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Political Motives in Term of Criminal Definition on Terrorism Law in Indonesia

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Abstract

In Law Number 5 Year 2018, the definition of terrorism with political motives is regulated. This is different from the previous regulation, namely Law Number 15 Year 2003 concerning the stipulation of Government Regulations in lieu of Law Number 1 Year 2002 concerning Eradication of Terrorism Criminal Acts. The issue raised is how the political motives as the goal of terrorism and what are the fundamental changes of the latest terrorism law. This research uses normative legal research in which the study legal material contains normative rules. With the ratification of the Terrorism Law, political motives are used as an element of the offense formula. Some changes are on the Definition of Terrorism, Terrorism Organizations, Military and Paramilitary Training, Incitement, involvement of children, time of detention, arrest, wiretapping, protection, victims' rights, prevention, BNPT, TNI involvement and oversight by the DPR.

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Introduction

The development of global society has an impact on the development of new crimes that were previously not known as a crime, including the crime of terrorism. Terrorism first gained worldwide attention due to an attack on the American World Trade Center on September 11, 2001, which resulted in many casualties and lifelong disabilities. Terrorism is included in extraordinary crimes because its disclosure is very difficult because and involves an international network.

The terrorism incident has become a major issue due to it has become a serious threat to every country. In Indonesia itself, acts of terrorism took many victims with the bombing in Legian Bali in 2002, bombs at the JW Mariot Hotel in Jakarta in 2003, the Australian Embassy Office in Jakarta in 2004. Bombing carried out by terrorist groups in Indonesia continued until several last year.

Responding to the terrorism act, Indonesian government has regulated law towards the perpetrator. After the Bali bombing incident in 2002, the government has issued a substitute Law Number 1 of 2002 concerning Eradication of Terrorism Crimes which is then stipulated by Law Number 15 of 2003 amended by Law Number 5 of 2018. It was formed with various considerations including the series of bombings that occurred in the territory of the Indonesian Republic has resulted in loss of lives without looking at the victims, causing widespread public fear, and harming property, thus causing impacts knowledge of social, economic, political and international relations. In addition, terrorism is a transnational, organized crime and has a network that threatens national and international peace and security .

The criminal acts definition of terrorism in article 1 number 1 of Law Number 15 of 2003 concerning the stipulation of Government Regulations in lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism, are all acts that fulfill criminal elements in accordance with the provisions in the Act. The definition of Terrorism as can be seen from the definition of Article 1, we can see that every person, corporation that commits violence and or threat of violence against the government of the Republic of Indonesia, Foreign Country Representatives, International Organizations, against vital strategic objects, public facilities with explosives.

Law enforcement against criminal acts of terrorism is institutionally regulated in Law Number 15 of 2003, carried out by the National Counterterrorism Agency established under Presidential Regulation No. 46 of 2010 concerning BNPT with the task of compiling strategic policies, and national programs in the field of national counter-terrorism, coordinate the relevant government agencies in the implementation and implementation of policies in the field of combating terrorism by forming a task force consisting of elements from the relevant government agencies in accordance with their respective duties, functions and authorities. Law enforcement of criminal acts of terrorism from the level of investigation, prosecution and examination in a court session is carried out in accordance with the Criminal Procedure Code. Then the investigation was carried out by the Police with a special team namely the Special Detachment 88, known as the Anti-Terror Detachment.

The existence of the National Counterterrorism and Detachment 88 National Counter Terror Agency does not make the terrorism perpetrators deterrent. This can be seen from the remaining acts of terrorism in various places in Indonesia. The definition of Terrorism is considered inappropriate, which was only religiously motivated, but lately many things have occurred politically motivated, so the government wants to incorporate ideological and political motives into the definition of terrorism.

With the issuance of Law Number 5 Year 2018 concerning Eradication of Terrorism Criminal Acts, in Article 1 point 2 the definition of terrorism is defined as an act that uses violence or threat of violence that causes an atmosphere of terror or fear that is widespread, which can cause mass victims, and / or cause damage or destruction to vital strategic objects, the environment, public facilities, or international facilities with ideological, political or security interference.

With the inclusion of ideological, political motives and security disturbances in the definition of terrorism above, it means adding elements of criminal acts that must be proven in order to declare that criminal acts of terrorism have occurred. From the foregoing, the authors are interested in conducting research with the following issues: How to regulate political motives in the definition of terrorism criminal acts based on Law Number 5 Year 2018 concerning Eradication of Theological Crimes and how changes are regulated in Law Number 5 Year 2018 concerning the Eradication of Theological Crimes.

Research Method

This study uses normative legal research in which the study of legal material contains normative rules including primary legal materials, especially legislation and secondary legal materials consisting of books, journals and legal scientific articles. The legal material obtained was analyzed by descriptive qualitative method, specifically political motives in the definition of terrorism based on Law Number 5 of 2018 concerning amendment of Law Number 15 of 2003 regarding the stipulation of Government Regulations in lieu of Law Number 1 of 2002 on Eradication of

Terrorism Criminal Acts.

