

COUNTERTERRORISM IN INDONESIA'S POSITIVE LAW

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Abstract: *Countering terrorism literally means combating terrorism. In general countering terrorism can be defined as an attempt of prevention and controlling the terrorism. Related to Sandler's opinion stating that there are two main categories in anti-terror policy namely proactive and defensive, then countering terrorism contextually is all efforts done by the state to overcome for example prevention, law enforcement, and others as a form of solutions in controlling terrorism formulated in policy (positive law). As the increase of terrorism crime in Indonesia it makes the government to further revise Law Number 15 of 2003 with new politics of law. Law Number 5 of 2018 on Amendment of Law Number 15 of 2003 on Establishment of Perppu Number 1 of 2002 on Eradication of Terrorism Act to be Law (UU No.5 of 2018 on Eradication of Terrorism Act) not only mandate repressive efforts, but also obligate the government to do the prevention. Terrorism is not extraordinary crime anymore but it is a serious crime that should be handled using serious measures. This study uses juridical normative method; study of law to find rules of law, principles of law, or doctrines of law to answer problems of law that are going to be investigated, including the study of principles of law, systematics of law, vertical and horizontal synchronization of law, comparison of law, and histories of law. The aim that wants to be achieved is finding comprehensive counterterrorism of terrorism crime in Indonesia.*

Keywords: *counterterrorism, positive law, serious crime.*

INTRODUCTION

Terminology of terrorism is firstly popular in the late of 18th centuries. This term is used to show the act of violence done by the state to its people in order to make the people obedient to the government or state. After French Revolution, in France it establishes "Republik de la terreur" under the leader Robes Piere that is aimed to control system of thoughts and feelings of its people. As the time goes by, in 1950 definition of terrorism shifts that is started from Aljazair. National Liberation Front (FLN) popularizes terrorism as "random attack" to civil society that is innocent. Inversion of term by Aljazair is done to combat the use of term "terrorism" in Algerian Natonalist that defines murder is

done to obtain justice. Term of terrorism in its development until now becomes a term that is stated to explain violence act as a form of resistance of unsatisfied group to the world order and wants to change according to perspective of their group's version. Averment of term "terrorism" begins with the tragedy of the destroyed World Trade Center (WTC) building in New York, Pentagon building and attack trial in White House, United States on September 11 2001. It also happened in the use of terrorism term in Indonesia. Term of terrorism appears when Bali bombing happened; October 12 2002 that is stated as the second biggest in the world after the tragedy in United States previously. President Megawati Soekarno Putri responds the tragedy of Bali bombing as threat to the peace and national or international securities by establishing Perppu Number 1 of 2002 on Eradication of Terrorism criminal act). Term of terrorism in Indonesia is defined as criminal act that is formulated into the criminal provision as violence act or violence threat that make terror atmosphere, fear widely and cause the large number of victims. This Perppu is institutionalized into Law Number 15 of 2003 on Establishment of Perppu No.1 of 2002 on Eradication of Terrorism criminal act to become Law. This Law prioritizes the eradication effort or called repressive for the applied 15 years. Then terrorism in 2018 has a definition based on Article 1 paragraph 2 UU No.5 of 2018: "*act that use violence or violence threat that make terror atmosphere or fear widely, that can cause victims, and/or cause destruction or demolition of strategic vital object, natural environment, public facilities or international facility by using ideology, politics, or security disturbance motives.*"

LEGAL MATERIALS AND METHOD

This study uses Juridical Normative method (Marzuki, 2011), which is study of law to find rules of law, principles of law, or doctrines of law to answer problems of law that are going to be investigated. In study of law that is normative includes type of study on principles of law, systematics of law, vertical and horizontal synchronization of law, comparison of law, and histories of law. Study of law that is juridical normative is supported by using statue approach. Statue approach is used because the focus of the study is regulating deradicalization in Indonesia's Positive Law. Thus, it will investigate materials of positive law on regulating deradicalization in Indonesia comprehensively.

RESULTS AND DISCUSSION

Regulation of Terrorism and Terrorism Criminal Act

Indonesia's positive law at this time differentiates between the definition of terrorism and definition of terrorism criminal act. Terrorism has formal meaning based on law Article 1 paragraph 2 Law No.5 of 2018. In contrast, definition of terrorism criminal act is all acts that fulfill the elements in stipulation of criminal as stated in Law No.15 of 2003 or Law No.5 of 2018.

