



THE URGENCY OF REGULATING THE AUTHORITY OF THE INDONESIAN NATIONAL ARMED FORCES (TNI) IN COUNTERING TERRORISM THAT THREATENS THE SOVEREIGNTY OF THE UNITARY REPUBLIC OF INDONESIA

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Abstract

The authority of the Indonesian National Armed Forces (TNI) in addressing acts of terrorism, as mandated by the TNI Law through Non-War Military Operations (OMSP), as stated in Article 7 paragraph (2) letter (b) number 3 of Law Number 34 Year 2004 regarding the Indonesian National Armed Forces, is one of the main tasks of the TNI in OMSP, hence it is the mandate of the TNI's authority in addressing acts of terrorism. To date, there are no implementing regulations that govern this TNI authority, resulting in ambiguity and a legal vacuum that causes hesitation in every military operation carried out by the TNI to counteract acts of terrorism, significantly threatening state sovereignty, thus raises questions with the problems: 1. What is the urgency of the regulation of authority in countering terrorism that threatens the sovereignty of the Indonesian State by the Indonesian National Armed Forces (TNI); 2. What is the model of involvement of the Indonesian National Armed Forces (TNI) in countering acts of terrorism that threaten the sovereignty of the Indonesian State? Therefore, the author uses normative legal research, a statutory approach method, a concept analysis, and a comparison approach. With this research, the author tries to explain that the arrangement of TNI authority in addressing acts of terrorism that have threatened state sovereignty is essential and urgent to be immediately enacted as the legality of the military operation carried out considering the current threat of terrorism which is increasingly developing following the times. So that the involvement of the TNI in addressing acts of terrorism is no longer carried out as an auxiliary task to the Indonesian National Police (POLRI). The TNI, in addressing acts of terrorism threatening state sovereignty, has clear and firm boundaries by the place, time, and level of threat such that the TNI can directly conduct military operations to address these acts of terror.

Keywords: *Terrorism, TNI Involvement, Non-War Military Operations.*

1. INTRODUCTION

Significant changes in the security sector due to globalization are evidenced by the bias in the concept of the nation-state, followed by the loss of barriers between regions of the country, making sovereignty, not something absolute. Suppose you take the agenda of terrorism from the 9/11 case in the United States to the Bali Bombing series in Indonesia. In that case, the death of one of the masterminds of the bombings did not break the chain of subsequent bombings. Terrorists have expanded their networks throughout the world. Their operation was successful due to globalization, which is associated with the internet, making communication more accessible, for example, by conducting bomb-making training through applications such as Skype. With thereby, terrorism action has a very extraordinary effect on average for the public and the state, so the international community strongly condemns this act of terrorism, especially countries that have experienced the impact of cruelty terrorism action, one of which is Indonesia. Acts of terrorism are in the category Extra Ordinary Crime and is multidimensional and propagates across the country, with originating actor from domestically and abroad. In connection with global developments that

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threaten the territorial sovereignty of the Unitary State of the Republic of Indonesia, acts of terrorism are considered as an understanding which assumes that by using violence, intimidation, and the like, which cause anxiety and fear, which can even cause loss of life and property, to achieve goals both individually and as a group or in an organization, usually has a broad network, both national and international scale.

With such a category, eradication cannot use only mediocre methods, such as dealing with ordinary crimes such as crimes of assault, theft, or murder. Acts of terrorism always use threats or acts of violence by threatening the safety of life and property, either choosing the victim's target or without choosing who will be the victim. For example, the Bali bombing tragedy had a significant impact on the ordinary, acceptable society and economics, was traumatic public local nor international resulted afraid of visiting Bali, and Indonesia was considered a vulnerable country to acts of terror, weakening the defense system and national security. A threat that is then carried out by terrorists to the government or parties that are against their interests usually occurs in various ways, such as killing, torturing, kidnapping, robbing, intimidating, or piracy. It has been done by the Free Papua Organization (OPM) in Papua. As the government's representative, the Coordinating Minister for Politics, Law, and Security (Menko Polhukam), Mahfud MD, officially declared on Thursday, 29 March 2021, that the Free Papua Organization (OPM) was a terrorist organization.