Result and Discussion

Political Motives in the Definition of Terrorism Based on Law Number 5 Year 2018 Regarding Eradication of Theological Crimes

Terrorism in the Black's Law Dictionary is defined as the use of threat of violence to intimidate or cause panic; especially as a means of affecting political conduct, activities that involve elements of violence or cause harmful effects on human life that violate criminal law, which are clearly intended to intimidate civilians, influence government policy, and influence the conduct by kidnapping or killing.

In etymology, the word terrorism consists of two words namely terror and -ism. Terror means cruelty, violence and horror, -ism means an understanding. But there are also those who say that the word terrorist and terrorism comes from the Latin word *terrere* which means to make it tremble or vibrate. Terror can also mean to cause horror .

Hafid Abbas states terrorism is the use of force or illegal force against people or property to intimidate or pressure the government, civil society or its parts to force social and political objectives . Whereas T.P. Thornton defines terrorism as the use of terror as a symbolic act designed to influence policy and political behavior in extra-normal ways, specifically by the use of violence and the threat of violence . However E.V. Walter explained that the terror process has three elements, namely act or threat of violence, emotional reaction to extreme fear on the part of victim or potential victim and social impact that follows violence or threat of violence and a sense of fear that arises later .

In the book *Financing of Terror, How the Groups that are Terrorizing the World Get the Money to Do It* by James Adam, defines that terrorism is the use or threat of physical violence by individual or groups for political purposes, both for the benefit or to counter existing power, if act of terrorism is intended to shock, cripple or intimidate a target group that is greater than its immediate victim. Terrorism involves groups that try to overthrow certain regimes, to correct group or national complaint or to undermine the existing international political order .

From the various notions of terrorism above, it appears that there is no uniformity in the understanding of terrorism. However, we can see the similarity of the motives or basic characteristics of terrorism, notably political aim or to commit criminal act of terrorism, there must be a political background. This contradicts with the rules of terrorism in Indonesia. In Act Number 15 of 2003 concerning the stipulation of Government Regulations in lieu of Act Number 1 of 2002 on Eradication of Terrorism Crimes, it is not stated that criminal act of terrorism must have political motive, but in reality criminal act of terrorism that has occurred in Indonesia exists because of the political motives.

Article 6 of Law Number 15 of 2003 concerning the stipulation of Government Regulations in lieu of Law Number 1 of 2002 on Eradication of the Criminal Act of Terrorism categorized elements of terrorism act are everyone; deliberately; using violence or threat of violence; creates an atmosphere of terror or fear; to people extensively or to cause mass casualties; by seizing freedom or loss of life and property of others, or causing damage or destruction to strategic vital objects or the environment or public facilities or international facilities. Terrorism on this notion does not mention the existence of political motives.

Muladi divided terrorism into five forms from which are cited from the *National Advisory Committee in the Report of the Task Force on isorder and Terrorism*, such as:

Official or State terrorism, which is an act of terrorism that occurs in a nation whose order is based on oppression.

1. Political Terrorism. It is a criminal act carried out with violence that are designed primarily to cause fear in the community with political objectives.
2. Non-political terrorism, i.e. terrorism which is carried out for the purpose of personal gain, including organized crime activities.
3. Quasi terrorism; actions that describe incidental activities to carry out violent crimes in the form and manner resembling terrorism, but do not have essential elements.
4. Limited political terrorism; an act that indicate terrorism act carried out for political purpose or motive, but is not part of a joint campaign to control State control.
5. Official or State terrorism, which is an act of terrorism that occurs in a nation whose order is based on oppression.

Law Number 15 of 2003 on the stipulation of Government Regulation in lieu of Law Number 1 of 2002 concerning Eradication of Terrorism Criminal Acts which does not regulate political motives as a background for the occurrence. According to Romli Atmasasmita, the difficulty in drafting the Terrorism Law is a discussion on the definition of terrorism that is compatible with Indonesia's culture, ethnicity and geography. Based on these considerations, he said that Law Number 15 of 2003 on the stipulation of Government Regulations in lieu of Law Number 1 of 2002 concerning Eradication of Terrorism Criminal Acts does not contain the definition of terrorism,

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except only including the definition of terrorism as a sterile criminal act from the political influence. The purpose of political sterilization as a criminal offense is to prevent ethnic conflicts and SARA perspective conflicts among Indonesian children .

With the complex motives for doing terrorism, the violence political phenomena and the terrorism regulation cannot be easily formulated. Violence can be committed by individual, group or country. Perpetrator's motivation can come from very complex reasons such as idiosyncrasy, criminal or political. Target or victim as part of intimidation, coercive, or propaganda tactics to achieve their goals. Thus, terrorism is the result of the accumulation of several factors, not only psychological factors, but also political, religious, sociological, and other factors, so that it is too simplistic to see terrorism through only one factor .

