

Non-Penal Policy Strategy in Tackling Criminal Acts of Terrorisme in Indonesia



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ABSTRACT: With so many cases of Radicalism-Terrorism still occurring in Indonesia, it is necessary to tackle crime penally and non-penally. In this study using normative methods. The results of this study found two types of approaches that became penal and non-penal policies. Penal policy in this case makes eradication efforts using the legal basis of Law number 15 of 2018 concerning amendments to Law number 5 of 2003. Meanwhile, non-penal efforts are carried out with preventive actions by precipitating humanity that focuses on prevention such as improving the morality of the Indonesian nation from an early age, providing socialization and understanding of the dangers of Radicalism-Terrorist, understanding of religion and the state of Pancasila, and strengthening coordination and cooperation between agencies to carry out prevention efforts together.

KEYWORDS: terrorism; Radicalism; Penal; Non Penal; Law

I. INTRODUCTION

In the 1945 Constitution, it is stipulated that the State of Indonesia is a state of law. The formulation of the provision that Indonesia is a state of law is given in addition to the meaning of the state government system. The state government system as another element in the rule of law has already been stated in the general section, Explanation of the 1945 Constitution concerning the State Government System. Formulated in Roman numeral I, that Indonesia is a country based on law (*rechstaat*). Furthermore, in number (1) Roman I it is formulated that the State of Indonesia is not based on mere power (*machsstaat*).¹

While Pancasila as an open state ideology that has actual, dynamic and anticipatory properties. Openness of Pancasila ideology does not mean changing the basic values of Pancasila but applying concrete insights, so that it has a clearer ability to solve new problems that arise and actual. Viewed scientifically, it must be realized that people always have their own view of life or philosophy of life that is different from other nations in the world. For the Indonesian nation, Pancasila is also the source of all sources of law that have noble values based on the value of spirituality. "The values of Pancasila become the spirit of the law to be formed, so that the applicable law contains awareness of god, glorifies people, unites various groups, prioritizes deliberation and fairness. Where these values are also practical guidelines that can be used in the administration of the State. If distinguished between religious and non-religious philosophy, Pancasila philosophy is classified as religious philosophy. This shows that the spiritual value of Pancasila materially needs to be implemented and practiced in a real life in all aspects of life in the administration of the State, including the resolution of complex national problems such as Criminal Acts of Terrorism which include a person's perspective in life."²

In the Big Indonesian Dictionary (KBBI), terror is an attempt to create fear or cruelty by a person or group. A terrorist is a person who uses violence to cause fear, usually for political purposes. Terrorism is the use of violence to incite fear in an attempt to achieve an end. From some of the above understandings, terrorists appear always related to politics and have nothing to do with religious teachings. According to the 1939 UN convention, terrorism is any form of crime directed directly at the state with the intention of creating a form of terror against certain people or groups of people or society at large. Terrorism is now on the list of international criminal offences and it is agreed that terrorism is a *hostis humani generis* (crime against all mankind) which was previously unknown in international criminal law. They are crimes of aggression, torture and terrorism.³

But the term terrorism still has different meanings, depending on which angle and meaning. Antonio Cassese gives a general feature of terrorism as a crime in International law which consists of 3 main elements: *First*, the act must have been recognized, or

¹ Teguh Prasetyo, *Sistem Hukum dan Pancasila (Sistem, Sistem Hukum dan Pembentukan Peraturan Perundang-Undangan di Indonesia)*, (Bandung: Nusa Media, 2018), hlm. 41.

² Agung Mafazi dan Achmad Bachroni, *Pencegahan tindak pidana terorisme di Indonesia*, *Jurnal Cakrawala Hukum*, Vol. 12, No. 2, 2021, hlm. 123.

³ Shomadani Putra, *Katakan Tidak Untuk Terorisme*, (Jogjakarta: Ar-Ruzz Media, 2020), hlm. 11.