Regarding Article 1, paragraph (2) of Law Number 5 2018 concerning the Eradication of Criminal Acts of Terrorism and the consideration that the movements and actions they have carried out have disturbed the community, the decision was taken, of course. Terrorist status does not only apply to OPM. According to the Coordinating Minister for Political, Legal, and Security Affairs, this status also applies to people or organizations who are members of it and their supporters. The decision taken by the Government through the Coordinating Minister for Political, Legal, and Security Affairs is also in line with statements from several figures and organizations such as the State Intelligence Agency (BIN), the National Police, the TNI, and the MPR. They consider that organizations or people who carry out massive acts of violence deserve to be called terrorists. Before the coordinating minister for Political, Legal, and Security Affairs, BIN had even labeled the Free Papua Organization (OPM) a terrorist after the death of the Head of BIN for the Papua Region, Brigadier General I Gusti Putu Danny in Puncak Regency, Papua on Sunday 25 March 2021 ago. The government's decision to brand OPM as a terrorist aims to narrow their space and funding. This is a countermeasure of terrorism that must be carried out comprehensively and involves many institutions, including the military.

Other cases can be seen in this regard, such as the Susi Air plane, which recently experienced a hijacking and arson incident by the Free Papua Organization (OPM) group at Paro Airport, Papua. Several passengers, including the pilot, were stranded in the incident. This incident indirectly warns us that unsafe conditions are experienced in the ground and air areas. So that caused flight aircraft carriers to pioneer logistics to the interior of Papua do not want to do flights, which naturally impacts public mountains that cannot send the logistics because flight pioneer is the only one to transport in the mountainous region of Papua. Liberation hostage Susi Air pilot, a New Zealand citizen, could not be carried out by the Densus 88 as a counter-terrorism unit. Remembering Papua's forests and the enemies OPM faces constantly move around; of course, in these matters, the apparatus must go directly to the woods to operate liberation hostage. To eradicate terrorism, as leading sectors, all lines of TNI, POLRI, and BNPT must coordinate,



especially in field Intelligence, and form other prosecutions. In the middle of the dynamic, it is necessary to fundamental strong laws as guidelines in carrying out Military duties. “Usage Military strength to crush terrorists is normal in all countries like Woyla Operation 1981, Entebbe Operation (Uganda) 1976, Troops Russia liberation hostage Operation in 2002 and 2004, as well several other cases”. Nimrod Operation (UK) 1980, where unique troops, an elite SAS (Special Air Service) unit came to rescue all hostages and killed five of six terrorists.

Whereas Liberation of Hostages operations ever done by the Indonesian military throughout history; among them is the Woyla Operation (1981) in Thailand, which successfully liberated hostages on a Garuda Indonesia plane in a short time, as the Release Operation of the pirated MV Sinar Kudus (2011) Somali pirates and succeeded in delivering the whole crewman ship being held hostage, Mapenduma Operation (1996), which successfully freed 12 Lorentz research teams held hostage by the Free Papua Organization (OPM), Liberation Operation hostages in Tembagapura (2017), which was successfully rescued 344 hostages held by the OPM. Events like that are urgent by seeing the threat and scope of crimes committed by groups of terrorists are outside the threshold of capabilities and limitations possessed by the apparatus security from the police because the crime scene took place abroad or on the high seas, or in forest areas where it is challenging and needs trained officers personnel to deal with the terrorist act. In responding to matters, the State must make flexible policies because they are not arranged yet in a manner firm in regulation laws in Indonesia related to limitations of the authority of the TNI in coping action terrorism. However, the power of the TNI in managing the action of terrorism has been listed in TNI Law included in one of the main tasks TNI in OMSP, as well also stated in article 43I in Law of Terrorism. Facing crime in a context that already bothers or threatens the sovereignty of the state, then the strategy/policy taken by the government must have a firm to protect society and the sovereign territory of the state of mastery group terrorists.

