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| RESEARCH ARTICLE

## Criminal Policy in Countering Terrorism in Indonesia

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| ABSTRACT

This study aims to analyze criminal policy in tackling criminal acts of terrorism in Indonesia. The research used a juridical empirical technique. The results of the study show that the criminal policy in the prevention of criminal acts of terrorism that occurs in Indonesia is a form of government responsibility, as stated in Article 43a paragraph (1) to paragraph (3) of Law Number 5 of 2018 concerning Amendments to Law Number 119 15 2003 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 Concerning the Eradication of Criminal Acts of Terrorism Into Law. Further regulations, as described in Article 43b paragraph (1) to (5) of Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 Concerning the Eradication of Criminal Acts of Terrorism Into Constitution. In National Preparedness. In addition to increasing the capacity of the Indonesian Anti-Terror Organization to carry out the prevention and countermeasures of terrorism, the Indonesian government has formed a special organization (unit) to deal with terrorism that is developing in the country. These units include the National Counter-Terrorism Agency (BNPT), Densus 88, Counter-Terrorism Detachment, and Intelligence.

| KEYWORDS

Criminal, policy, handling, criminal acts, terrorism

| ARTICLE INFORMATION

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### 1. Introduction

Terrorism is an *extraordinary crime* that requires treatment by using extraordinary measures because of various things:<sup>1</sup>

- a. Terrorism is *the greatest danger* to human rights, in this case, the right to life and the right to life and the right to be free from fear.
- b. The targets of terrorism are random and indiscriminate, which tends to sacrifice innocent people.
- c. It is possible to use weapons of mass destruction by utilizing modern technology.
- d. The possibility of cooperation between terrorist organizations and both national and international.
- e. May endanger international peace and security

Terrorism crime is an *extraordinary crime because* the crime has its own reasons, namely as a transboundary crime that not only involves networks within the Country of Indonesia but also involves international networks that are carried out in an organized manner, either carried out individually or in groups and has a very extraordinary impact on the State and Nation. Acts of terror are

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<sup>1</sup> Muladi, "Countering Terrorism as a Special Crime, Seminar on Securing Terrorism as a Special Crime" (Jakarta, 2004).

used in conflicts – Structural conflicts rooted in an ideology, both social ideology, political ideology, and religious ideology, that give rise to an understanding of radicalism; this is what makes terrorism and radicalism go hand in hand and cannot be separated.<sup>23</sup> Realizing the amount of harm caused by an act of terrorism and the impact that is felt directly is what makes it the government's obligation to thoroughly investigate terrorism crimes by punishing terror perpetrators with laws and regulations regarding criminal acts of terrorism, but at that time Indonesia did not have a special law to take action as a form of prevention and eradication of acts of terrorism. Specifically, Indonesia already has laws and regulations, namely the Criminal Code (hereinafter referred to as the Criminal Code), but the criminal regulations in the Criminal Code have not been specifically regulated and are not sufficient to eradicate terrorism.<sup>4</sup>

Policies or efforts to overcome crime are essentially an integral part of efforts to protect the community (*social defence*) and efforts to achieve community welfare (*social welfare*). Therefore, it can be said that the ultimate goal or main goal of criminal politics is "the protection of society to achieve the welfare of society". Thus, it can be said that criminal politics is, in essence, also an integral part of social politics, that is, (policies or efforts to achieve social welfare).<sup>5</sup>

Crime countermeasures need to be pursued with a policy approach in the following senses:<sup>6</sup>

- a. There is an integrality between criminal politics and social politics
- b. There is an integrality between crime countermeasures and "penal" and "non penal."

Therefore, to overcome criminal acts of terrorism, efforts are needed to overcome crime using criminal law policies.

Indonesia is a legal state that upholds the value of human rights (hereinafter referred to as human rights), which is regulated in the fourth amendment to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 NRI Constitution), which aims to provide a sense of security from all threats to the Indonesian people, then with forced circumstances and a lot of pressure from foreign parties, The Indonesian government has begun the first steps to develop rules for the eradication of terrorism by establishing a Government Regulation in Lieu of Law (PERPU) Number 1 of 2002 concerning Eradication.