Non-Penal Policy Strategy in Tackling Criminal Acts of Terrorisme in Indonesia

at least have elements that can be classified as crimes in most countries; *Second* Such acts are aimed at spreading terror by using violence or threats directed against the State, the public or a group of people; *Third* It must be political, ideological, religious and aimed at personal gain. From the explanation above, it shows that terrorism is a crime that is natural to all humans, this is where it should be fought together. But ironically, the eradication mechanism is still at the domestic level and the handling of the class is still punished nationally. As we know that in general national laws, especially in world countries, are very vulnerable to politicization. In fact, it should be an authority in international justice. Due to the fact that terrorism is no longer just an *international crime* that has become an *international organized crime*, it is very difficult to eradicate this type of crime without the same cooperation and understanding among countries in the world.⁴

Prof. Muladi noted that although terrorism is seen as an *extra ordinary crime* and requires *extra ordinary measures*, human rights principles should not be ignored in the law enforcement process. Regarding the crime of terrorism, Muladi also argued that terrorism is an extraordinary crime that also requires handling by utilizing extraordinary means because of various things:

1. Terrorism is the act that creates the greatest danger to human rights. In this case the human right to life and the human right to be free from fear.
2. The targets of terrorism are random or indiscriminate which tends to victimize innocent people.
3. The possibility of using weapons of mass destruction using modern technology.
4. The tendency of negative synergies between national terrorist organizations and international organizations.
5. Possible cooperation between terrorist organizations and organized crime of both national and transnational nature.
6. May endanger international peace and security.⁵

In cases that occur every year there are always cases related to terrorism, the most highlighted are the Bali Bombings that occurred in 2002, simultaneous church bombings on Christmas Eve that occurred in 13 major cities in Indonesia and many more cases of terrorism that claimed lives. Based on the Global Terrorism Index in Indonesia, it can be seen that for attacks in 2023 it has decreased by 56 percent. The terrorism index in Indonesia has also decreased in terms of the number of deaths and socio-economic impacts on society and the country. There are three things that become a benchmark to measure the terrorism index, namely the number of attacks, the number of victims and the impact caused by the attack.⁶ Although 2023 has decreased, suspected terrorist perpetrators still occur with evidence that in October 2023 Densus 88 anti-terror arrested 18 suspected terrorists, these terrorist suspects came from Anshar Daulah and Jemaah Islamiyah.⁷ Of course, radicalism-terrorism is still prevalent in Indonesia today, especially during the political years that are quite heated. This is because terrorism cannot be separated from social, political, and economic factors. Terrorism that still occurs in Indonesia certainly needs a more special approach to overcome this terrorism crime, especially for the younger generation who are exposed to the radicalism-terrorist virus.

Looking at the discussion above, the question arises about how the non-penal policy strategy in tackling criminal acts of terrorism in Indonesia.

II. RESEARCH METHODS

This research uses normative legal research methods because the focus of the study begins with uncertainty of norms. In order to understand the problems discussed, this study uses a *conceptual approach* and *comparative approach*. In addition, to collect legal materials used document study techniques, which are analyzed using qualitative analysis. Data collection techniques to solve this problem are carried out by documentary studies or *library research* studies, which are then analyzed qualitatively. Analysis techniques are carried out in stages, namely materials or legal literature are sought and collected for study so that they can provide pictures of the research topic, ultimately will help researchers make an objective conclusion.

III. RESULTS AND DISCUSSION

A. Regulation on Radicalism-Terrorists

Terrorism has had a negative impact on the personal lives of victims and their families and also has a negative impact on the nation and state. For families of victims of terrorist barbarity carrying a heavy psychological impact, the loss of loved ones is a psychological burden that is difficult to face. For the State, acts of violence committed by terrorists have a negative impact on the image of security and comfort of the country. Therefore, the government must be serious in tackling terrorism. Indonesia has seriously made efforts to combat terrorism, these efforts can be classified into two scopes, namely internal and external. Internal efforts are counterterrorism efforts carried out by the Indonesian government without involving other countries, while external efforts are counterterrorism efforts carried out with other countries both regionally and internationally.⁸

⁴ Ibid., hlm. 12.