According to the author, this terrorism topic is significant and crucial to be discussed and researched because it relates to state sovereignty and rules and legality in handling acts of terrorism to avoid conflicts of authority. Therefore, in this study, the author chose "The Urgency of Regulating The Authority of The Indonesian National Armed Forces (Tni) In Countering Terrorism That Threatens The Sovereignty of The Unitary Republic of Indonesia."

2. PROBLEM FORMULATION

1. What is the urgency of regulating authority in countering terrorism which threatens the Indonesian State sovereignty by the Indonesian National Armed Forces (TNI)?
2. What is the model for the involvement of the Indonesian National Armed Forces (TNI) in countering acts of terrorism that threaten the sovereignty of the Indonesian State?

3. DISCUSSION

3.1 Urgency of regulating authority in countering terrorism which threatens the Indonesian State sovereignty

The country sees terrorism threats as disrupting, damaging, and destroying the wholeness of state sovereignty; of course, it must be firmer in determining policy to protect the state, society, and sovereignty from threats and undermining attacks of terrorism acts. Considering that terrorism is a crime that requires extraordinary handling, not like other criminal offenses, then needs similar understanding and a pattern of thought, a pattern of attitudes, and patterns of action that can synergize whole nation components for prevention and control of terrorist acts. The United Nations

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in 1992 defined terrorism as “An anxiety inspiring method of repeated violent action, employed by semi-clandestine individuals, group or state actors, for idiosyncratic, criminal or political reasons, whereby - in contrast to assassination – the direct targets of violence are not the main targets.” (an engendering method of anxiety with repeated acts of violence, implemented semi-clandestine by individuals, groups, and countries, with criminal or unique purposes, whereas the opposite with murder targets direct acts of violence with no main target).

From various definitions, of course, several incident action terrorisms in Indonesia are well-founded ideology, politics, and separatism ideology nor religion already happened, and still until now. Naturally, the actions can be seen from the underlying elements of, which are inseparable from every act of terrorism, like politics element, violent elements, planned elements, elemental psychology, and dynamic factors, even though not all stuff must be in the action of terrorism. Element political inaction of terrorism can be seen in the target violence, not aiming for war with the Armed Forces of a country but war with the government by politics aspect raises political effect inside as well as abroad, with blame the ruling authorities in a political manner because of injustice even economy, as well social for example actions movement The Papua Freedom Organization (OPM) is demanding Papua independence because of the inequity feeling from Indonesian government even economy as well as social toward the origin of Papua people by killing immigrants in Papua, or burn the plane and hostage the Susi Air pilot who still in hostage at this moment.

Terrorism always utilizes not direct targets in operating the action, so planned group actions of terrorists are tough to be detected. For example, an attack against the WTC, the Twin Towers, on September 11, 2001, in New York by a group of terrorists not directed at the people who worked in it or the building owners. However, more led to the fall of the authority of the US government, so clearly that the act containing psychological elements acceptable to the government nor society, like the bomb Bali attack in Indonesia, appearance intimidation feeling give psychological effect to something environment nor government. The impact of violence can change people's opinions and views from fear of further actions by terrorist groups. Thus the element of violence and destruction is only a medium used by terrorists to achieve their desired goals. If seen from the history of the development of terrorism root in Indonesia today, there is a diverse related picture from profile perpetrator terrorism, starting from movement-based radical extremism ideology and religion (Raka and Raki), movement separatism and groups interest certain, both on a scale national nor international. Internally, Indonesia, with its various aspects of life, such as cultural aspects, kinship, socio-psychological aspects, and aspects of economic life, also provides enormous opportunities for the development of terrorism. Indonesian location is strategic and composed of rich islands with natural resources. It is tracked strategically between two continents and two oceans, with diverse ethnicity and religion and an aspect of social life. It makes an excellent opportunity for event activity terrorism and correlated with international terrorism networks.