Series of terrorist acts that occurred in early 2018 in various major cities in Indonesia, 9 May 2018, murder of five policemen in the Salemba Mako Brimob detention center, 13 May 2018, suicide bombings in three churches in Surabaya and bombs in Rusunawa Wonocolo Sidoarjo, 14 May 2018, suicide bombs in Surabaya Mapolresta and 16 May 2018, attacks carried out by terrorists in Riau Mapolda. A number of these terrorism acts have triggered the ratification of terrorism law. Revision of Law Number 15 of 2003 on the stipulation of Government Regulation in lieu of Law Number 1 of 2002 concerning Eradication of Terrorism Crime was ratified in the Republic of Indonesia parliament Plenary Meeting on May 25, 2018 which actually had been submitted by the government to the DPR since February 2016 after the Thamrin bomb.

Law Number 15 of 2003 on the establishment of Government Regulation in lieu of Law Number 1 of 2002 concerning Eradication of Terrorism Crimes, in Article 1 Number 2 defines Terrorism is an act that uses violence or threat of violence that causes 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 motives, or security disturbances.

The use of the phrase political motives in the definition of terrorism initially met with opposition from various parties, because it would be abused by terrorists to avoid accusation and would also narrow the space for law enforcement to act against terrorists, because in a criminal defense the material could not be substantiated political motive. In addition, opening up a broad multi-interpretation space with political motive, potential vulnerability targets groups that are not terrorism.

Political motive that is used as elements of the offense formulation, can be used as deviation by the government to criminalize political opponents. Not to mention after the 2017 Regional Head Election and General Election, the identity politics has increased especially the politics of religious identity, also lately, the perpetrators of terrorism are indicated with radical groups from one of the majority religions in Indonesia.

The identity politics groups emerge on the ground of ongoing injustice. The injustice that was shown was considered to threaten the group, resulting in distrust of the government, by protesting and pressuring the government to be fair. With the political motive in the latest regulation, the government easily silences community groups.

The presence of groups that understand violence and radicalism as the mastermind of terrorism act in Indonesia based on ideological and political motives that are different from the basis of the Republic of Indonesia. The movement to replace Pancasila as the basis of the State with radicalism ideology, it is of a great importance to present the political motive phrase and ideology in terms of terrorism, so that law enforcement gets certainty.

Acts of terrorism are actions that have been carefully planned. Terrorism with political objective wants to replace the existing political system and government system. Dissatisfaction with government policies made a real threat to the integrity of the Unitary State of the Republic of Indonesia.

On the other hand, the placement of political motive phrase in the definition of terrorism aims to prevent the arbitrariness of law enforcement. Fulfillment of political motive can avoid law enforcement to directly execute stipulating articles of terrorism that have not been explored in advance in terms of investigation. The use of political phrase purpose in the definition of terrorism is important to distinguish terrorism from other criminal acts.

With the changes in the definition of terrorism above, the criminal act of terrorism can be accompanied by ideological motive or political motive, or certain goals as well as other personal, economic, and radicalism objectives that endanger the State ideology and State security. Therefore, criminal acts of terrorism are always threatened with serious crimes by criminal law in the jurisdiction of the State.

Amendment that is Regulated In Law Number 5 Year 2018 Regarding Eradication of Theological Crimes

Ratification of Law Number 5 of 2018 as amended by Law Number 15 of 2003 concerning the stipulation of Government Regulations in lieu of Law Number 1 of 2002 on Eradication of Terrorism Crimes resulted in several fundamental changes, including changes in definition until the involvement of the Indonesian National Army. Here are some of the changes, i.e:

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Changes on Terrorism Definition

The definition of terrorism which previously only stated is any act that fulfills the elements in a criminal act in accordance with the provisions of this law. In Article 1 of Law Number 5 Year 2018 concerning Eradication of Terrorism Criminal Acts, terrorism is an act that uses violence or threat of violence that causes a widespread atmosphere of terror or fear, incurs a mass victim, and / or causes damage or destruction to strategic vital object, environment, public facilities, or international facilities with ideological, political or security interference motives.

Criminal Againsts People Related to Terrorism Organization

Article 12 A of Law Number 5 Year 2018 concerning Eradication of the Terrorism Criminal Act states that anyone who intentionally becomes a member or recruits a person to become a member of a corporation determined by the court as a terrorism organization shall be subjected to a maximum of 2 years and a maximum of 7 years. For the founder, leader, management or person who controls the corporation's activities, the prison sentence shall be a minimum of 3 years and a maximum of 12 years.

