



Analysis of Legal Structural Protection of Terrorism Crimes in Indonesia Based on Legal System Theory

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ABSTRACT

The enforcement of terrorism cases in Indonesia still has several problems, including the inability to implement Government Regulation Number 77 of 2019 concerning the Prevention of Criminal Acts of Terrorism, and Protection of Investigators, Public Prosecutors, Judges, and Correctional Officers, and the centralized handling of Terrorism cases in Jakarta. In all entities, the enforcement of criminal acts of terrorism is part of the legal structure according to Lawrence M Friedman's theory which is often used as legal system theory. In this research, the method used is normative juridical research, besides that the research is carried out with a statutory approach, and a case approach. The results showed that Government Regulation Number 77 of 2019 concerning the Prevention of Criminal Acts of Terrorism and the Protection of Investigators, Public Prosecutors, Judges, and Correctional Officers, is still difficult to implement. This is because the guidelines in protecting investigators, public prosecutors, judges, and correctional officers and their families in the case of criminal acts of terrorism who must be given protection by the state from possible threats that endanger themselves, their lives, and/or their property both before, during, and after the case examination process, have not been institutionalized in a regulation or policy by the government to the fullest, based on research, this takes time, not only synergy between stakeholders, such as the budget policy of the finance ministry to the ministry of home affairs and other institutions to sit together to overcome the problems of government regulation number 77 of 2019. On the other hand, the centralized handling of terrorism cases in Jakarta is a priority consideration for the government so that the security factor of the central government in the capital is maximized.

INTRODUCTION

The Indonesian government is very serious about tackling criminal crimes specifically in the field of terrorism. This can be seen in the creation of anti-terrorism laws, apart from that, the government also collaborates with institutions in several countries both at regional and international levels. There is no other reason to prove this seriousness to overcome the practice of terrorism which is becoming increasingly disturbing day by day. Not only is the government's desire (political will) to resolve the problem of terrorism in Indonesia but this desire is translated into an institution or forming a body as proof of its seriousness in dealing with terrorism. Indonesia's efforts to combat terrorism are interesting to study considering that Indonesia is currently still in the process of transition from a totalitarian government to a democratic government.

Terrorism is a criminal act or extraordinary crime that is currently attracting world attention, especially in Indonesia. The terrorism that has occurred in Indonesia recently has ideological, historical, and political connections and is part of the dynamics of the strategic environment at global and regional levels. Although acts of terrorism that have occurred in various regions in recent years have mostly been carried out by Indonesians and only a few external actors. However, it cannot be denied that current acts of terrorism are a combination of domestic actors and those who have transnational networks.

For example, the Bali bombing tragedy I, 2002. This cruel event was the worst terrorist event in Indonesian history. The number of deceased victims came from 20 countries, including Indonesia. A car blew up a nightclub filled with foreign tourists on the island of Bali, sparking a sea of fire that killed 202 people and injured 300 others. With the increasing number of terrorism cases occurring in Indonesia, it is necessary to enforce the law against the perpetrators and acts of terrorism. Law enforcement is an effort to create order, security, and tranquility in society, whether it is prevention eradication, or follow-up after a law violation occurs.

Terrorism is categorized as part of a widespread or systematic attack, the attack is directed directly at the civilian population, especially directed at the souls of innocent people (public by innocent) as is the case in Bali. Due to the categorization of crimes against the general public, the government needs to be responsible and these crimes are included in criminal law, because the perpetrators responsible have been confirmed to be given criminal sanctions, for the sake of the responsibilities they carry out towards the general public. Criminal practices in Indonesia can stand upright based on the maximum normalization of the criminal justice system. When talking about a criminal system, one of the tasks that is of particular concern is the prosecutor's office, one of the entities in law enforcement, the prosecutor's office is the spearhead in prosecuting perpetrators of criminal acts. Moreover, if it is related to criminal acts of terrorism, a professional prosecutor needs to also consider the demands made on human rights which are also attached to perpetrators of criminal acts of terrorism.

