

THE RECONSTRUCTION OF VALUES IN HANDLING TERRORISM BASED ON PANCASILA

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Abstract

The purpose of the research is to find out and examine the reconstruction of terrorism prevention policies in the digitalization era that is oriented towards Pancasila justice. The approach method used a normative juridical approach. The results of the research that show that the legal reconstruction is carried out by adding special counter-terrorism efforts, namely in the form of observation, supervision and control of all forms of activities related to terrorism, both from outside and from within the country. Then added efforts in the form of early supervision of the terrorism movement through digital technology as well as conducting international cooperation related to the prevention and eradication of terrorism, for this reason it is necessary to reconstruct the Prevention of Terrorism Crimes and the Protection of Investigators, Public Prosecutors, Judges, and Correctional Officers, then reconstruction of Protection For Investigators, Public Prosecutors, Judges, and Correctional Officers, the contribution of the research is expected to reconstruct policies for handling terrorism crimes based on the value of justice so that they are expected to be able to provide a renewal of thought in the theory of preventing and handling terrorism crimes through the thought of preventing terrorism crimes.

Keywords: Pancasila; Reconstruction; Terrorism.

A. INTRODUCTION

Indonesia is one of the countries in Southeast Asia that has experienced the most threats and attacks by terrorism. Criminal acts or criminal acts are acts that are against the law.¹ The recent spate of terrorist

¹ Anton Rudiyanto, Gunarto, Anis Mashdurohatun, Andri Winjaya Laksana, Implementation of Indonesian Supreme Court Regulation No. 02/2012 on the Adjustment of Limitations on Minor Crimes and the Amount of Fine set in the Criminal Code on Minor Criminal Cases in Semarang State Prosecutor's Office, *Journal of Xidian University*, Vol.16 Issue.2, 2022, page.505-517

attacks in Indonesia is testament to this. According to Indonesian Police Chief Tito Karnavian, the attacks were directed by IS central to retaliate against the arrest of radical cleric Aman Abdurrahman, mastermind of the 2016.²

The issue of terrorism was also increasingly problematic in 2019 with the bombing in Surabaya which made the police the object of terror and involved women and children as suicide bombers. The bombing in Surabaya is an act of terrorism that is sure to take its toll. The main aim of this act is terror that inflicts damage.³ For this reason, as an extraordinary crime, terrorism requires extraordinary handling.⁴ In the Old Order era, the approach to counter-terrorism used more of a security and military approach. At this time, the State is in the process of establishing a regime and self-defense from the threat of colonialism trying to return to Indonesia. The Armed Forces of the Republic of Indonesia (ABRI), now the Indonesian National Army (TNI) plays a very dominant role in the field of defense and domestic security. The role of the military also includes efforts to maintain the integrity of the nation and sovereignty, including overcoming various attempts at rebellion and terrorism in the country.⁵

During the New Order era, acts of terrorism began to emerge which were based on the interpretation of certain religious teachings. Many acts of terror were carried out by radical Islamic movements, which had the terminology of purely Western product movements which were often associated with fundamentalism in Islam,⁶ emerged from the mid-1970s to the early 1980s. These include the terror carried out by the Haji Ismail Pranoto Group calling itself Komando Jihad, the Hasan Tiro Group calling itself the Indonesian Muslim Liberation Front, the group movement led by Abdul Qodir Djaelani who declared himself adherents of the Islamic Revolutionary Struggle Pattern, the terror carried out by the Warman group which also calls itself Komando Jihad, and the terror carried out by the Imran group which calls itself the Indonesian Islamic Revolutionary Council.⁷

Then in the Reformation era, Act No. 11/PNPS/1963 was officially revoked through the enactment of Act No. 26 of 1999. While acts of terrorism such as bombings and suicide bombings continue to emerge, this time targeting houses of worship, crowd centers and embassies of friendly countries. The act of terrorism in Indonesia that attracted the most attention