Terrorism Crimes and Regulations in Lieu of Law (PERPU) Number 2 of 2002 concerning the Implementation of Government Regulations in Lieu of Laws - Law Number 1 of 2002. The two PERPUs were formed on the grounds that they were implementing rules and used to uncover the Bali bombing case; considering that the essence of this PERPU is very important to eradicate the crime of terrorism, so in 2003, this PERPU was changed to Law Number 15 of 2003 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Terrorism Crimes.

Undang - Law Number 15 of 2003, which is used as an eradication measure and an effort to crack down on acts of terror, is considered by many to have not been effective in eradicating terrorism at its roots. It has also been explained <sup>7</sup>that **the** Eradication of Criminal Acts of Terrorism has many shortcomings, such as inadequate legal tools, the provision of widespread authority, the lack of understanding of "preliminary activities" (planning, preparation, training, etc.) as an act that can be punished, and the lack of coordination in handling terrorism problems both nationally, regionally, and internationally.<sup>8</sup>

So that in 2018 the Indonesian government made changes to Law Number 15 of 2003 concerning the Eradication of Terrorism Crimes into Law Number 5 of 2018 (hereinafter referred to as the Law on The Eradication of Terrorism Crimes). The second reason governments are making changes is that terrorism increasingly endangers state ideology, state security, state sovereignty, and various aspects of social, national and state life. Therefore, the eradication of criminal acts of terrorism needs to be carried out in

<sup>2</sup> F. Budi Hardiman et Al, *Terrorism Definitions, Actions, And Regulations (Editions 12-19)*. (Jakarta: Imparsial Coalition for the Safety of Civil Society, 2003).Pp. 62

<sup>3</sup> Ahmad Jazuli, "Strategies to Prevent Radicalism in the Context of Eradicating Terrorism," *Scientific Journal of Legal Policy* 10, no. 2 (2016): 196.

<sup>4</sup> Ahmad Mukri Aji, "Eradicating Terrorism in Indonesia," *Journal of Legal Minds* 1, no. 1 (2013): 63.

<sup>5</sup> Barda Nawawi Arif, *Potpourri of Criminal Law Policy (Development of the Drafting of the New Criminal Code Concept)* (Bandung: Citra Aditya Bakti, 2014).Pp. 3

<sup>6</sup> *Ibid*, Pp. 4

<sup>7</sup> National Commission on Human Rights, "Protection of Human Rights in the Draft Law of the Republic of Indonesia Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2002 concerning Tin Eradication" (Jakarta: DPR RI, 2018).Pp. 2

<sup>8</sup> National Legal Development Agency, *Academic Manuscript of Amendment to Law Number 15 of 2003*. (Jakarta: BPHN, 2011).Pp. 170-171

an extraordinary, planned, directed, integrated, and sustainable manner, as well as considering human rights and the Law Enforcement Process which paradigma *criminal justice system*.<sup>9</sup>

The improvement of the Law on The Eradication of Criminal Acts of Terrorism also still has pros and cons in terms of eradicating and preventing criminal acts of terrorism, one of which is the granting of authority to the Indonesian National Army (hereinafter referred to as the TNI) to overcome acts of terrorism. The granting of this authority is according to some circles, especially human rights activists who say that "the TNI does not need to be involved in the Terrorism Law because if it is involved in overcoming acts of terrorism, there will be potential for human rights violations and can violate the principle of civil supremacy". There are also those who state that the role of the TNI in countering terrorism needs to be involved because the crime of terror is a crime that cannot be handled partially but must involve all stakeholders.

The legal basis for the criminal act of terrorism is specifically regulated in Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Terrorism Crimes. The definition of the criminal act of terrorism itself is contained in Article 1, paragraphs 1 and 2 of this Law, which is meant by:

- 1) Criminal Acts of Terrorism are 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 terror or widespread fear, which can cause mass casualties, and/or cause damage or destruction to vital strategic objects, the environment, public facilities, or international facilities with ideological, political, or security disturbance motives

