



LEGAL PROTECTION OF THE RIGHTS PERPETRATORS OF TERRORISM IN THE CRIMINAL JUSTICE SYSTEM IN INDONESIA

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ABSTRACT

Criminal acts of terrorism can be categorized as *malum in se* not including *malum prohibitum*. This is because terrorism is a crime against conscience, being evil not because it is prohibited by law but because terrorism is essentially a despicable act. Generally, police officers will determine a criminal offender if preliminary evidence is sufficient. Unlike the case with acts of terrorism, because this criminal act is a humanitarian problem that may receive the attention of many people, causing the police to be prosecuted to quickly uncover the perpetrators of terrorism crimes. As an alternative is possible, namely the confession of a suspect who has been caught. It is not an open secret that the Suspect of a criminal case, is unlikely to reveal what has been done or what his group is planning. So the disclosure of criminal acts of terrorism in terms of obtaining the confession of a suspect, there are many ways that investigators can do it. Among other things, through coercion, threats not even a few that end in physical violence or torture, but we must not be separated from the principle adopted in Indonesia regarding the principle of Presumption of Innocence, and against even perpetrators of Terrorism, this principle must also be applied, but still that we put forward the principle of *Lex Specialeis Derogat Lex Generale*. In the criminal justice system in Indonesia, the criminal justice mechanism as a process is referred to as the Criminal Justice Process which starts from investigation, arrest, search, detention, prosecution. The implementation of human rights in the Indonesian criminal justice system already regulates the rights of suspects and defendants, and also by prioritizing the principle of presumption of innocence, but nevertheless has not clearly and completely guaranteed the process of compensation, restitution, and rehabilitation of the protection of the rights of suspects/defendants suspected of being perpetrators of terrorism crimes.

Keywords : *Criminal Acts of Terrorism, Indonesian Justice System, Legal Protection*

1. INTRODUCTION

Social inequality continued after the repressive regime fell. Reform has not been able to prove itself enough to overcome various social problems. People who are eliminated and constantly let down by life as a result of an impartial system, still continue to exist. There was hurt and anger in them waiting for a momentum to vent. Such conditions make the penetration of literally converted religious doctrines very easy to enter. It's as if they are rediscovering the meaning of a self-long neglected by social inequality. They also withdraw from association with ordinary people and limit themselves to living in a circle of people who agree with them, because it is there that they find peace and happiness that they do not encounter in real life. (Detty Yektiningsih, 2009: 137). The current reality in recent years has been a sharp tendency of some young men who feel that a certain religious group as their religion/belief, which bases *aga-ma* as the foundational teaching of the organization. (Damien D. Mantra, 2011: 73) It can be the purpose of an action with ideological motives in addition to other motives. Almost all criminal law experts and criminologists in the world say that terrorism is *an extra ordinary crime* and the judicial process is different from

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ordinary criminal acts. It is because of its *extra ordinary nature* that almost all countries use special laws in dealing with criminal acts of terrorism.

In contrast, according to Kent Roach (Canada), Adnan Buyung Nasution and several experts in criminal law and human rights, among others, the Coalition for the Safety of Civil Society (KKMS) rejects this view. For them, terrorism is an ordinary criminal act and its handling is sufficient with the laws and regulations that apply to other criminal acts, in the context of the criminal justice system, it is enough with the provisions of the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP) alone there is no need to use the Anti-Terrorist Law (UU) or others such as ISA (*Internal security act*). Another view according to Muladi (2002: 198) states that it cannot be denied that terrorist crimes can be categorized as *malum inse* not including *malum prohibitum*. This is because terrorism is a *crime against con science*, being evil not because it is prohibited by law but because it is essentially a despicable act. The rights of suspects including those considered terrorists are guaranteed by law.

The concept of Human Rights (HAM) determines that rights are also something of a protected specificity that cannot be challenged. A right is something specificity, power over something or the necessity of using something over another, to fulfill a certain benefit. Such particularity shall be recognized by the terms of the Right nor shall it be used for purposes not justified by the terms. The war on terror gives rise to new terrorism on human rights issues. The war on terror has also violated things that are personal to everyone. The policy of spying on ora-ng imposed on an even-scale basis, raises serious democratic problems. The policy of collecting data for the purposes of the fight against terror has opened up the entire private life of others, ranging from family life, culture, religion, political affiliation, financial condition to health reports, on the one hand, the state must protect its people against the threat of terrorism, on the other hand, they must also protect the basic rights of every individual, including persons suspected or charged with terrorism activities (Muladi, 2002: 200).

The country of Indonesia is a country of laws. The formulation explains that the Indonesian state as a unitary state in the form of a republic is a country that upholds the law in every aspect of state life. As Hamid S. Attamimi (2013: 10) defines the state of law as "... the state which places the law as the basis of state power and the organizer of the state such power in all its forms is carried out under the power of law." This also applies in the criminal justice process for perpetrators of criminal acts of terrorism. The crime of terrorism, which is one of the various types of criminal acts that occur in Indonesia, is not regulated in the Criminal Code, but is regulated separately in regulations outside the Criminal Code. This is affirmed in Article 103 of the Penal Code which formulates that: "The provisions of Chapter I to Chapter VIII of this book also apply to acts which by other statutory provisions are punished with a criminal offence, unless by law otherwise specified."