2 Sylvene See, Returning Foreign Terrorist Fighters: A Catalyst for Recidivism Among Disengaged Terrorists, *International Centre for Political Violence and Terrorism Research*, Vol.10 Issue.6, June 2018, page. 7-15

3 Abd. Halim & Abdul Mujib Adnan, Problematika Hukum dan Ideologi Islam Radikal (Studi Bom Bunuh Diri Surabaya), *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam*, Vol.2 No.1, October 2018, page.31-61

4 Aidir Amin Daud, Human Rights, Islamophobia, and the War on Terrorism, *Hasanuddin Law Review*, Vol.7 Issue.3, December 2021, page.169-182

5 Sidratahta Mukhtar, Strategi Pemerintah Indonesia Menghadapi Terorisme Dalam Era Demokratisasi, *Reformasi*, Vol.6 No.2, 2016, page.143-153

6 Anzar Abdullah, Gerakan Radikalisme Dalam Islam: Perspektif Historis, *ADDIN*, Vol.10 No.1, February 2016, page.1-28

7 Reni Windiani, Peran Indonesia Dalam Memerangi Terorisme, *Jurnal Ilmu Sosial*, Vol.16 No.2, Edisi July-December 2017, page.135-152

was the Bali Bombing 1 on October 12, 2002. This incident was responded quickly by the government, along with the reform process in Indonesia, the government decided to separate the functions of the TNI and Polri through TAP MPR/VII/2000. The separation of these institutions then gave a significant change to the counter-terrorism strategy in Indonesia. Since then the government has established a new counter-terrorism organization under the Indonesian National Police, known as Densus 88, with the aim of fighting domestic terrorism. In this case the TNI plays a supporting role, as regulated in Article 7 of Act No. 34 of 2004 concerning the TNI in the context of military operations other than war.⁸

After Perppu No. 1 of 2002 and Perppu No. 2 of 2002 was published, bomb terror attacks in Indonesia continue to occur. In fact, almost every year bomb terror attacks take place in remote corners of the archipelago. The terror attacks did not go away until Perppu No. 1 of 2002 was stipulated as Act No. 15 of 2003 and Perppu Number 2 of 2002 was stipulated to be Act No. 16 of 2003 at the beginning of 2003, specifically and specifically being a very strategic matter to anticipate and eradicate various forms of criminal acts of terrorism which will threaten the security, peace and integrity of all the people under the unitary State of the Republic of Indonesia.⁹ Because of that, a comprehensive strategy and a gentle or humane approach are needed but applies to those involved in the terrorism movement.¹⁰

Indonesia has a law that specifically deals with terrorism, namely Act No. 5 of 2018 concerning Amendments to Act No. 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Act No. 1 of 2002 concerning Eradication of Criminal Acts of Terrorism into Law.¹¹ However, in the latest terrorism law, there are still some shortcomings, namely the absence of clear implementing regulations and the position of the protection and recovery of victims of terrorism is not clear and the progress of information and communication technology as a means of terrorism has not been clearly regulated. Sri Endah Wahyuningsih stated that there needs to be good coordination between existing law enforcement agencies regarding a problem of violating the law or existing crimes.¹²

The previous research on terrorists only stated that terrorism has become a global phenomenon. The terrorism movement has penetrated almost all countries in the world, including Indonesia. As in other regions,

8 Diandra Megaputri Mengko, Military Involvement in Counter-Terrorism in Indonesia, *Jurnal Penelitian Politik*, Vol.14 No.2, December 2017, page.197–208

9 Ahmad Mukri Aji, Pemberatasan Tindak Pidana Terorisme di Indonesia (Analisis Terhadap UU No. 15 dan 16 Tahun 2003 Berdasarkan Teori Hukum), *Jurnal Cita Hukum*, Vol.I No.1, June 2013, page.57-74

10 Septi Gumiandari, The Role of Cirebon Women Ulama in Countering Religious radicalism, *Qudus International Journal of Islamic Studies (QIJIS)*, Vol.8 No.1, 2020, page.33-64