## **2. Discussion**

### **1. Review of Criminal Law Policy in Crime Countermeasures**

Crime prevention policy or criminal policy is a rational effort from the community as their reaction to crime; as part of the *law enforcement policy*, crime enforcement policy must be able to place every component of the legal system in a conducive and applicable direction to overcome crime, including improving the legal culture of the community so that it is willing to provide active participation in countermeasures. The crime must therefore be carried out through rational and thorough planning in response to crime.<sup>10</sup>

Kejajakan to carry out crime prevention and countermeasures, including the field of criminal policy. This criminal policy is also not separated from the broader policy, which is a social policy consisting of policies/efforts for social welfare and policies or efforts for the protection of society. Crime prevention policies are carried out using the means of "penal" (criminal law), then criminal law policies, especially at the judicial policy stage, must pay attention to and lead to the achievement of the objectives of the social policy in the form of "*social welfare*" and "*social defence*".

The crime countermeasures policy is carried out using the following means:<sup>11</sup>

- a) Penal Policy (criminal law)  
That effort to overcome with criminal law (penal means) focuses more on the "Repressive" nature of oppression or eradication after a crime or criminal act occurs; besides that, in essence, penal means are part of law enforcement efforts; therefore, criminal law policy is part of law enforcement policy (Law Enforcement), criminal law policy, especially at the judicial policy stage must pay attention to and lead to the achievement of goals of the social policy is in the form of "*Social Welfare*" and "*Social Defence*."
- b) Nonpenal Policy  
Namely, the policy of tackling crime through the "nonpenal" route is more of a preventive measure before the occurrence of crime. Therefore, the main target is to deal with conducive factors that cause crime that is centered on problems or social conditions that can directly or indirectly cause or foster crime, thus judging from

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<sup>9</sup> Human, "Protection of Human Rights in the Draft Law of the Republic of Indonesia Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2002 concerning Tin Eradication."Pp. 2

<sup>10</sup> Mahmud Mulyadi, *Criminal Policy* (Medan: Pustaka Bangsa Perss, 2008).Pp. 66

<sup>11</sup> Barda Nawawi Arief, *Legal Policy Issues and Criminal Law Countermeasures in Crime Management* (Jakarta: Kencana Prenada Media Group, 2007).Pp. 77

the policy of overcoming crime, these non-penal efforts have a strategic position and play a key role that must be intensified and effective.

Penal facilities are prevention or countermeasures based on existing regulations such as the Criminal Code and other regulations; usually, this penal means always imposes punishment on criminal offenders; the perpetrator must undergo a series of examinations such as investigations and investigations, trials until finally, the verdict by the judge and punishment, penal efforts are the longest way used by the community because this effort is considered to be the most staple. In essence, the use of reasoning efforts in the fight against crime is related to the following issues:<sup>12</sup>

- a. Determination of acts that should be formulated as crimes in the law
- b. Determination of the perpetrator's guilt
- c. The issue of criminal sanctions that will be imposed on perpetrators While the non-penal policy is a way/countermeasure before the occurrence of a crime, so this is usually without using punishment or regulations to overcome the problem of crime.

Meanwhile, the non-penal policy is a way/countermeasure before the occurrence of crime, so this is usually without using punishment or regulations to overcome the problem of crime.

The empirical prohibition of crimes consists of three main parts, as follows: <sup>13</sup>

- a. Pre-Emtif  
What is meant by Pre-Emtive efforts here are the initial efforts made by the police to prevent criminal acts from occurring. The efforts made in the prevention of crime pre-emptively are to instill good values/norms so that these norms are internalized in a person. Even if there is an opportunity to commit an offence/crime, but there is no intention to do so, then there will be no crime. So in a pre-emptive endeavor, the intention factor becomes lost despite the opportunity. This method of prevention comes from the NKK theory, namely: the intention and chance of a crime occurring.
- b. Preventive  
These preventive efforts are a follow-up to pre-emptive efforts that are still at the level of prevention before the occurrence of crime. In preventive efforts, the emphasis is on eliminating the opportunity for crime to be committed.
- c. Repressive  
This effort is carried out when there has been a criminal act/crime whose actions are in the form of law enforcement (law enforcement) by imposing penalties.

*The National Crime Prevention Institute* (NCPI) defines crime prevention as a straightforward and simple approach that protects potential victims from crime by anticipating the possibility of crime and eliminating or reducing the chances of crime occurring.

