Juridical Study of Article 43a in Amending Law Number 5 of 2018 Concerning Criminal Acts of Terrorism in Pre-Emptive Strike Policy

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Abstract
Finding out the effects of terrorist activities in Indonesia and the application of Law Number 5 of 2018 concerning Criminal activities of Terrorism Article 43A Against Strike Pre-Emptive Policies are the goals of the research. The research approach used is normative juridical, meaning that it is based on the primary legal literature and is carried out by looking at relevant laws, regulations, theories, and conceptions. Examining Law Number 5 of 2018 concerning Amendments to Law 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism is the goal of the study. The amendment to Article 43A, which inserts and reads in the framework of dealing with Criminal Acts of Terrorism, contains dangerous articles. It is unclear what is meant by countermeasures, every certain person, allegedly brought or placed and a certain place. These are the results of the discussion in Law Number 5 of 2018 concerning Amendments to Law 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism. None of these arrangements can be found in the current Indonesian criminal procedural law. The conclusion is that acts of terrorism have a significant impact on the community. They are not things, but rather frequent victims of Second Life. The preceding text makes it evident how many lives were lost in the blast. These fresh impacts originate from people's personal experiences. Acts of terrorism on a larger scale actually have an impact on many things, and that is a matter of life and death for people and the nation. This loss and threat can be explained from seven aspects/fields, namely defense and security, ideology, politics, economy, society, education, and religious relations. Related to article 43A regarding the prevention of Terrorism Crime, pre-emptive efforts are needed.

Keywords: crime, terrorism, pre-emitf strike, article 43a, law no. 5 of 2018

A. INTRODUCTION

1. Background of the Research
One way to create an atmosphere of terror with mass casualties, as well as cause damage and sabotage to objects, the environment, public facilities, or strategically important international facilities, is to commit a destructive act in the political sphere by using violence and threats on a regular basis to intimidate the authorities.
All of the detrimental effects of terrorism, in Shodiq's opinion, have the capacity to upend the country's and state's daily operations. Because of its extensive network, terrorism poses a real and significant threat to the nation. Crimes against humanity that result in infrastructural ruin, civil disturbance, and heightened mistrust among religious communities are considered terrorist attacks. (Shodiq, 2018).

Almost a year, there has been an upward tendency in the number of terrorist instances during Indonesia's history of using terrorism. From conventionally committed acts of terrorism to contemporary acts of terrorism via the internet. Terrorism causes terror throughout the community, disrupting daily activity. Numerous acts of terror obviously transgress religious principles, national dignity, and human ideals. Terror has shown to be a tragedy for human rights.

One example of the idea of the rule of law that is governed by the provisions of Article 1 paragraph (3) of the 1945 Constitution is the recognition of human rights. The 1945 Constitution's Article 28 had regulations for the acknowledgment of human rights before it was amended. In the meantime, the 1945 Constitution's human rights provisions—which are outlined in Articles 28 and 28A–28J—became more precise and comprehensive following the revision.

The government of Indonesia released legislation on combating acts of terrorism during a period when terrorism poses a severe threat to national security. Law Number 15 of 2003 for the Eradication of Criminal Acts of Terrorism is the regulation. Prior to the enactment of this law, the Government Regulation was issued in lieu of Law Number 1 of 2002 in reaction to the terrorist attack in Bali that at the time attracted widespread media attention. Next, the National Counterterrorism Agency (BNPT) was established by Presidential Decree No. 46 of 2010 issued by the government in 2010. This decree was then updated by Presidential Regulation No. 12 of 2012 in 2012.

Treating terrorism as an extraordinary crime necessitates unique measures. The National Counterterrorism Agency is in charge of these initiatives (BNPT). An organization called BNPT is dedicated to implementing deradicalization through the use of direct preemptive actions, or police duties that prioritize community outreach and appeals in order to avert potential social issues and criminal activity. Establishing plans, defenses, and state protection against acts of terrorism is the tricky part. However, it seems that TNI, Polri, and BNPT are not the only organizations that work to stop and defeat terrorist crimes. (Dey Ravena, 2017). Confusion arises from the legislation that governs it, leaving questions about how to deal with terrorism, how the system operates, and what the responsibilities of those in charge are.

The latest development of counterterrorism policy in Indonesia is the issuance of Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism and Government Regulation No. 77 of 2019 concerning the Prevention of Criminal Acts of Terrorism and Protection of Investigators, Public Prosecutors, Judges, and Correctional Officers. Since terrorism involves both a form of breaking the law and a threat to the state's defense, it is actually unclear what exactly is included in the law regarding the authority to prevent and control terrorist acts. Still, BNPT, Polri, and TNI are all authorized to handle matters pertaining to this matter. (Wijaya, Muhammad Akbar, 2021). Article 43A of the Amendment of Law Number 5 of 2018 concerning Changes in the Stipulation of Government Regulations in Lieu of Law Number 15 of 2003 concerning Criminal Acts of Terrorism is one of the several provisions in the Amendment to the Anti-Terrorism Law that could cause issues.