⁵ Muladi, Bahan Seminar 'Penanggulangan Terorisme Sebagai Tindak Pidana Khusus', Jakarta, 28 Januari 2004, hlm.3.

⁶ <https://news.republika.co.id/berita/ruuiw9377/bnpt-indeks-serangan-terorisme-2023-di-indonesia-turun-56-persen>, di akses pada 25 Oktober 2023.

⁷ <https://databoks.katadata.co.id/datapublish/2023/10/27/densus-88-tangkap-18-teroris-sepanjang-oktober-2023-terbanyak-di-ntb>, diakses pada 27 Oktober 2023.

⁸ Reni Windiani, *Peran Indonesia Dalam Memerangi Terorisme*, Jurnal Ilmu Sosial Vol. 16, No. 2, 2017, hlm. 139.

Non-Penal Policy Strategy in Tackling Criminal Acts of Terrorisme in Indonesia

In Law number 5 of 2018 concerning amendments to Law number 15 of 2003, concerning the application of the government in lieu of Law number 1 of 2002 concerning the eradication of criminal acts of terrorism provides an explanation in Article 1 Paragraphs 1 and 2 related to Criminal Acts of Terrorism and the definition of Terrorism which means:

1. Criminal Acts of Terrorism means all acts that meet the elements of a criminal act in accordance with the provisions of this Law.
2. Terrorism is an act that uses violence or the threat of violence that creates an atmosphere of widespread terror or fear, which can cause mass casualties, and/or cause damage or destruction to strategically vital objects, living environments, public facilities, or international facilities with ideological, political, or security disturbance motives.

In addition, there are criminal threats related to someone who deliberately makes threats of terror violence to the wider community, this is in article 6 which reads:

"Any Person who intentionally uses Violence or Threats of Violence that creates an atmosphere of terror or fear of people widely, causes mass casualties by depriving others of their freedom or loss of life and property, or causes damage or destruction to Strategic Vital Objects, the environment or Public Facilities or international facilities shall be punished with imprisonment of not less than 5 (five) years and at most a length of 20 (twenty) years, life imprisonment, or death penalty."

This criminal liability is also contained in article 10A, namely:

- 1) Any person who unlawfully enters into the territory of the Unitary State of the Republic of Indonesia, makes, receives, obtains, delivers, controls, carries, has supplies thereof or has in his possession, stores, transports, conceals, or removes from the territory of the Unitary State of the Republic of Indonesia chemical weapons, biological weapons, radiological, microorganisms, nuclear, radioactive or any component thereof, with the intention to commit an Act Terrorism is punishable with a maximum imprisonment of 3 (three) years and a maximum of 20 (two puluh) years, life imprisonment, or the death penalty.
- 2) Any person who knowingly trades potential materials as explosives or trades chemical weapons, biological weapons, radiology, microorganisms, nuclear, radioactive materials or their components to commit Criminal Acts of Terrorism as referred to in Article 9 or Article 10 shall be punished with a maximum imprisonment of 2 (two) years and a maximum of 7 (seven) years.
- 3) In the event that potential materials or components as referred to in paragraph (2) are proven to be used in Criminal Acts of Terrorism, punishable with a maximum imprisonment of 4 (four) years and a maximum of 15 (fifteen) years.
- 4) Any person who enters into and/or removes from the territory of the Unitary State of the Republic of Indonesia an item other than as referred to in paragraph (1) and paragraph (2) that can be used to commit a Criminal Act of Terrorism shall be punished with a maximum imprisonment of 3 (three) years and a long period of 12 (twelve) years.⁹

Relating to criminal liability is also contained in Article 12 and, Article 13 inserted 2 (two) articles, namely Article 12A and Article 12B.