11 Notariani Asril, Husni, Ferdy Saputra, Asas Retroaktif Terhadap Tindak Pidana Terorisme, *Jurnal Ilmiah Mahasiswa Fakultas Hukum (JIM FH) Fakultas Hukum Universitas Malikussaleh*, Vol.IV No.1, January 2021, page.25-33

12 Sri Endah Wahyuningsih dan Agus Sunaryo, The Role of Prosecutor Office In The Eradication Of Corruption Criminal Acts In Indonesia, *Jurnal Pembaharuan Hukum*, Vol.IV No.2, May-August 2017, page.248.

terrorism in Indonesia also has theological and ideological foundations as well as networks so that it has strong resilience. Until now, terrorism has become one of the challenges and threats to national security, and what distinguishes it from the research conducted by the author discusses further regarding the reconstruction of policies for handling terrorism based on the value of justice so that it is expected to be able to provide a renewal of thought in the theory of prevention and handling of criminal acts of terrorism through the thought of preventing criminal acts of terrorism holistically in today's digital era.

The purpose of this research is to find out and examine the reconstruction of terrorism prevention policies in the digitalization era that is oriented towards Pancasila justice, so that the classification of issues related to the roots of terrorism is carried out and prevention is carried out by developing a democratic system that is able to realize protection and guarantee for the recognition of human rights of all parties, then carry out surveillance of terrorist networks that are capable of destroying the country through armed terror, as well as war in international politics by refusing to cooperate with institutions or countries that are involved with terrorism.

B. RESEARCH METHODS

The approach method used for the completion of this research was normative juridical. In the context of the problems discussed in this study, the constructivism paradigm was used as a thinking paradigm to reconstruct the policy of preventing and handling terrorism so that it has the value of justice. Changes in the legal policy against terrorism were carried out to improve policies that have not been effective and there are many obstacles in their implementation.

C. RESULTS AND DISCUSSION

1. Policies for Handling Terrorism in Indonesia in the Perspective of Pancasila Justice

Progressive legal thought that requires real efforts to change quickly, make fundamental reversals in legal theory and practice, and make various breakthroughs. Indonesia is a country based on law and not based on power. The law must be made the commander in carrying out the wheels of national and state life.¹³ The discussion is based on the principle that the law is for humans and not vice versa and the law does not exist for itself, but for something broader, namely for human dignity, happiness, welfare, and human glory.¹⁴

Satjipto Rahardjo tried to highlight the above conditions into the situation of the social sciences, including law, although it was not as dramatic as in physics, but basically there was a phenomenal change in the laws he formulated in sentences from simple to complex and from

13 Mukhidin, Hukum Progresif Sebagai Solusi Hukum Yang Mensejahterakan Rakyat, *Jurnal Pembaharuan Hukum*, Vol.I No.3, September-Desember 2014, page.267-268

14 Satjipto Rahardjo, *Ilmu Hukum; Pencarian, Pembebasan dan Pencerahan*, Muhammadiyah Press University, Surakarta, 2004, page.45

fragmented ones box into a single unit. This is what he calls a holistic view of science (law). This holistic view provides a visionary awareness that something in a certain order has parts that are interrelated either with other parts or with the whole. In its development, the non-regulation of prevention related to terrorism prevention in the legal politics of eradicating criminal acts of terrorism will result in an increasing terrorism movement, this is clearly contrary to the mandate of progressive law which requires the existence of laws that are able to make people happy through the realization of justice, benefit, and humane legal certainty. Such a stance is heavily influenced by its adherents, namely the flow of legal positivism which views the law as merely a set of rules, legal norms and principles which are more commonly called laws.¹⁵

This clearly also contradicts the justice of Pancasila. Pancasila is basically a state philosophy or staatsidee (state ideals) that functions as a philosophy of ground lag and common platforms or sentences among fellow citizens in the context of state life, showing the nature of Pancasila as an open ideology. The consequence of Pancasila as an open ideology is to open up space to form community agreements on how to achieve these basic ideals and values. The agreement is an agreement on the rule of law as the basis of government or state administration (the basic of government) and an agreement on the form of institutions and administrative procedures (the form of institutions and procedures).¹⁶