There are various human rights problems in the follow-up to criminal acts of terrorism, for example, the protection of perpetrators of criminal acts of terrorism in Article 28 of Law Number 15 of 2003 does not regulate the human rights of perpetrators, namely regarding arrests by investigators which are carried out no later than 7x24 (seven times). twenty-four) hours opens up opportunities for actions that lead to torture or other acts that can violate the suspect's rights and human rights. then article 28 is vulnerable to acts of discrimination against suspects/defendants. This legal vacuum requires special attention by the government in general, and on the other hand, a prosecutor in particular in making demands also needs more consideration before imposing charges on a terrorist suspect or defendant. Djoko Prakoso in his book on Prosecution in Criminal Practice says that:

"In upholding justice and truth, the prosecutor, when prosecuting someone proven to have committed a criminal act, will consider all the actions the defendant has committed, so that the prosecution is felt to be fair by both the defendant and the public. In this way, a prosecutor can create and realize the material truth that is expected and aspired by the entire community."

The Prosecutor's Office of the Republic of Indonesia is a government institution that exercises state power independently, especially in carrying out its duties and authority in the field of prosecution, carrying out its duties and authority in the field of investigation and prosecution of special criminal cases such as corruption and serious violations of Human Rights (HAM) and other authorities. under the law. In criminal cases, theory is not only for prosecutors, but other legal structures need to be understood in the same context, namely investigators, judges, and correctional institutions. Where all of these legal structures are in principle regulated in Government Number 77 of 2019 concerning the Prevention of Criminal Acts of Terrorism and the Protection of Investigators, Public Prosecutors, Judges, and Correctional Officers.

LITERATURE REVIEW

The legal structure of law enforcement is a proposition that is often mentioned by legal system theory. This theory was elaborated by Lawrence M Friedman, that a legal system does not only stand on the text of the law which regulates the creation of order and security for humans, but law enforcers also need to be studied seriously in more depth so that they can work optimally. In the context of this research, law enforcers should be able to be self-aware of their actual role implementation.

The ability to be introspective among law enforcers is the main thing. Law enforcement as a process is essentially the exercise of discretion which involves making decisions that are not strictly regulated by legal rules, but have an element of personal judgment. By quoting Roscoe Pound's opinion, LaFavre stated that essentially discretion is between law and morals (ethics in the narrow sense). Based on this description, it can be said that disruption to law enforcement may occur if infrastructure and superstructural needs have not been properly accommodated by the government as a legislator. Improving the moral values of human rights, as well as the rules and behavior patterns of law enforcers in dealing with criminal acts of terrorism, are priority issues that need

to be studied further. If there is interference and incompatibility between the values that need to be upheld by law enforcers, then the results that will be obtained in law enforcement will not be optimal.

Based on the background above, the main problem that the author will describe is related to how law enforcement handles it, from investigators to the prosecution process to correctional institutions regarding cases of criminal acts of terrorism. and secondly, how does the government accommodate the legal structure related to cases of criminal acts of terrorism? in Indonesia according to legal system theory?

METHODOLOGY

The author will use normative-empirical legal research using secondary and primary data originating from books, legal literature, legislation, interviews, and other materials. The use of this type of normative-empirical legal research is a combination of a normative legal approach with the addition of various empirical elements. In this case, the data to fulfill the empirical element comes from direct interviews that the author will conduct with Public Prosecutors who work in the Directorate of Terrorism and Transnational Crimes.

RESEARCH RESULT AND DISCUSSION

A. Law Enforcement for Special Criminal Cases on Terrorism

In enforcing the crime of terrorism, which is a criminal act, the law enforcement process includes the stages of investigation, investigation, prosecution, and examination at trial. The provisions for these stages are regulated in the Criminal Procedure Code. Each stage is carried out by each law enforcer by their authority, but each stage mentioned above is a unit that is interconnected with each other in a criminal justice system.

In a criminal justice system, the stages in law enforcement consist of investigation and inquiry. An investigator has an important role in identifying and investigating an incident that is suspected of being a criminal act. An investigator must be able to find a case position which is an important point in determining and determining a criminal act and naming a suspect.

Investigators are state organs that have the authority to carry out investigations and collect evidence so that criminal acts come to light. Article 1 number (1) of Law Number 8 of 1981 concerning Criminal Procedure Law states that investigators are police officers of the Republic of Indonesia or certain civil servant officials who are given special authority by law to carry out investigations. Article 6 of the Criminal Procedure Code states that investigators are police officials of the Republic of Indonesia; certain civil servant officials who are given special authority by law.