Democratization, social gap, and the economic sector development in Indonesia also participate, giving a huge opportunity to develop terrorism. One obstacle in countermeasures terrorism moment is also due exists doubt government inside determines the status of acts of terror and actors responsible for terrorism on a series of incidents of terrorism that occurred, for example, actions terrorism committed by the Papua Freedom Organization in Papua. A doubt made and maximized by the group terrorist to keep going to stay exist, facing global challenges, and keep fighting to realize their objective, by the operation patterns terrorist groups always dynamic and



changeable. It is a big challenge, and a must search immediately for the solution by government agencies that are stakeholders in the countermeasure's terrorism, of course, need to collaborate with whole element related nations. Draft military engagement in countermeasures action against terrorism is part of the steps comprehensive of the Indonesian government. However, there is still government doubt about involving the military because terrorism follows criminals by what is set in Law Number 15 of 2003 concerning the Stipulation of Government Regulation instead of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism to Become Law.

Draft use of military strength in Indonesia to counteraction terrorism, in essence, is part of the national defense interest carried out by the Indonesian National Armed Forces (TNI) with the principal and function task, the authority of the TNI to counter-terrorism according to what has been set in Constitution Number 34 of 2004 article 7 paragraph (2) and Law Number 5 of 2018 article 43i which has not been arranged in detail and until now does not have the implementation rule/derivative yet from Constitution by those who have mandated. So that matter will raise hesitation in the act of the military to counter-terrorism. Remembering the threat of terrorism in Indonesia in the future is more complex and dynamic, as already happened that is Bali bombing action, terrorism in Poso, the activities of the Papua Freedom Movement with murder, hostage-taking, and robbery, as well as intimidation to the public so that need exists the rule of law as legality for the Indonesian Armed Forces to counter-terrorism, moreover if already threaten state sovereignty. Primarily terrorist actions happened outside the country of Indonesia, such as the experience of pirate Garuda Indonesia aircraft in Thailand, the pirate of the MV Sinar Kudus in Somalia, and the Susi Air pilot taken hostage in the jungles of Papua, of course, must use military strength in overcome action such terrorism, because can not handle like other criminal ordinary. With thereby arrangement in detail, the authority of the TNI in coping with terrorism efforts threatening State sovereignty is significant for quick made.

3.2 TNI's involvement model in countermeasures terrorism action threatening Indonesian sovereignty

Authority military involvement in coping terrorism naturally already has based on solid law in Law Number 5 of 2018 concerning Eradication Criminal Terrorism Article 43I that task counter-terrorism by the TNI is part of the non-war military operation. In paragraph (2), that is, overcome action terrorism as meant in paragraph (1) is implemented by the primary and functions task of the TNI. The primary mission of the TNI in Law Number 34 of 2004 concerning the TNI, according to Article 7 paragraph (2), that primary assignment as paragraph (1), is carried out by (a) war operation military; (b) non-war military Operations (OMSP). Furthermore, paragraph (3) mentions that the provision is implemented based on state policy and politics, as referred to in paragraph (2). Although, until the moment, uses military strength to overcome terrorism only assistance (Under Control Operation) to the Polri, and can not carry out the operation that stands itself because not exists yet the rule implementation as a derivative from mandate/delegation TNI Law and Eradication Law Criminal Terrorism. By Article 43 B of the Terrorism Law, manufacturer Raperpres is given a time limit of one year since the law was promulgated (22 June 2018 to 22 June 2019), and the formation of Raperpres must be consulted, especially with the DPR RI first.