The provisions of the Material Criminal Law for Terrorism Crimes are regulated in a Government Regulation in Lieu of Law of the Republic of Indonesia Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism, as passed by Law of the Republic of Indonesia Number 15 of 2003 concerning the Establishment of Government Regulations in Lieu of Law of the Republic of Indonesia Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law. Article 25 paragraph (1) of Law Number 15 of 2003 concerning the Eradication of Terrorist Crimes determines that the investigation; Prosecution; and examination at court hearings in cases of criminal acts of terrorism, carried out under the applicable procedural law, unless otherwise specified in the Government Regulation in Lieu of this Law, from these provisions it can be concluded that the procedural law imposed in the case of criminal acts of terrorism is Law Number 8 of 1981 concerning the Code of Criminal Procedure unless the Law on Combating Criminal Acts of Terrorism has regulated it. Thus, in an effort to eradicate terrorism and crimes against humanity, standards and principles of protection of human rights should not be ignored, but must be upheld. Terrorism must be fought, but at the expense of protecting human rights.



1.1.Problem Formulation

How is the protection of the rights of perpetrators in terrorism crimes in the Indonesian criminal justice system in the perspective of perpetrators considering that this crime is a special criminal act?

2.RESEARCH METHODS

2.1.Types of Research

This research is "normative legal research, or doctrinal legal research", where referring to Peter Mahmud Marzuki, the author carries out a series of processes to find out the set of doctrines, principles, and rules of law to be able to describe the legal issue under study.

2.2.Data Sources

In the book Legal Research by Peter Mahmud Marzuki, he said that basically legal research does not recognize the existence of "data", so what is used is legal material. So the legal material in this writing is sourced from *library research*).

2.3.Data Collection Techniques

The technique used in this writing is a document study technique, namely data obtained from relevant literature.

2.4.Analytical Techniques

All data that has been obtained will be analyzed qualitatively or known as Qualitative Descriptive Analysis. Where the entire collected data will be analyzed systematically.

3.RESULTS AND DISCUSSION

3.1.Arrangements for the Protection of the Rights of Terrorism Suspects in the Criminal Justice System

A country based on law must guarantee the equality of each individual, including the *freedom of individuals* to exercise their human rights. The state of law was born as a result of the struggle of the individual to extricate himself from attachment as well as the arbitrary actions of the ruler, then the actions of the ruler against the individual and his power must be limited by law. Both the state and the individual are legal subjects who have rights and obligations. Therefore, in a legal state the position and relationship of the individual with the state must be balanced, both of which have rights and obligations that are protected by law. Sudargo Gautama said, that to realize the ideals of the State of law, it is an absolute condition that the people are also aware of their rights and ready to stand up straight to defend their rights. The Criminal Procedure Code (KUHAP) has formulated a number of rights for suspects that protect them from various possible human rights violations, although normatively, the protection of suspects' rights has been clearly regulated in the Criminal Procedure Code, but in the case of terrorism crimes, these normative rules are often easily ignored by law enforcement officials. In relation to the phenomenon of law enforcement and protection of the rights of suspects as stated above, it is necessary to understand the policy formulation of criminal law with regard to the rights of terrorism suspects guaranteed by the Criminal Procedure Code. The Criminal Procedure Code has clearly and unequivocally regulated matters relating to the rights of suspects in the criminal justice system. The following describes the rights of suspects regulated in the Criminal Procedure Code as follows:

1. The right of the suspect to be immediately examined. In Article 50 of the Criminal Procedure Code which gives legal and statutory rights to suspects of terrorism crimes, including: The suspect is entitled to immediate examination by the investigator and can then be submitted to

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the Public Prosecutor (Article 50 paragraph (1), the Suspect has the right to have his case immediately advanced to the Court by the Public Prosecutor (Article 50 paragraph (2)), the Defendant has the right to be tried immediately by the Court (Article 50 paragraph (3)). Based on the sound of the article above, it can be understood that the process of resolving cases of terrorism crimes must also be handled quickly so that they can be resolved immediately in a short time.

2. The Right to Defense, namely Regarding the rights of suspects of terrorism crimes in terms of making defenses, among others: The Right to Get Explanations in Understandable Language, the Right to Give Information Freely, the Right to Get Interpreters, the Right to Get Legal Assistance, the Right to Choose Their Own Legal Advisors, the Right to Get Help.
3. Rights of Terrorism Suspects in Detention include: The Right to Contact Legal Counsel, the Right to Visit by a Doctor, the Right to Be Notified, To Contact or Receive Family and Relatives Visits, The Right to Correspondence
4. The Rights of Suspects Before the Trial include: The Right to Be Tried at A Public Hearing, The Right to Submit Expert Witnesses, The Right Not to Be Encumbered with The Obligation of Proof, The Right to Grant Indemnity and Rehabilitation.