The practice of investigation is of course different from the duties of an investigator in carrying out an investigation. Investigation in a terrorism case means a series of actions to search for and find a situation or event related to terrorism or suspected of being an act of terrorism. Searching for and attempting to find events suspected of being terrorism are carried out to determine whether the incident can be investigated. The difference with investigations into criminal acts of terrorism is that the process can be linked to intelligence reports because

based on Article 26 paragraph (1) PERPU No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism, intelligence reports can be used as sufficient initial evidence to start an investigation. So, if there is a report of a criminal act of terrorism, then the investigation process can immediately be carried out.

In economic terms, when the process carried out by the police is complete, it is handed over to the prosecutor's office to be followed up by the prosecution and entered into the examination process in court: There are several stages of examination at the court hearing, namely checking the identity of the defendant as regulated in Article 155 of the Criminal Procedure Code, warning the defendant to pay attention and provide advice, read the indictment, ask whether the defendant understands the contents of the indictment, and then obtain the right to make an exception or object to the court process.

In the Law on the Eradication of Criminal Acts of Terrorism, special provisions have been made regarding examinations in court where the provisions are contained in Article 35 paragraph (1), namely:

"If the defendant has been legally summoned and should not appear at court without a valid reason, then the case can be examined and decided without the presence of the defendant."

The provisions in the article above are different from the provisions in the Criminal Procedure Code, wherein in the court examination process the defendant must be present at the trial. This provision is regulated in Article 196 paragraph (1) The court decides cases in the presence of the defendant, unless this law provides otherwise.

In practice, police institutions and prosecutors have been regulated in detail in the criminal procedural law, but the implementation of law enforcement in criminal acts of terrorism is a practice to anticipate acts carried out intentionally using violence or threats of violence which creates an atmosphere of terror or widespread fear of people, causing mass victims by taking away freedom or loss of life and property of other people, causing damage or destruction to vital strategic objects, the environment, public facilities and international facilities.

On this basis, it is necessary to provide and implement protection for investigators, public prosecutors, judges correctional officers, and their families in cases of criminal acts of terrorism so that they must be given protection by the state from possible threats that endanger their person, life and/or property both before and during, or after the case examination process.

B. Centralized Handling of Terrorism Cases in Jakarta and Analysis of Legal Structure Protection According to Legal System Theory

The protection referred to is provided in the form of protection for personal security from physical and mental threats, confidentiality of identity, and other forms of protection specifically proposed by investigators, public prosecutors, judges, and correctional officers. Currently, the practice of terrorist crimes in Indonesia continues to grow. Initially, the modus operandi of terror was often structured, but nowadays it is increasingly unstructured and diverse, for example in lone wolf attacks. Terror networks not only carry out physical

attacks but also carry out propaganda by utilizing developments in information technology, in the end, social media or technological developments develop simultaneously with terrorist crimes which are difficult to stop using conservative means.

Law number 15 of 2003 as the main instrument for countering terrorism is considered to be unable to meet developments occurring in terrorism, so a revision of this Law needs to be carried out. The riot at the Mako Brimob detention center in 2018 resulted in the deaths of five police personnel and one prisoner. Then, the hostage-taking incident at Mako Brimob was followed by acts of terrorism by JAD members in Surabaya on May 13, 2018. In this incident, three churches were attacked by suicide bombs by a family of JAD members resulting in 13 people being killed and 43 others being injured. On this basis, law enforcers for criminal acts of terrorism have become a priority for the government to consider,

Previously, the Supreme Court issued Decree of the Chairman of the Supreme Court number 163 of 2009 dated December 15 2009 concerning the appointment of the South Jakarta District Court to examine and try terrorist cases with consideration of security factors. The Supreme Court's decision is appropriate because it is guided by Article 85 of the Criminal Procedure Code.

Based on this decision letter, all evidence, witnesses, and prosecution were carried out at the South Jakarta District Court. The basis for the crime of terrorism remains the Law on the Eradication of Criminal Acts of Terrorism. Although there are more or less things that are different from the provisions contained in the Criminal Procedure Code. This provision is contained in Article 27 letters b and c, where evidence in criminal terrorism investigations includes other evidence in the form of information spoken, sent, received, or stored electronically with optical devices or similar and data, recordings, or information. which can be seen, read, and/or heard, which can be produced with or without the help of a means, whether written on paper, any physical object other than paper, or recorded electronically. Meanwhile, in the Criminal Procedure Code, evidence is stated in Article 184, which includes witness statements, expert statements, letters, instructions, and defendant statements.