The role of TNI's engagement in coping action against terror is the part that doesn't inseparable from the main task of TNI in maintaining Indonesian sovereignty based on Pancasila and the 1945 Constitution of the Republic of Indonesia and for protecting the whole homeland and freedom of Indonesian people from threats and distractions from in nor abroad. Meanwhile, action

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possible terrorism threatens state sovereignty happens later in the day, for example, purposeful terrorism for damaging political stability, national security, territorial integrity, and the Indonesian economy. Along with the progress in technology and the flow of globalization, more patterns will also develop operations from terrorism. So, the vigilance and preparedness nationally to threaten terrorist attacks must continuously be developed and improved. Attack on government facilities or military, installation energy, transportation, or possible communication can damage vital infrastructure, so state/government functions can be disturbed or can not work, then the matter can endanger state sovereignty. Attacks on official government, such as the head of state (president) or official country height, as well as important political figures, the aim creates political chaos and threatens the stability of government, and can shake the structured government. Attack on state agencies so no one can carry out the function. Attack on the Indonesian economy by destroying the critical infrastructure, attacking the trade sector, agriculture sector, investment foreign sector, or tourism, which aims to bother the country's economy, detrimental well-being of residents for threaten the sovereignty economy country. And also, groups of terrorists target to separate specific areas of the Unitary State of the Republic of Indonesia and create an autonomous entity or a new country. This conflict separatism can threaten state sovereignty, damage territorial integrity, and create instability within Indonesia.

Actions possibly terror threatening the sovereignty of the country can not be considered ordinary acts of terror course, and they must be focused on and attention seriously by the government. The state must present to protect the people and ensure national stability and sovereignty. One step of government in prevention is an action against terror using destroyer bulk weapons with authorized Law No. 9 of 2013 concerning Prevention and Eradication Terrorism Funding Crimes. And since 2021, has been done the evaluation risk analysis to prevent Funding Proliferation Destroyer Bulk Weapon (PPSPM) issued by the Center for Reporting and Analysis Transaction Finance (PPATK) involves the TPPU Committee (National Co-ordination Committee on ML) with whole stakeholders' interest in the prevention of TPPT and PPSPM. So that destroyer bulk weapon threats can happen even in bombs, nuclear or biological weapons, and chemistry (Nubika) has a remarkable effect on the community and the environment. Indonesian National Armed Forces (TNI), with the strength and deployment of troops in all parts of Indonesia, even with the outer islands, is one of the nation's components' strengths, always ready on standby to face any threats that arise and a national asset that can be mobilized to counter threat terrorism. Using the military in the coping model, terrorism naturally needs to be arranged with regulation legislation, in principle, still comes down to enforcement law by government policy. This required encouragement of the Presidential Regulation regarding the involvement of the TNI, which could include operational mechanisms and civilian supremacy within it, by the paradigm of the criminal justice system model and the non-war military operation (OMSP) concept. The tool for involving the TNI needs to be confirmed by a Presidential Regulation as the legality of using military force in countering terrorism can be carried out if there is a state political decision. The President's decision with the approval of the DPR as a civil authority in this matter is a derivative of TNI Law Number 34 of 2004 and the Terrorism Law, which stated that the deployment of TNI forces in countering terrorism according to the OMSP scheme must be based on state political decisions.



Policy or political criminal law can be seen from political law or political criminal. According to Sudarto, legal politics are:

- a. Efforts to realize reasonable regulations by the circumstances and situation.
- b. Policies from the state through authorized bodies to establish the desired regulations expected to be used to express what is contained in society and achieve what is aspired to.

So, it can be interpreted that the politics of criminal law means efforts to realize criminal statutes and regulations under the circumstances and situation at a time and for the future. Because it's on one follows criminal terrorism, which is an extraordinary crime and can not handle by ordinary law enforcers (Polri) due to situations and circumstances particularly dangerous and can threaten state sovereignty is necessary exists rule the law governing it. Regarding determining a criminal act, Indonesian law adheres to the principle of legality. That is, an action cannot be punished other than by the force of the criminal provisions in the law, which were held before the act occurred (Article 1 paragraph (1) of the Criminal Code). This was formulated by Anselm Von Feuerbach as follows: *nulla poena sine lege, nulla poena sine crimine, nullum crimen sine poena legali*. It means that there is no punishment if there is no law, no punishment if there is no crime, and there is no crime if there is no lawful punishment. If it happens, the action of terrorism is already carried out by groups of terrorists, and the matter can direct held enforcement law by the authorities enforcer law, which becomes a question if the action of terror is highly escalating, which can threaten the safety of society and state sovereignty or threaten state honor, like hostage Garuda Indonesia aircraft in Thailand, and enforcers law (Polri) can not counter the matter, whether will be let course? Of study, needed government policy as regulations maker that can be made legality to use or military action in carrying out prosecution, one of which is to authorize Raperpres TNI's duties in counter-terrorism.