In Law number 5 of 2018 concerning amendments to Law number 15 of 2003, concerning the application of the government in lieu of Law number 1 of 2002 concerning the eradication of criminal acts of terrorism, there is a prevention of criminal acts of terrorism regulated in Chapter VIIA part one of Articles 43A, 43B, 43C, and 43D.

Indonesia is one of the countries that often occurs cases of Terrorist Radicalism, in an effort to eradicate terrorism in Indonesia the government made Law number 5 of 2018 concerning amendments to Law number 15 of 2003, concerning the application of government substitutes for Law number 1 of 2002 concerning the eradication of criminal acts of terrorism. The government's seriousness in handling terrorism cases in addition to passing the Terrorist Law also established the National Counterterrorism Agency BNPT and involved the TNI/Polri to eradicate terrorism. In addition, the government also programs for someone who has become a terrorist by changing what was originally radical to what was originally called a deradicalization program.

B. STRATEGY TO COUNTER CRIMINAL ACTS OF TERRORISM THROUGH NON-PENAL POLICY

In preventing domestic terrorism in general and preventing terrorists specifically, BNPT outlines 3 strategic approaches, namely: ideology, politics and law. Ideological strategies include strengthening Pancasila as the nation's ideology; strengthening moderate Islam such as NU, Muhammadiyah, and MUI to be part of 300 *counter-radicalism* (deradicalization) efforts. BNPT has also prepared the *blueprint* of the program, among others, through a moderate understanding of religious doctrine; a deep understanding of the dynamics of global radical movements & their relation to Indonesian radicalism; and formed a special study on radicalism. In the political strategy, the government and the DPR are expected to take firm action in dealing with acts of violence and anarchism, especially those with a background of radicalism in the name of religion and SARA issues by:

1. Presenting the state quickly and precisely in the SARA conflict,
2. Support the National Police to dare to exercise the authority to act based on their own considerations (discretionary principle).

⁹ Undang-Undang nomor 5 tahun 2018 tentang perubahan atas undang-undang nomor 15 tahun 2003, tentang penerapan pemerintah pengganti undang-undang nomor 1 tahun 2002 tentang pemberantasan tindak pidana terorisme

Non-Penal Policy Strategy in Tackling Criminal Acts of Terrorisme in Indonesia

3. Raise awareness of national leaders, governments and moderate Islamic groups about the serious threat of radicalism to the joints of the nation and state.
4. Stirring up the spirit of peaceful Islam (*Rahmatan LilAlamin*).
5. Synergize between moderate Islamic leaders and law enforcement officials in responding to radicalism.¹⁰

According to Prof. Barda Nawawi Arief, efforts or policies to prevent and overcome crime include the field of criminal policy. In crime prevention, there are two paths, namely penal and non-penal. Penar policy is a policy that focuses on the nature of "repressive" (eradication / eradication / crackdown). This criminal policy is also inseparable from broader policies, namely social policies consisting of policies / efforts for social welfare and policies or efforts for community protection. Crime reduction policies are carried out using the means of "penal" (criminal law), so criminal law policies, especially at the judicial policy stage, must pay attention to and lead to the achievement of the objectives of social policies in the form of "social welfare" and "social defense". In this case, the government carried out criminal law reform actions by enacting Law number 5 of 2018 concerning amendments to Law number 15 of 2003, concerning the application of government substitutes for Law number 1 of 2002 concerning the eradication of criminal acts of terrorism.

As for efforts to overcome crime through "non-penal" channels are more "prefentive" or preventive measures for the occurrence of crime, the main target is to deal with conducive factors that cause crime.¹¹ These conducive factors include focusing on social problems or conditions that can directly or indirectly lead to crime. Viewed from the perspective of macro and global criminal politics, non-penal efforts occupy a key and strategic position in overcoming the causes and conditions that cause crime. Some problems and social conditions that can be conducive factors to the emergence of crime, these are clearly problems that cannot be overcome solely by "penal policy". This is where the "penal" path is limited and therefore, must be supported by the "non-penal" path. One of the "nonpenal" ways to overcome social problems as mentioned above is through the "social policy" route. Social policy is basically a policy or efforts that are racially to achieve community welfare.