## 2. Criminal Policy in the Nature of Countering Terrorism crimes in Indonesia

*Criminal policy* in countering terrorism crimes that occur in Indonesia is a form of government responsibility, as stated in Article 43a paragraphs (1) to (3) of Law Number 5 of 2018 concerning Amendments to Law Number 119 15 of 2003 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2002 concerning Eradication The Criminal Act of Terrorism Becomes Law makes it clear that the Government has an obligation in efforts to prevent criminal acts of terrorism.

Article 120

- (1) The government is obliged to prevent terrorism;
- (2) In an effort to prevent terrorism, the Government takes continuous anticipatory steps based on the principle of protecting human rights and the principle of prudence;
- (3) Prevention, as referred to in paragraph (1), is carried out through:
  - a. national preparedness;
  - b. counter radicalization; and
  - c. deradikalisasi.

<sup>12</sup> G. Widiartama, *Victimology, Victims' Perspectives in Crime Management* (Yogyakarta: Cahaya Atma Pustaka, 2014).Pp. 125

<sup>13</sup> A.S Alam, *Introduction to Criminology* (Makassar: Pustaka Refleksi Books, 2010).Pp. 45

Further regulations, as explained in Article 43b paragraphs (1) to (5) of Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Terrorism Crimes into Law. In National Preparedness, as follows:

- (1) National preparedness is a condition of readiness to anticipate the occurrence of Terrorism Crimes through a planned, integrated, systematic, and continuous process;
- (2) National preparedness, as referred to in Article 43A paragraph (3) point a, is carried out by the Government;
- (3) The implementation of national preparedness, as referred to in paragraph (1), is carried out by the relevant ministries/agencies under the coordination of the body that organizes affairs in the field of counterterrorism;
- (4) National preparedness, as referred to in paragraph (1), is carried out through community empowerment, increasing the capacity of the apparatus, protecting and improving infrastructure, developing Terrorism studies, and mapping areas prone to radical terrorism.
- (5) Further provisions regarding procedures and implementation of national preparedness are regulated by Government Regulation.

As a form of the government's obligations in efforts to overcome terrorism crimes as stated in Article 43a paragraphs (1) to (3) of Law Number 5 of 2018, About the Amendment to Law Number 15 of 2003 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Terrorism Crimes into Law.

The Indonesian government uses *the culture approach* and *religion approach* methods that are utilized optimally in tackling acts of terror. The method used is no longer just relying on *the security approach*. A *culture approach*, like a *soft approach*, is something that must be strengthened by all officials and related parties to prevent acts of terror in strengthening coordination and strengthening deradicalization programs. This is important because one of the toughest things in dealing with terror perpetrators is to face the growth of radical groups and expose them whenever they have joined the TERRORISTS. Through prevention policies, the focus is on deterring radical terrorism so as not to affect society. It is hoped that through this method e,<sup>14</sup> there will be an increase in people's resilience from the influence of radical terrorism.

In addition to capacity building of the Indonesian Anti-Terror Organization, In carrying out the prevention and countermeasures of terrorism, the Indonesian government has formed a special organization (Unit) to deal with the growing terrorism in the country. These units include the National Counterterrorism Agency (BNPT), Densus 88, the CounterTerrorism Detachment, and Intelligence. The existence of this anti-terror unit is expected to synergize optimally in its performance to deal with and even prevent terrorism in Indonesia. Regarding the existence of BNPT, the formation of BNPT was carried out by the government by issuing Presidential Regulation (Perpres) Number 46 of 2010. Through the Presidential Regulation, the government places the BNPT as the authority to formulate and make policies and strategies and become a coordinator in the field of counterterrorism.

Furthermore, the BNPT is regulated in Article 43E, 43F, 43G, 44H, Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law. The National Counterterrorism Agency (BNPT) has several functions, as stated in Article 43F, including:

- a. Develop and establish national policies, strategies, and programs in the field of counterterrorism;
- b. Coordinating national policies, strategies, and programs in the field of counterterrorism; and
- c. Implement national preparedness, counter-radicalization, and deradicalization.