Criminal Against Military and Paramilitary Training

Article 12B of Law Number 5 Year 2018 concerning Eradication of the Criminal Act of Terrorism, regulates everyone to intentionally carry out, give, or participate in military training, paramilitary training, or other training, both within and outside the country with the aim of terrorism being sentenced to a prison term of at least 4 years and a maximum of 15 years.

Criminal Against People who Incite Terrorism

Article 13A of Law Number 5 Year 2018 concerning Eradication of Terrorism Criminal Acts mentioned that every person who has a connection with terrorism and deliberately incites persons or groups of people to commit terrorism act shall be sentenced to a maximum of 5 years in prison.

Criminal Against Terrorism Perpetrator Involving Children

Article 16A of Law Number 5 Year 2018 concerning Eradication of Terrorism Criminal Acts stated that there is an additional 1/3 of criminal sanctions against anyone who involves a child in terrorism act.

Detention on Terrorists

Article 25 of Law Number 5 Year 2018 concerning Eradication of Terrorism Criminal Acts, in the interest of investigation, in this case, investigator can carry out detention for a maximum of 120 days, an extension can be submitted to the general public for a maximum of 60 days and an extension of detention can be submitted to the Chair of the District Court 20 days at the most. For prosecution, in this case, the public prosecutor can hold for 60 days and an extension can be submitted to the Chair of the District Court for 30 days.

Time of Arrest by Investigator

Article 28 of Law Number 5 Year 2018 concerning Eradication of the Criminal Act of Terrorism stipulates that investigators would have 14 days and can be extended 7 days to make arrests of suspected terrorists before establishing them as suspects or acquitting them.

Preliminary evidence in the case of wiretapping

Article 31 and 31A of Law Number 5 Year 2018 concerning Eradication of Terrorism Criminal Acts, stipulates that under conditions of urgency, police investigators can directly conduct wiretapping to the terrorists. In the case of wiretapping within a period of 3 days, the investigator is obliged to request a determination from the local District Court Chairman. Wiretap permission can be granted for a maximum period of one year and can be extended for another year.

Protection for Related Parties

Articles 33 and 34 of Law Number 5 Year 2018 concerning Eradication of Terrorism Criminal Acts state that the relevant Parties, in this case are Investigators, Public Prosecutors, Judges, Advocates, Reporters, Experts, Witness and Correctional Officers, and their families get protection in all matters not limited to the security of the State.

Victim Protection

Article 35A, 35B and 38B of Law Number 5 Year 2018 concerning Eradication of Terrorism Crimes, regulates the rights of terrorism crime victims, namely the rights in the form of medical assistance, psychological rehabilitation, psychological rehabilitation, compensation for deceased victims, restitution granting and compensation.

Terrorism Prevention

Article 43A, 43B, 43, and 43D of Law Number 5 Year 2018 concerning Eradication of the Terrorism Criminal Act states that the government is obliged to prevent the crime of terrorism. Prevention can be done through national preparedness, counter radicalization and de-radicalization.

National Counter-terrorism Agency

Article 43E, 43F, 43G, 43H of Law Number 5 of 2018 concerning Eradication of Terrorism Criminal Acts confirms that the BNPT is located and is responsible to the president. The task of the BNPT is to formulate, coordinate, and implement national policies, strategies and programs to combat terrorism, coordinating between law enforcement agencies in combating terrorism and coordinating victim recovery programs.

The involvement of the Indonesian National Army

Article 43I of Law Number 5 Year 2018 concerning Eradication of the Terrorism Criminal Act explained that the TNI in dealing with terrorism act is part of military operation other than war which are adjusted to their the main tasks and functions.

Oversight by the House of Representatives

Article 43J of Law Number 5 Year 2018 concerning Eradication of the Criminal Acts of Terrorism states that the Parliament is to form a terrorism control oversight team.

Conclusion

1. Terrorism is an act of violence or threat of violence that creates a sense of terror against people who have political aims. Law Number 15 of 2003 on the stipulation of Government Regulation in lieu of Law Number 1 of 2002 concerning Eradication of Terrorism Crimes, does not clearly regulate the definition of terrorism, but Ratification of Law Number 5 of 2018 provides a definition of terrorism as a political motive as a criminal act motive. This definition answers the rampant terrorist acts in Indonesia which are motivated by ideology, politics and security disturbances.
2. Ratification of Law Number 5 of 2018 as amended by Law Number 15 of 2003 on the stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning Eradication of Terrorism Criminal Acts resulted in several changes namely concerning Amendment to the Definition of Terrorism, Criminal Acts for Persons who are Related to Terrorism Organizations, Crimes Against Military and Paramilitary Training, Crimes Against People who Incite Terrorism, Crimes Against Terrorists Involving Children, Detention, Investigation, Tapping, Protection of Related Parties, Victims Rights, Prevention of Criminal Acts terrorism, BNPT, TNI involvement and oversight by the DPR.

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