The non-penal step taken by the government in tackling terrorism is to formulate the prevention of criminal acts of terrorism contained in Chapter VIIA of Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law. Chapter VIIA consists of articles 43A, 43B, 43C, and 43D. These articles contain the government's obligation to prevent Criminal Acts of Terrorism, as written in article 43A paragraph (1) which reads: "The government is obliged to prevent Criminal Acts of Terrorism" Furthermore, the steps taken by the government in preventing Criminal Acts of Terrorism are also explained in article 43A paragraph (3) which reads: "Prevention as referred to in paragraph (1) is carried out through:

- a. national preparedness;
- b. counter radicalization; and
- c. deradicalization."¹²

Counterterrorism efforts are not only carried out by the central government because each region has its own map of the spread of radical terrorism so it is impossible to rely only on efforts from the central government.¹³ Deradicalization is the process of creating a peaceful environment, preventing the growth of radical groups by responding to the root causes that drive the 17 groups to grow. According to Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law, Article 43D Deradicalization is a planned, integrated, systematic, and continuous process carried out to eliminate or reduce and reverse the radical understanding of terrorism that has occurred. The goal of deradicalization is to return or invite terrorists to return to being a better person and avoid violent acts they commit with terrorist groups. Conceptually, deradicalization refers to counterterrorism preventive measures or strategies to neutralize ideas that are considered dangerous to be radicalized by a non-violent approach, namely through interdisciplinary approaches, such as legal, psychological, religious and socio-cultural to suspects, defendants, convicted prisoners, former terrorism convicts, people or groups of people who have been exposed to terrorism and/or pro-violence radicals.¹⁴

Preventive efforts are non-penal countermeasures (prevention) carried out by improving the social and economic conditions of the community, increasing legal awareness and community discipline, and improving moral education. The purpose of preventive efforts is to provide motivation, guidance and direction to the community, especially about the dangers of terrorism and the laws

¹⁰ Sri Yunanto, *Ancaman Dan Strategi Penanggulangan Terorisme Di Dunia Dan Indonesia*, (Jakarta: Institute For Peace and Security Studies (IPSS), 2017), hlm. 301.

¹¹ Barda Nawawi Arief, *Bunga Rampai "Kebijakan Hukum Pidana" Perkembangan Penyusunan Konsep KUHP Baru*, (Semarang 2008, Kencana Prenada Media Group), hlm. 46.

¹² Undang-Undang Nomor 5 Tahun 2018 tentang Perubahan Atas Undang-Undang Nomor 15 Tahun 2003 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2002 tentang Pemberantasan Tindak Pidana Terorisme Menjadi Undang-Undang, Pasal 43A Ayat 1.

¹³ Krisna Hidayatullah Ibnu Hartoyo, R.B. Sularto dan AM Endah Sri Astuti, *Kebijakan Non Penal Dalam Penanggulangan Terorisme Di Jawa Tengah*, Jurnal Diponegoro Law, Vol. 9, No. 1, 2020, hlm. 121.

¹⁴ Syukri Kurniawan, Anditya Rahayu Putri, Tendy Septiyo dan Pujijono, *Upaya Non Penal Dalam Menanggulangi Tindak Pidana Terorisme Dengan Program Deradikalisme Di Indonesia*, Jurnal Yustisiabel, Vol. 4, No. 1, 2020, hlm. 18.