For certainty law, following the theory from Gustav Radbruch that statute has to contain three fundamental values; where in his book, he writes that in direction, there are three essential values, namely legal certainty (*rechtssicherheit*), where legal certainty discusses from a juridical point of view; legal justice (*gerechtigheit*), where legal justice discusses philosophical angles as justice is equal rights for all people who have affairs in the realm of courts, and the benefits of law (*zweckmassigkeit*) where the benefits of law discuss utility or use value. Law enforcement efforts are an integral part of efforts to protect society (social welfare) and an integral part of social policy or politics (social policy). Social policy can be interpreted as a rational effort to achieve community welfare and, at the same time, includes community protection so that in the sense of "social policy," it also includes "social welfare policy" and "social defense policy."

Like case regulation, the law states that the Indonesian Navy was given authority by regulation legislation for an investigation or Acting as an investigator to follow criminals, particularly at sea. The Indonesian Navy has three roles, namely the military role, the police role, and the diplomatic role. The police's role is to enforce the law at sea, protect national marine resources and wealth, and maintain security and order at sea. From a formal juridical perspective, these three roles have been implemented in various laws and regulations that regulate the duties of the Indonesian Navy, for example, explained in the elucidation of Article 9 letter b of Rule Number 34 of 2004 concerning the Indonesian National Armed Forces that the Indonesian Navy has the authority and obligation to enforce the law in the maritime area of Indonesia, which is limited in the scope of pursuit, arrest, investigation, and investigation which will then be submitted to the prosecutor's office for prosecution, as well as in article 17 Government Regulation Number 27 of

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1983 concerning the Implementation of the Criminal Procedure Code and its explanation. So that three marks based in accordance theory from Gustav Radbruch about legal certainty (rechtssicherheit), legal justice (gerechtigkei), and legal benefits (zweckmassigkeit) can be reached.

With thereby associated with following criminal terrorism that occurs at sea, the Indonesian Navy is also authorized to carry out investigations, then how to follow criminal terrorism that happens on land due to condition geographic or because the skills/abilities apparatus enforcer the law limited, and only can be carried out by the military so that more effective and target precisely in the prosecution. Naturally, engaging the military in this matter is necessary, seeing from facet threats that arise. The TNI's involvement model in coping action against terrorism can refer to the model of the Indonesian Navy in the enforcement law of the sea, limited in the scope of investigation, pursuit, arrest, and prosecution if situations and conditions emergency. However, the next stage of the inquiry will be submitted to the Attorney General for prosecution. Investigation and trial submitted to apparatus authorized law enforcer. In countermeasures terrorism, the BNPT, as the leading sector, must be capable of synergizing all related institutions in countermeasures terrorism in Indonesia.

4. CONCLUSION

Based on fact, until this moment still happens, emptiness law-related arrangements implemented the authority of the TNI in countering terrorism, so TNI's doubts about carrying out military operations independently. Acts of terrorism constituting an army threat are acts of armed terror carried out by international terrorist networks or in collaboration with domestic terrorism or domestic terrorism, which highly escalates, thus endangering state sovereignty, territorial integrity, and the safety of the whole nation. TNI involvement in carrying out military operations to prosecute actions of terrorism still according to the condition's applicable laws and regulations; each step is taken from the rule of law. Using military strength as an integral part of the criminal justice system, which cannot be done in a manner that stands by itself, must involve government agencies or other agencies by their respective duties and authorities as stipulated in statutory regulations coordinated by BNPT as leading sector countermeasures terrorism in Indonesia.



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