Regarding intelligence reports as evidence in terrorism cases and the possibility of examining and deciding cases of criminal acts of terrorism even if the defendant is not present, it can be said that the provisions contained in the Law on the Eradication of Criminal Acts of Terrorism give more authority to law enforcement officials in handling terrorism cases. The centralization of handling terrorism cases in Jakarta is motivated by several reasons. The existing security system at the District Court in the DKI Jakarta area is considered adequate and has experience in carrying out the trial process for terrorism cases.

The appointment of the District Court in the DKI Jakarta area to carry out the trial process for terrorism cases is due to the widespread distribution of terrorist networks in areas where security is not yet as tight as security in Jakarta. Apart from that, if the trial process for terrorism cases is carried out based on locus delicti, it will be very risky considering that district courts located outside the Jakarta area have never held trials on terrorism cases. The appointment of the

District Court in the DKI Jakarta area to carry out the trial process for terrorism cases is based on the Supreme Court Decree (SKMA).

According to the author, the centralization of courts in Jakarta will reduce the protection of regional law enforcement, not only judges who must be protected but from the police, prosecutors to correctional institutions, this also needs to be carefully considered. Therefore, the solution to centralizing the handling of terrorism cases in Jakarta is to create special terrorism courts in each province so that they can be carried out by the locus delicti.

Even though it has been regulated in the National Counterterrorism Agency Regulation Number 2 of 2020 concerning Procedures for Providing and Implementing Protection for Investigators, Public Prosecutors, Judges and Correctional Officers and Their Families in Terrorism Crime Cases, the Implementation of Prevention of Terrorism Crimes and Protection for Investigators, Public Prosecutors, and Judges and correctional officers are increasingly becoming a crucial problem for which solutions must be provided. The handling of criminal acts of terrorism is different from the handling of other criminal acts. Because the handling of criminal acts of terrorism is special because the terrorism case itself has a very high risk. On this basis, the security priority of the legal structure is an urgent matter to be accommodated by the government. For example, when analyzed by Lawrence M Friedman's legal system theory, Beli states that the effectiveness and success or failure of law enforcement lies in three elements of the legal system. The legal system is all aspects and elements that are arranged as an integrated unit of law. The legal system consists of legal structure, legal substance, and legal culture.

The definition of legal structure is the level or arrangement of law, law implementers, legal institutions, the judiciary, and lawmakers. This legal structure is founded on three independent elements, namely first, the *Beteknis*-system, namely the totality of rules, rules, and legal principles that are formulated into a system of understanding. Second, *Intelligence*, namely institutions (institutions) and law implementing officials, all of which are operational elements (law implementation).

Third, *Beslissingen*'s handling, namely decisions and concrete actions, both from legal officials and community members. However, it is only limited to decisions and actions that have a relationship or are in a relationship that can be carried out with this understanding system.

Therefore, there is a need for protection for law enforcement officials in the field of terrorism, including investigators, public prosecutors, judges, and correctional officers. Based on the above, this PP was created to protect law enforcement officials in handling criminal acts of terrorism. However, in its implementation, policies need to be made by each agency. Therefore, it takes time to implement this PP.

Apart from that, because this PP was only passed in November 2019, the budget for implementing this PP cannot yet be prepared considering that it is nearing the end of the year. Therefore, the implementation of this PP may only begin next year.

CONCLUSIONS AND RECOMMENDATIONS

In handling terrorism cases special handling is required because terrorism cases are classified as extraordinary crimes. The centralized handling of terrorism cases in Jakarta has had both positive and negative impacts. The positive impact is that the handling is centralized in the Directorate of Terrorism and Transnational Crimes, where the handling becomes more organized. Apart from that, in law enforcement in the field of terrorism, law enforcement officers need special protection because their handling is very risky.

When linked to legal system theory, the legal structure accommodated by the government is still far from optimal, not only in the infrastructure aspect, namely the existence of trials held in every province in the region, but the existence of law enforcers for criminal acts of terrorism also still requires policy optimization from the government. for the safety of law enforcers who have become part of the criminal justice system

ADVANCED RESEARCH

The researcher realizes that, given the limited knowledge and abilities of the researchers themselves, there are still many shortcomings in terms of language, writing, and presentation form. Therefore, the researcher expects constructive criticism and suggestions from various parties in order to make the article better.

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