Law No.5 of 2018 is amendment of law in terrorism field including new criminalization of any new mode of terrorism criminal act such as type of explosive material, following military training/paramilitary training/other trainings, either in domestic or in abroad. Other amendment also aggravate criminal penalties to the perpetrator Terrorism criminal act, such as conspiracy, preparation, trial, and help to do

Terrorism criminal act that is enlarged until founder, leader, organizer or people that guide the corporate. Even according to the writer, the establishment of Law No. 5 of 2018 beside strengthen law enforcement it also strengthens the position of apparatus "*Peace Maintenance*".

The definition of Terrorism in Article 1 paragraph 2 of Law No. 5 of 2018 has its own intention and purpose, terrorism is enlarged not only as criminal act but also as other activity in the field of prevention of terrorism criminal act. The definition of terrorism is as follow:

"act that use violence or violence threat that makes terror atmosphere or fear widely, that can make large number of victims, and/or cause destruction or demolition of strategic vital object, natural environment, public facility, or international facility with motives of ideology, politics, or security disturbance."

Elements of terrorism definition are:

- Act that uses violence or violence threat
- Causing terror atmosphere or fear widely, that can cause large number of victims, and/or cause destruction or demolition of strategic vital object, natural environment, public facility, or international facility
- Using motives ideology, politics, or security disturbance

In Law No.5 of 2018, this crime is described as crime that has special characteristics that starts from the radical ideology of Terrorism that needs to be supervised earlier as a part of effort of countering terrorism in general. The legislators try to depict the activity that is not included in the field of Terrorism criminal act. Special characteristics that want to be delivered in terrorism criminal act is that by the establishment of definition of Terrorism word in Law to explain an activity, a belief, and an act, such as development activity of review that is academic scientific, activity of mapping susceptible area of radical ideology of Terrorism, belief - radical ideology of Terrorism and Terrorism act, that all are separated from the context of Terorisme criminal act.

Law No.5 of 2018 regulates from a condition before terrorism crime happened, from the tragedy of terrorism to post-terrorism (criminal act and terrorism act). Condition before terrorism happened, Law No.5 of 2018 mandates to do prevention done through: national preparedness, countering radicalization, and deradicalization. The word "prevention" in this case is defined as Prevention of Terrorism Criminal Act seen from Implementing Regulation PP No.77 of 2019 entitle Prevention of Terrorism Criminal Act and Protection of investigators, prosecutors, judges and correctional officers.

For condition when terrorism happened, Law No.5 Tahun 2018 regulates to do law enforcement through apparatus of police and also military action by Indonesian Soldiers. On the contrary, the condition when terrorism happened, Law No.5 of 2018 regulates the activity of victim recovery, either psychological, medical, or form of compensation in other material form including recovery of facility and infrastructure. The Law at this time shows concrete form of responsible countries from the aspect of security to the victim, explicitly based on Article 35A paragraph (3) Law No.5 of 2018, the aimed victim is the victim of Terrorism criminal act.

From the definition of deradicalization Article 43D paragraph (1) Law No.5 of 2018, overcoming terrorism is done such as belief or ideology. In deradicalization activity that eliminate, reduce and invert radical ideology of Terrorism it is done through a program.

Each program of deradicalization is done step by step and continuously that is differentiated based on subject of target.

Based on Government Regulation No.77 of 2019, all stages of deradicalization are initially identified and assessed. The step to do deradicalization that is done to people or group of people that has an exposure of radical ideology of Terrorism and deradicalization of former convict is equalized through step of assessment of exposure level of radical ideology of Terrorism. Specifically for subject that has an exposure of radical ideology of Terrorism it needs to know things that become the basis of assessment that having the ideology is basically still in the form of belief that has not been realized in the form of certain act, in explanation of Article 43D paragraph (3) letter f it is stated “it is potential to do terrorism criminal act”. At this time the indicator of assessment stated in AKURAD (Sub-Directorate of Society, Directorate of Deradicalization of BNPT, 2020) is applied for convicted person and former convict that in fact there is a realization of criminal act (*actus reus*) *in casu* it is legally proven to have a relation to (*mens rea*) belief of understanding radical terrorism.