In addition to the National Counterterrorism Agency (BNPT), the parties who are authorized to tackle acts of terrorism based on Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law are the TNI, as regulated in Article 43 as follows:

- (1) The task of the Indonesian National Army in overcoming acts of terrorism is part of military operations other than war;
- (2) In overcoming acts of terrorism, as referred to in paragraph (1), carried out in accordance with the main duties and functions of the Indonesian National Army;

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<sup>14</sup> Mardenis, *Eradication of Terrorism*. (Jakarta: Raja Grafindo Persada, 2013).p. 19

- (3) Further provisions regarding the implementation of overcoming acts of terrorism, as referred to in paragraph (1), are regulated by a Presidential Regulation.

Based on Law No. 15 of 2003 concerning the Eradication of Terrorism Crimes, the National Police established Densus 88 to optimize counterterrorism in Indonesia. Densus 88 is a special unit designed as an anti-terror unit with special competence to overcome various types and forms of terrorism. The Densus 88 unit is estimated to have a strength of 400 personnel consisting of investigative experts, explosives experts and a batting unit in which there are sniper experts.<sup>15</sup>

In the Regional Police, Densus 88 also placed its personnel in anti-terror units with a total of about 45 to 75 people. The role of the anti-terror unit in the Polda is limited to the role of investigation and reporting. Meanwhile, the role of enforcement is still carried out by the Police Headquarters. In addition to Densus 88, other units also have special anti-terror units. But normatively, the unit must work under the coordination of Densus 88 because the role it carries out is the role of assistance. Meanwhile, in the body of the TNI, there is the Terror Counterterror Detachment (Dengultor) of the Indonesian Army / Anti-Terror Group 5, Detachment 81 kopassus of the Indonesian Army, Detachment Jalamangkara (Denjaka) of the Navy Marine Corps, Detachment bravo (Denbravo) of the Air Force and the anti-terror unit BIN.

Another no less important anti-terror unit is Intelligence. Based on Law No. 17 of 2011 concerning State Intelligence, intelligence is a party that plays a role in carrying out efforts, work, activities, and actions in early detection and conducting early warnings for the prevention, deterrence, and countermeasures against any threats that threaten national interests and security. In an effort to eradicate terrorism, intelligence serves to prevent and overcome terror threats that can threaten the security of the country. Intelligence information is absolutely necessary for anticipating and detecting as early as possible any social change and rapid social processes. The effectiveness of this intelligence performance will be able to become an eye and ear for state security in the process of globalization, especially in tackling terrorism.<sup>16</sup>

To deal with terrorism, intelligence is necessary to improve the basic principles of its duties and functions, namely investigation, security and fundraising. Through investigation, intelligence needs to maximally obtain information materials about the opposing party. Through security, intelligence prevents the opposite party, in this case, from spreading its threat to our country. Meanwhile, through fundraising, intelligence approaches within the framework of Intelligence activities, such as persuading, convincing, or otherwise inciting. In order to create a mature situation and conditions for operational intelligence activities.<sup>17</sup>

### 3. Conclusion

*Criminal policy* in countering terrorism that occurs in Indonesia is a form of government responsibility, as stated in Article 43a paragraphs (1) to (3) of Law Number 5 of 2018 concerning Amendments to Law Number 119 of 15 of 2003 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Terrorism Crimes into Law

Further regulations, as explained in Article 43b paragraphs (1) to (5) of Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Terrorism Crimes into Law. In National Preparedness

In addition to capacity building of the Indonesian Anti-Terror Organization, In carrying out the prevention and countermeasures of terrorism, the Indonesian government has formed a special organization (Unit) to deal with the growing terrorism in the country. These units include the National Counterterrorism Agency (BNPT), Densus 88, the CounterTerrorism Detachment, and Intelligence.

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<sup>15</sup> Muchamad Ali Syafa'at, *New Fetters of Terror Crimes For*. Jakarta.: (Jakarta: Imparsial Coalition for the Safety of Civil Society, 2003).p. 19

<sup>16</sup> Wawan H Purwanto, *Terrorism The Endless Threat* (Jakarta: Grafindo Perkasa, 2004).p. 29

<sup>17</sup> Bintatar Sinaga, "The Crime of Terrorism," *Journal of Progressive Justice* 1, no. 4 (2001): 29.

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