Materially and intrinsically, Pancasila is philosophical. For example, the essence of just and civilized human precepts, not to mention the values in the precepts of the One Godhead and values in other precepts. All of them are metaphysical/philosophical in nature, in the cultural system of pre-independence Indonesian society and are still ongoing today and should be in the future, the value of Pancasila as a philosophy of life or view of life practiced.¹⁷ Meanwhile, formally-constitutionally, the Indonesian people recognize Pancasila as the state foundation (state philosophy) of the Republic of Indonesia. There is not a single law in Indonesia's positive legal system that does not include an acknowledgment that the entire structure, content, way of working, goals, functions and basic principles as well as various other legal rules are contained in every law that does not include Pancasila. Psychologically and culturally, the Indonesian nation and culture are equal to any nation and culture. Therefore, it is natural for the Indonesian people, like other nations (China, India, Arabia, Europe) to inherit a philosophical system in their culture.

15 Sutrisno, Fenty Puluhalawa, Lusiana Margareth Tijow, Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi, *Gorontalo Law review*, Vol.3 No.2, October 2020, page.168-187

16 Ahmad Zaenal Fanani, *Teori Keadilan dalam Perspektif Filsafat Hukum dan Islam*, Universitas Islam Indonesia, Yogyakarta, 2010, page.5.

17 Dini Amalia Fitri, Pancasila as A Legal Science Paradigm, *International Journal of Law Recontruction*, Vol.3 Issue.1I, September 2019, page.123-133

2. Weaknesses in Countering Terrorists in the Digital Age

a. Weaknesses of Legal Substance

The meaning of legal substance includes statutory instruments, legal substance by empirically showing that this relationship can vary from one area of law to another.¹⁸ Act No. 5 of 2018 has not regulated the implementation of a clear terrorism prevention and the position on the protection and recovery of victims of terrorism is not yet clear and regarding the progress of information and communication technology as a means of terrorism has not been clearly regulated. In addition, it has not yet been regulated related to efforts to prevent and deal with criminal acts of terrorism. So in other words it can be said that the proliferation of advanced methods of terrorism has not been clearly regulated in the legal politics of handling terrorism. This fact has resulted in terrorism growing and causing many victims.¹⁹

This has clearly resulted in the legal politics of handling criminal acts of terrorism unable to ^{realize} the mandate of Pancasila and the 1945 Constitution of the Republic of Indonesia. Efforts made by the government to eradicate criminal acts of terrorism through special legislation are aimed at preventing a legal vacuum.²⁰ Basically, legal politics in Indonesia must contain various values as reflected in the five precepts of Pancasila. Legal politics based on the value of God Almighty means that legal politics must be based on the moral value of God. Legal politics based on just and civilized human rights means that the existing legal politics must be able to guarantee respect and protection for human rights in a non-discriminatory manner.

Regarding the prevention of terrorism in cyberspace, it can be done through efforts to improve facilities and infrastructure in the form of developing information and communication technology as well as counter radicalization through digital media. However, this has not been able to be realized properly, considering that there are still quite a number of terrorism cases that use the current means of digital technology ^{advancement}. Prevention and handling of criminal acts of terrorism digitally as referred to in the above provisions have not been stated explicitly and clearly.

b. Weaknesses of Legal Structure

When we talk about the rule of law, which positions the law uprightly with the support of its three legal pillars in the frame of humane social justice, it turns out that up to this day it is nothing more than a utopian act that is always directed in idealistic rhetoric

18 Anu Bradford, Yun-chien Chang, Adam S. Chilton & Nuno Garoupa, Do Legal Origins Predict Legal Substance?, *Journal Of Law & Economics*, Vol.64, 2021, page.207

19 Soerjono Soekanto, *Kelemahan-Kelemahan yang Mempengaruhi Penegakan Hukum*, PT. Raja Grafindo Persada, Jakarta, 2007, page. 5.