Starting from the argumentation of Pancasila as the center of argumentation, then the ideology existing in the people that has an exposure of radical ideology of terrorism ideally faces *de*-ideology of Pancasila and the increase of other ideology. Dichotomy of ideology that is known that there are terms “extreme right and extreme left so it is possibly not enough to assess exposure with the condition of *de*-ideology of Pancasila but it should also be related to have an ideology/other understanding, such as religion. In line with the statement of Amirsyah in Golose (2010), radicalism in the context of terrorism due to the variety of radicalism that contains element of insufficient understanding of religiosity. Therefore, radical ideology of terrorism does not stand alone but it is followed by other understanding that contains element of certain religiosity that is considered insufficient.

The element of religion in this case becomes the differentiator from understanding of other general ideology. Insufficient religiosity is a characteristics of terrorism criminal act so it becomes the differentiator from the understanding of ideology such as Liberal and Communist (usually called extreme left), the *de*-ideology of Pancasila in the context of radical ideology of Terrorism should be followed by understanding the contrary or extreme right. The President, Joko Widodo, at this time calls it “manipulator of religion”. Term that is used by President Joko Widodo according to teh writer is also in accordance with the statement of Daniel Kohler by naming “*cults and New Religion Movement*”.

Insufficient understanding of religion by manipulator of religion prioritizes its belief based on holy book. As its crutch, for the case of movement “extremism of islam” spreads in almost all over muslim areas (including Indonesia) it also uses Islamic text (Al-Quran, hadits, and *classical source-(kitab kuning)* as the basis of legitimation of theology, textually considered to support exclusivism and extremism (Alqurtuby, 2009):

Fight those who do not believe in Allah and not (also) in Last Day, and who do not consider unlawful what Allah and His Messenger have made unlawful and who do not adopt the religion of truth from those who were given the Scripture – [fight] until they give the jizyah willingly while they are humbled. (Q.S. Attaubah: 29).

The phrase radical followed by terminology of law “Terrorism” that has definition namely the element of violence act or violence threat that actually makes the definition obscure (*obsuur*). However, if it is related to the moslem typology in Indonesia, the overview of characeristics that believe the context of the understanding legality of

violence to be clear. Contextually the radical ideology of Terrorism that is meant is same with the extreme right column called *Religious-Oriented* that in 2018 it is considered to have 18.10% existence. It is depicted that there are three characteristics as follows:

- Violence is needed to enforce amar *ma'ruf nahi mungkar*;
- The headman until the President should be from moslem;
- It tends to agree with the concept of *khilafah*.

Formulation of terrorism in Article 1 paragraph 2 Law No. 5 of 2018 is considered to be not characterizing insufficient understanding of religiosity. Motivation that is mentioned is only in the form of: ideology, politics, or security disturbance. Different from UK in its regulation, United Kingdom *Terrorisme Act* 2000 defines terrorism that there is an element of religiosity as the purpose or motivation:

Part I Introductory

“1.—(1) In this Act “terrorism” means the use or threat of action where—

(a) the action falls within subsection (2),

(b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and

(c) the use or threat is made for the purpose of advancing a political, religious or ideological cause. “

The translated by Shodiq (2018) is as follows:

- Act that involve serious violence to someone, serious losses in term of material, threatening someone's life, not people's life that perform an act, making a serious risk for health or public safety or certain part of public or designed seriously to interfere or disturb electronic system;
- The use of threat or designed to influence the government or intimidate public or certain part of public;
- The use or threat made by purpose of politics, religion, or ideology;
- The use or threat included in the activity that involve the usage of weapon or explosive material.

Based on the previous explanation, radical ideology of Terrorism can be described as not an ideology or belief that stands itself. Pancasila as a central argumentation is also new to give answer of Non-Pancasila, which can have definition of communist or liberal ideologies. Radical ideology of Terrorism that become an object of deradicalization is still considered as a counter of Islam in general, which is frequently suspected by the society until disagreement of deradicalization itself, but if this is understood properly actually Islam is strengthened as religion of *rahamatan lil alamin* or the religion that is full of peace without issuing Pancasila in contradiction to the teaching of Islam.