Non-Penal Policy Strategy in Tackling Criminal Acts of Terrorisme in Indonesia

that regulate it so that the public understands and is aware of it. In addition, another objective is to supervise the wider community in order to protect themselves from terrorists and make them aware of the impact caused by the danger of terrorism. Non-Penal efforts occupy a strategic key position in tackling the causes of crime and the conditions that lead to crime. Efforts to overcome crime in the form of Non-Penal are more to prevent a criminal act, which focuses on problems or social conditions that can directly or indirectly cause or foster crime. Non-penal means need to be intensified also because of the emergence of doubts about the penal path which is considered unable to prevent or overcome the occurrence of crime. So it is important to explore and streamline all non-penal efforts to complete the lack of existing penal facilities. Against the dangers of terrorism crimes that originate from SARA-based radicalism or religion, there are several non-penal means that can be taken such as religious and moral education from an early age, providing understanding and awareness efforts to perpetrators of terrorism and radical understanding, Strengthen coordination and cooperation between agencies to carry out prevention efforts together.¹⁵

In preventing and tackling terrorism, the Government remains guided by the principles that have been taken before, namely preventive and repressive actions supported by efforts to strengthen the legal framework as a basis for proactive actions in dealing with activities, especially in exposing terrorism networks. Increased intelligence cooperation, both domestic and with foreign intelligence, through the exchange of information and other assistance, continues to be increased. To narrow the space for perpetrators of terrorist activities, the Government will continue to encourage the authorities to increase control and supervision of the traffic of people and goods at airports, sea ports, and border areas, including the flow of funds, both domestic and interstate. Control and supervision will also be carried out on the trade and use of explosives, chemicals, firearms and ammunition within the TNI, Police, and government agencies. In addition, the TNI, Police, and government agencies also continue to conduct in-depth studies in collaboration with academics, community leaders, and religious leaders. In addition, the holding of cultural degrees and lectures on national insight and the dissemination of terrorism books can change the negative public perception of the Government's steps to combat terrorism in Indonesia.

Increasing the ability of various anti-terror and intelligence units to use primary sources and information networks is needed in order to form a professional and integrated anti-terror apparatus from the TNI, Polri, and BIN. Furthermore, international cooperation really needs to be improved because terrorism is a cross-border problem that has networks and channels not only in Indonesia.¹⁶

CONCLUSIONS

Based on the discussion above, it can be concluded that terrorism is a form of crime directed directly at the state with the intention of creating a form of terror against certain people or groups of people or the wider community. Terrorism is now on the list of international criminal offences and it is agreed that terrorism is a *hostis humani generis* (crime against all mankind) which was previously unknown in international criminal law. They are crimes of aggression, torture and terrorism. Indonesia, which is affected by terrorism in this case, has made various efforts related to the eradication of radicalism-terrorism, both penal and non-penal efforts.

The government's penal policy carried out criminal law reform actions by enacting Law number 5 of 2018 concerning amendments to Law number 15 of 2003, concerning the application of the government in lieu of Law number 1 of 2002 concerning the eradication of criminal acts of terrorism. The enactment of this law as a legal basis in eradicating criminal acts that are increasingly penetrating among young people, the seriousness of the government is certainly not only through penal policy but also with non-penal policy. In the non-penal policy, the government needs to do many things including improving the morality of the Indonesian nation from an early age, providing socialization and understanding of the dangers of Radicalism-Terrorist, understanding of religion and the state of Pancasila, and strengthening coordination and cooperation between agencies to carry out prevention efforts together. In addition, the government through the National Terrorist Eradication Agency (BNPT) has carried out deradicalization efforts as an effort to neutralize radicalism-terrorist ideas that occur in victims of terrorism through interdisciplinary approaches, such as law, psychology, religion and socio-culture.

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¹⁵ Abdul Karim dan Elfrida Ratnawati Gultom, *Penanggulangan Tindak Pidana Terorisme Di Indonesia Dengan Pendekatan Penal Dan Non Penal*, Jurnal Palar, Vol. 9, No.1, 2023, hlm. 23.

¹⁶ Moh. Djafar Shodiq, *Strategi Penanggulangan Terhadap Pelaku (Kelompok) Tindak Pidana Terorisme Dengan Pendekatan Penal Dan Non Penal*, Thesis Sekolah Tinggi Ilmu Hukum Jakarta, 2010, hlm. 128.

Non-Penal Policy Strategy in Tackling Criminal Acts of Terrorisme in Indonesia

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