3.2.Fulfillment of Human Rights in the Indonesian Criminal Justice System Against perpetrators of Terrorism and its comparison with perpetrators of general criminal acts

The understanding of human rights is meant to be the rights that man has not because they are given to him by society, so not based on applicable positive law, but based on his dignity as a human being. Man has it because he is a human being who in this sense can also be understood that the perpetrator of the criminal act of terrorism is also a human being, in the understanding of human rights including that the right cannot be eliminated or declared invalid by the state. Through human rights prepositive moral demands can be realized in positive law. On the one hand, human rights express the basic demands of human dignity. But on the other hand, since the demands are formulated as concrete and operational rights or obligations, they can be incorporated into positive law as basic norms in the sense that all other legal norms must not conflict with them. (Franz Magnis Suseno, 1988: 121)

3.3.Protection of Perpetrators of Terrorism Crimes from the Threat of Extra Judicial Killing

Although with the many legal instruments and institutions that assist in the protection of human rights, but in its implementation as according to Kate Thompson and Camille Giffard, 2002: 20) that the protection and fulfillment of human rights does not guarantee that human rights violations will not occur again. One of them is *extra judicial killing* that violates the right to life. It is the responsibility of the state to ensure that the fulfillment of the right to life is carried out properly, the fulfillment of this right to life consists of 4 elements:

1. Prevention of arbitrary killings
2. responsibility to protect the right to life
3. responsibility for carrying out effective investigations;
4. the responsibility to provide an effective remedy.

Law enforcement officials in carrying out their duties are often faced with a situation where they are forced to use force or violence which leads to injury to a person (in this case a criminal suspect) or in the most severe cases can lead to the death of that person. This was done with great compulsion and had to be done in order to protect the law enforcement officers themselves or for their efforts to protect the lives of other people. However, in several cases, there are also many law enforcement officers who use force or violence which also leads to someone's death on purpose and in violation of the law. As we know, of the many cases of extra-judicial killings that have occurred in Indonesia, the form of accountability for the actions of law enforcement officials has not been carried out effectively, so far the actions that have caused the death of suspects or suspects that



have been committed by officials are only considered as violations of the code of ethics. In fact, what has been done by the authorities is more than just a violation of the code of ethics, because it involves killing other people's lives.

Bearing in mind that the concept of the necessity of proof means that a person cannot be punished if there is no evidence to prove that it was he who committed the crime. Everyone who commits a new crime can be punished if there is evidence that he is guilty and providing evidence is the responsibility of the prosecution, so indirectly the concept of the power of proof in this criminal law also recognizes the theory of the principle of presumption of innocence. It should be noted, in the Code of Conduct for Law Enforcement Officials (Code of Conduct for Law Enforcement Officials) 18, Article 2, explains that: "In carrying out their duties, law enforcement officials will respect and protect human dignity and maintain and uphold human rights. of everyone." Article 3, explains that "Law enforcement officials may use force only when it is absolutely necessary and to the extent necessary for the performance of their duties". In Article 3, it is emphasized that the use of force by law enforcement officials can be justified if it is used in a reasonable manner and is considered very necessary according to the circumstances to prevent crime or in the process of lawful arrest of perpetrators of crimes or those suspected of being perpetrators of crimes. While the use of firearms is considered as something that is very extreme, especially in children.

Firearms are used when a person who is a criminal or suspected criminal commits resistance with a firearm or other resistance that can threaten the life of the law enforcement officer or other people around him. The use of firearms by law enforcement officials must be a last resort after previous attempts were unsuccessful and forced the use of firearms. Where this code of conduct is incorporated into national legislation or practice, this code of conduct must be adhered to. If the state is unable to fulfill its responsibility to prevent arbitrary killings and protect the right to life, another responsibility will arise, namely the responsibility to carry out in-depth effective investigations into acts of violation of the right to life that have occurred and the responsibility to provide appropriate remedies. effective for victims. Thus, the responsibility of officials who have carried out extra judicial killings is accountability based on violations of human rights. In terms of accountability for acts of human rights violations, it can be taken through a human rights court. If we refer to Law No. 26 of 2000, extra judicial killing is not a human rights violation that can be tried through a human rights court, but only through an ordinary court. From the elucidation of article 104 of Law no. 39 of 1999 above extrajudicial killing is included in the category of gross human rights violations, so if you refer to this law, it should be tried in a human rights court. Article 104 of law No. 39 of 1999 which has a broader meaning, on the basis of the principle of *lex superior derogate legi priori* is no longer valid since the promulgation of Law No. 26 of 2000

4.CONCLUSION

The protection of the human rights of suspects/defendants in the Indonesian criminal justice system, especially in national law, is an important part of development in the field of law, especially law enforcement against criminal acts of terrorism, however, the implementation of these laws and regulations has not adhered to the principle of balance between the theory of crime control model and the theory of due process model adapted to Pancasila as the basis of the state and the Constitution.

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