At this time Law No.5 of 2018 is criminal policy in terrorism field that contain activities of countering terrorism either prevention and criminal law enforcement or victim recovery of terrorism criminal act as a form of the presence of state in giving protection in the realization of social defense. The use of penal and non penal efforts as the solution stated in the form of Law use all elements of society and stake holder of the state to be more aware of terrorism danger.

Law No.5 of 2018 has described three efforts in eradicating terrorism as stated by G. P Hoefnagels namely (Arief, 2010):

- *Criminal law application*;
- *Prevention without punishment*

- *Influencing views of society on crime and punishment/mass media.*

Criminal law application in Law No.5 of 2018 is done by strengthening either material or formal law. Strengthening material is done by adding criminal act such as inserting, bringing chemical weapon, biological weapon, radiology, microorganism, nuclear, radioactive or its component. Strengthening the formal law by adding the policy of apparatus of law enforcer in arresting and doing detention in terrorism criminal act.

The effort of *prevention without punishment* contained in Law No.5 of 2018 is started from preparing facility and infrastructure and the ability of apparatus, improvement of the society's preventing ability, mapping susceptible area of terrorism, deradicalization, and others. All of counterterrorism is divided into 3 activities of prevention based on Article 43A Law No.5 of 2018 through 3 activities namely:

- National preparedness;
- Counter-radicalization; and
- deradicalization

If it compares between prevention activity regulated in Presidential Regulation No.46 of 2010 and Law No.5 of 2018, there is a significant difference. The obligation of prevention of terrorism criminal act is not as a duty of function of BNPT in term of institution, but it requires the government (Article 43A of Law No.5 of 2018) and society as the form of developing *extra-legal system* for doing collectively the coordinated prevention by BNPT. The institution of BNPT is placed into institution of coordinator, regulator, and executor in the field of eradicating terrorism.

Article 43A paragraph (1) of Law No.5 of 2018 states that the government should do prevention according to the writer is that the form of strengthening *Peace Maintenance* (Usman, 2014). BNPT is as government institution does not independently have an obligation to do prevention, all government institutions are required to do prevention. In a wider meaning law enforcement in this case includes not only them (institution) law enforcement (*criminal justice system*) but also the institutions beyond them including BNPT and all ministries (at this time there are 38 K/L) that are also required to do peace maintenance as prevention act of terrorism.

The effort of eradicating third crime, *influencing views of society on crime and punishment/mass media* is not explicitly being the norm in Law No.5 of 2018. Activity of using mass media to influence society's view is done in the form of institution partnership. Based on the collected data of the writer, BNPT makes a partnership with National Pers Council on February 9 2019. The partnership is written in *Memorandum of Understanding* including the scope to maintain pers in order to be careful in broadcasting the news of terrorism especially circumspection of terminology usage and does not expose widely identity of apparatus of law enforcer that solve the case for security.

Countering terrorism in the field of terrorism criminal act regulated in Law No.5 of 2018 is implementatively done by referring to Government Regulation No.77 of 2019 on Prevention of Terrorism Criminal Act and Protection of investigators, prosecutors, Judges and correctional officers. Specifically counterterrorism is regulated to be able to do prevention more operational in order to reach politics of policy in achieving *social defense* and *social welfare*.

DERADICALIZATION IN CRIMINAL POLICY

Basically, deradicalization held through this program is to re-educate that is psychological or in other words the inversion of knowledge/ideology to have the ideal ideology (Pancasila). In contrast, program of re-socialization (knowledge of social field) is the form of disengagement activity/subject dissolution from the network or group and admitting into new and conducive social environment.

The subject that becomes target of program of deradicalization can be found in the function of Directorate of Deradicalization of BNPT based on Article 76 of Regulation of Head of BNPT No. Per-01/K.BNPT/I/ 2017 on Organization of system of BNPT, namely convicted terrorist, former convicted terrorist, former terrorist, family and its network done either in prison or beyond prison. Comprehensively, it contains as follows:

- monitoring, analysis and evaluation regarding the activity of guidance of convicted terrorist, former convicted terrorist, former terrorist, family and its network;
- preparing arrangement of draft of policy, strategy and national program of guidance in prison, guidance in society and guidance in prison for Terrorist;
- preparing the coordination of implementation of eradicating terrorism in the field of deradicalization;
- implementation of activity guidance to convicted terrorist, former convicted terrorist, former terrorist, family and its network; and
- monitoring and evaluation and controlling the material of guidance program in prison, guidance in society and guidance in prison for Terrorist.