20 Maulana Rahmat, Politik Hukum Terhadap Tindak Pidana Terorisme Dalam Pembaharuan Hukum Pidana Indonesia, *Jurnal Wawasan Yuridika*, Vol.1 No.2, September 2017, page.155-173

for every apparatus and legal figures and experts especially in Indonesia. In addition, the legal concept of upholding the rule of law that is processed by the state is not necessarily perfect in its implications, although it is recognized that in general it has fulfilled the ideal framework according to the framework of the maker (it is common in Indonesia, especially to make laws, always ignore the real characteristics of society. very important and functional).²¹

Based on the legal structure regarding law enforcement institutions, authority of institutions and personnel (law enforcement officers),²² then we can find social phenomena related to the problems of law enforcement in Indonesia are as follows "the occurrence of a decline in the rule of law which is marked by the increasing number of irregularities committed by law enforcement officers, which is accompanied by the increasing number of mass judgments against criminal acts in society, correlated with applicable laws and regulations positivistic."²³

c. Weaknesses of Legal Culture

The issue of national security in its development cannot be separated from the problems of the world's political economy, starting with the monopoly of the world economy through imperialism and colonialism as well as military power against third countries. Stability of national and local policies, so that when a country's economic stability is disturbed it will also result in other countries as an organizational unit being affected, this leads to the instability of the security of a country and people in a country in various sectors where the economic sector is in the form of the problem of poverty is at the center of national security disturbances, legal culture refers to the values, orientations and hopes or dreams of the community about law.²⁴

Poverty is one of the causes of terrorism, this happens as a chain effect of poverty in the form of pressure on economic life and low human resources due to the lack of access to adequate education which is the main factor for someone to enter the trap of terrorism.²⁵

3. Reconstruction of Values and Norms in Handling Terrorism Based on Pancasila Values

The existence of Pancasila as the basis of the state in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, Pancasila is an ideology for the Indonesian nation. Pancasila is

21 Sabian Ustman, *Penegakan Hukum Responsif*, Pustaka Pelajar, Yogyakarta, 2010, page. 15

22 Lutfil Ansori, Reformasi Penegakan Hukum Perspektif Hukum Progresif, *Jurnal Yuridis*, Vol.4 No.2, December 2017, page.148-163

23 *Ibid.*

24 Muh. Sudirman Sesse, Budaya Hukum dan Implikasinya Terhadap Pembangunan Hukum Nasional, *Jurnal Hukum Diktum*, Vol.11 No.2, July 2013, page.171-179

25 Kenichi Ohmae, *The End of Nation State*, The 1995 Panglaykim Memorial Lecture, Jakarta, 1995, page.18.

the science of ideas from the founding fathers.²⁶ This is indicated by the sound of the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. This has clearly resulted in the consequence that in Indonesia, human rights of all groups of people are recognized, respected and protected. In order to achieve this, the Indonesian state adheres to the Pancasila democratic system which makes the law as the basis.

The position of Pancasila as *Philosofische Grondslag* or by Nawiasky called *Staatsfundamentalnorm* as well as *rechtsidee* or legal ideals, has the consequence that the making of all legal regulations and their implementation must be in accordance with all the values contained in each of the Pancasila precepts as described above. Based on the explanation above, it can be stated that legal politics is basically a direction of legal development based on the national legal system to achieve the goals of the state or the ideals of the state and nation.²⁷

The various values contained in the five precepts of Pancasila are then concretized in the state goals as stated in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Unitary State of the Republic of Indonesia. So it is also clear that legal politics must be based on the four principles contained in the Fourth Paragraph of the Preamble of 1945 Constitution of the Unitary State of the Republic of Indonesia.²⁸

According to Padmo Wahyono, the legal state of Pancasila is a state of law rooted in the principle of kinship, where social interests are the most important but still respect and recognize and protect individual human rights. In line with Wahyono's view, Muhammad Tahir Azhary re-added the principle of harmony in thinking related to the Pancasila legal state which is rooted in the principle of kinship. So that the life of the nation and state will continue to uphold the values of togetherness and kinship which makes the life of the nation and state become an inseparable unit, so that in carrying out the life of the nation and state, efforts will be made to maintain national unity and the territorial integrity of the Unitary State of the Republic of Indonesia.²⁹

