulnerable groups, are essential steps. Commitment to human rights principles, as embodied in the Republic of Indonesia Law. Number 12 of 2005, must be a guideline in every legal action involving the death penalty. or arbitrary. Ensuring a fair and transparent judicial process is a crucial step in avoiding uncertainty and confusion in society.

Opinions critical of the death penalty, especially in the context of terrorism, do not only come from religious aspects, but also from a human rights perspective. Favoring the right to life, which is guaranteed by various international legal norms, is the basis for rejecting the execution of the death penalty. This is in line with the view that the death penalty violates humanitarian principles and fundamental human rights.

Despite this, the use of the death penalty in Indonesia continues to be implemented, especially in the face of the threat of terrorism. It should be remembered that enforcement of the death penalty must pay attention to aspects that include a fair trial process, assessment of the seriousness of crimes, and protection of individual rights. This is important so that Indonesia not only carries out measures to prevent terrorism, but also maintains the integrity of human rights principles which are the foundation of the nation.

As a UN member state, Indonesia has a responsibility to integrate human rights principles into all aspects of national and state life. Therefore, enforcement of the death penalty needs to be monitored and evaluated periodically to ensure conformity with international standards recognized by the global community. Only in this way can efforts to enforce the death penalty be carried out proportionally and in accordance with the humanitarian values that have been upheld by the Indonesian state internationally.

4. Conclusion

From the analysis of Indonesia's criminal policy in tackling criminal acts of terrorism, especially in the context of applying the death penalty to perpetrators of terrorism, several important conclusions can be drawn.

1. The application of the death penalty to perpetrators of terrorism in Indonesia is regulated by Law Number 15 of 2003 and later revised into Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism. It is hoped that the threat of the death penalty will be an effective deterrence and means of eradicating terrorist networks.
2. The Human Rights (HAM) perspective is a critical focus in the application of the death penalty. Indonesia as a UN member state has a responsibility to comply with international human rights standards, and the application of the death penalty must pay attention to the provisions stipulated in the International Covenant on Civil and Political Rights (ICCPR).
3. Critical views on the death penalty are mainly emphasized by religious and moral aspects, such as the views of religious figures and religious leaders in Indonesia. This illustrates that the application of the death penalty triggers ethical and moral debates in society.
4. In dealing with perpetrators of terrorism, firm action by law enforcement officials is necessary. However, it is also important to ensure that the judicial process remains fair, transparent and pays attention to individual rights in order to realize true justice.
5. The abolition of the death penalty is a demand from several parties, including human rights and religious groups, who feel that the death penalty is not in accordance with the principles of humanity and justice.

In closing, the conclusion that can be drawn is the need to balance between enforcing the death penalty as an effort to combat terrorism and ensuring that the principles of human rights and justice are maintained. Continuous evaluation of the application of the death penalty and open dialogue involving various parties are the keys to reaching common ground that respects humanitarian values and justice in the context of overcoming criminal acts of terrorism in Indonesia.

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