After the implementation of Law No.5 of 2018, subject of deradicalization faces significant changes. At first deradicalization is aimed to: convicted person, former convicted terrorist, former terrorist, family and its network while at this time based on Article 43D paragraph (2) deradicalization is aimed to: suspect, defendant, convicted person, convict, former convicted terrorist, and to people or group of people that has an exposure of radical ideology of Terrorism.

If it compares, the norm that shows subject of deradicalization before and after the implementation of Law No.5 of 2018, efforts of penal and non penal are also done before Law No.5 of 2018. For non penal it is only limited to subject of convict that show activity of deradicalization as *double track system* that is performed in and for the perpetrator as inmate. For non penal activity, deradicalization is done to the perpetrator that has status of former convicted terrorist and also former terrorist. Therefore, it is also explicitly seen that deradicalization is as a tool of intervention.

Based on the norm of Article 43D of Law No.5 of 2018, deradicalization is not only as *double track system* but also to be able to be done during the process of interrogation of the case to the suspect, defendant, convicted, and convict. For non penal deradicalization beside it is aimed to ex convicted terrorist, it is also aimed to the people or group of people that has an exposure of radical ideology of Terrorism. For subject of ex terrorist it is not regulated anymore as the subject of deradicalization.

SUBJECT OF PERSON THAT HAS AN EXPOSURE OF RADICAL IDEOLOGY OF TERRORISM

Beside Law No.5 of 2018, Subject of person that has an exposure of radical ideology of Terrorism is also regulated in PP No.77 of 2019 on Prevention of Terrorism Criminal Act and Protection of investigators, prosecutors, Judges and correctional officers (PP No. 77 of 2019) that further specifies the intended subjects that have an exposure of radical ideology of Terrorism. Explanation of Article 30 PP No.77 of 2019 is as follow: *“husband/ wife/ child, family, individual or group involved in organization of Terrorism in foreign country or people/group of people that is decided as suspected terrorist based on court decision.”*

Referring to the typology of architecture of counterterrorism, Kohler (2017) places deradicalization as a tool of intervention implemented in the level of micro/smallest social environment such as family. *Consequentially, micro-social intervention tools work with individuals and aim to assist them with leaving their radical milieus and/or ideologies behind.* The family either husband, wife or child in deradicalization is positioned as a supporting partner to reach the success of deradicalization program and *disengagement* especially the stage of social re-integration of convict and ex convict. The family that becomes target or subject of counterterrorism is done through *family counseling* and not deradicalization program done in the level of micro but in the level of social Meso/ social environment is wider than family environment (area of regency/city) with the wide target in order to leave radical understanding.

Based on Article 47 PP No.77 of 2019, deradicalization that is done to people or group of people that has an exposure of radical ideology of Terrorism can be seen in the following:

- guidance of nationalism knowledge;
- guidance of religiosity knowledge; and/or
- entrepreneurship.

CONCLUSION

In Indonesia the policy of prevention that is regulated in the level of Law is recently done in 2018. Indonesia's positive law namely UU No.5 of 2018 specifically regulates prevention activity by combining all activities of prevention and eradication. According to that regulation, activity of prevention is done through National preparedness, Counter Radicalization, and Deradicalization.

These three preventions then further regulated operationally in Government Regulation No.77 of 2019. Based on PP No.77 of 2019 activity of prevention is differentiated based on subject of target. Activity of prevention in countering radicalization and deradicalization specifically differentiates subject of target based on measurement of exposure of radical ideology of Terrorism. For the activity of prevention through national preparedness, it does not mention specifically its subject of target but this activity prioritizes more on the improvement of ability and awareness of apparatus and society and also improvement of facility and infrastructure.

National preparedness is done through society empowerment, the ability upgrading of apparatus, protection, and improvement of facility and infrastructure, development of

terrorism review, and mapping susceptible area of radical ideology of Terrorism is done in order to improve ability of state apparatus in combating terrorism, build awareness of society in general, and geospatial activity, that the entire is readiness activity in facing a terrorism threat.

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