In order to realize the various kinds of legal ideas above, it is necessary to reconstruct Article 2 paragraph (2) of Government Regulation Number 77 of 2019 concerning Prevention of Terrorism Crimes and Protection of Investigators, Public Prosecutors, Judges, and Correctional Officers, which initially reads:

Prevention as referred to in paragraph (1) is carried out through:

- a. National Preparedness;
- b. Counter Radicalization; and
- c. Deradicalization.

26 Nurul Fadilah, Tantangan dan Penguatan Ideologi Pancasila Dalam Menghadapi Era Revolusi Industri 4.0, *Journal of Digital Education, Communication, and Arts*, Vol.2 No.2, September 2019, page.66-78

27 Moh. Mahfud M.D, *Membangun Politik Hukum, Menegakkan Konstitusi*, Pustaka LP3ES, Jakarta, 2006, page. 17

28 *Ibid.* page.16

29 Sarja, *Negara Hukum Teori Dan Praktek*, Thafamedia, Yogyakarta, 2016, page. 67- 68

It is necessary to add special counterterrorism efforts, namely in the form of observation, supervision, and control of all forms of activity related to terrorism, both from outside and from within the country. Then added efforts in the form of monitoring since the early days of the terrorism movement through digital technology as well as carrying out international cooperation related to the prevention and eradication of terrorism. So that Article 2 paragraph (2) of Government Regulation Number 77 of 2019 concerning Prevention of Terrorism Crimes and Protection of Investigators, Public Prosecutors, Judges, and Correctional Officers becomes:

Prevention as referred to in paragraph (1) is carried out through:

- a. National Preparedness;
- b. Counter Radicalization;
- c. Special Counterterrorism;
- d. Digital Monitoring;
- e. Foreign Cooperation in the Field of Handling and Combating Terrorism; and
- f. Deradicalization.

Then the reconstruction is carried out in Article 3 paragraph (3) of Government Regulation Number 77 of 2019 concerning Prevention of Terrorism Crimes and Protection of Investigators, Public Prosecutors, Judges, and Correctional Officers to become:

In coordinating the implementation of National Preparedness as referred to in paragraph (2), BNPT shall carry out:

- a. coordination meetings;
- b. exchange of data and information;
- c. digital monitoring and supervision; and
- d. monitoring and evaluation.

Furthermore, Article 5 paragraph (1) Government Regulation Number 77 of 2019 concerning Prevention of Terrorism Crimes and Protection of Investigators, Public Prosecutors, Judges, and Correctional Officers are:

Community empowerment as referred to in Article 4 letter a is carried out by:

- a. encourage groups and community organizations to play an active role in the Prevention of Criminal Acts of Terrorism in accordance with the provisions of laws and regulations;
- b. increase the institutional capacity of community groups and organizations to be actively involved in the Prevention of Terrorism Crimes;
- c. convey and receive information on the Prevention of Crime of Terrorism to and from the public;
- d. provide education about the dangers and impacts of the Crime of Terrorism through formal, non-formal, and informal education;
- e. digital surveillance and monitoring of radicalism movements in cyberspace; and

- f. other community empowerment in accordance with the provisions of the legislation.

D. CONCLUSION

The legal reconstruction carried out is by adding special counter-terrorism efforts, namely in the form of observation, supervision, and control of all forms of activity related to terrorism, both from outside and from within the country. Then added efforts in the form of early supervision of the terrorism movement through digital technology as well as conducting international cooperation related to the prevention and eradication of terrorism, for this reason it is necessary to reconstruct the Prevention of Terrorism Crimes and the Protection of Investigators, Public Prosecutors, Judges, and Correctional Officers, then reconstruction of Protection Against Investigators, Public Prosecutors, Judges, and Correctional Officers.

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