The paper is titled "Judicial Study of Article 43A in Amendments to Law
2. **Problem Statement**
   1. What is the impact of terrorism in Indonesia?
   2. What is the Pre-Emptive Strike policy in efforts to prevent and counter-terrorism as regulated through Article 43A of Law Number 5 of 2018 concerning Criminal Acts of Terrorism?

3. **Research Methods**
   This study employs a type of normative juridical legal research, meaning that it is grounded in the primary legal literature and is carried out by looking at relevant laws, concepts, theories, and legal principles. Sunggono, Bambang (2016). The primary legal source is the Law on Theorist Crimes; secondary legal sources include books, scientific papers, and journals; and tertiary legal sources include encyclopedias and legal dictionaries. The secondary data used in the literature search on criminal acts of terrorism is from Mestika Zed (2003). Qualitative data analysis is used.

**B. DISCUSSION**

1. **The effects of terrorist crimes in Indonesia**
   The bombing in Bali on September 12, 2002, which resulted in the greatest number of fatalities in Indonesian bomb blast history, marked the height of the country's terrorism movement. There were numerous foreign nationals killed in that incident, most of them being Australian citizens. In cooperation with foreign security agencies, Indonesian police were able to track down and apprehend several of the offenders, including Amrozi, Imam Samudera, Mukhlas, and Ali Imron. The suspect's examination revealed that the Bali 1 bomber belonged to a network of widely distributed organizations, specifically Jemaah Islamiyah. (A.C Manullang, 2016).

   The first effect of terrorist crimes is on the domain of defense and national security, which disrupts defense across international boundaries. Secondly, the influence on Pancasila, the national philosophy of Indonesia, as a result of attempts to substitute Islamic sharia law for Pancasila and to replace the current system with a government based on it. Third, disruptions to security, stability, and order have been brought about by the political landscape. Fourth, the Indonesian economy is being disrupted by the effects on the economic sector. The effect on tourism is the fifth. Well-known tourist destinations suffered damage, most notably Bali, also called the island of the gods. The effects of the tragedy on the tourism sector are evident due to the Bali Bombings I and II. Following the Bali I bombing, visitors left the area, which resulted in a significant drop in hotel revenue. The impact on the social sector comes in sixth. People in general are now terrified and aware of the crime of terrorism as a result of the acts and actions of those who commit acts of terror. Even victims of crimes of acts of terrorism feel dread and psychological trauma. Undoubtedly, a feeling of bitterness and animosity has developed and persisted, phobia and anxiety about the crime of terrorism can also give birth to a phobia of interacting with other groups. (Abdul Wahid, 2004).

   The seventh is the effect on the educational field. The public is beginning to view educational institutions with distrust, particularly universities with a strong religious component. For instance, Pepi Fernando, an IAIN alumnus, will handle the Pipe Bomb case. The case strengthened society's distorted perceptions of education and religious educational establishments. Lest parents' sending their kids to religious schools lead to the acceptance of radical understanding, which would distort kids' conceptions of religion. When it
comes to sending their kids to school or college, parents are becoming increasingly concerned about religious education. In addition, parents worry so much that they forbid their kids from participating in religious activities at school, including Rohani Islam (ROHIS). They worry that their kids' thinking will be altered and that skewed notions will prevail.

The effect on interfaith relations is the eighth. The reason Muslims are surrounded is that terrorists constantly identify their acts with Islam (jihad). Because of the terror offenders’ deep institutional and cultural ties to these groups, several Islamic organizations also feel besieged. (Wahid, Abdul, 2004). Terrorist acts also impair Islam's reputation as a religion of rahmatan lil-alamin, or "mercy for all nature."

2. Pre-emptive strike policy in efforts to prevent and counter-terrorism as regulated through Article 43A of Law Number 5 of 2018 concerning Criminal Acts of Terrorism

Separated from administrative criminal law (mala prohibita), terrorism is a pure criminal conduct (maala perse). The criminalization of terrorist acts as part of the evolution of criminal law can be accomplished in a number of ways, including: (a) an evolutionary system through modifications to articles of the Criminal Code; (b) a global system through comprehensive agreements outside the Criminal Code, including the details of its procedural law; and (c) a compromise system through the addition of a new chapter titled "terrorism crimes" to the Criminal Code. (Abdul Wahid, 2004). Criminal terrorism is a violent tactic used to manipulate public opinion in order to achieve specific goals. The use of violence, or the threat of using violence, to bring about political change is known as terrorism. (Wiyono, 2014).

Aspects of simultaneous, planned, and integrated prevention must be presented in Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism into Law in order to reduce the incidence of Criminal Acts of Terrorism. In order to bring the Stipulation of Perppu Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law, Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 simply specifies the following in Article 43: The government is required to take proactive measures based on the preservation of human rights and the prudential principle in order to avert terrorist attacks. There are three types of prevention: deradicalization, counter-radicalization, and national preparedness.

The words "In the context of countering criminal acts of terrorism, investigators or public prosecutors may prevent any particular person who is suspected of committing a criminal act of terrorism from being brought or placed in a certain place that is the jurisdiction of the investigator or public prosecutor within a maximum of 6 (six) months" are one of the amended provisions of Article 43 that has led to confusion and a conflict of legal norms. Because it does not make reference to the language or regulation principles found in Indonesia's criminal procedure law, this article represents a multiinterpretation of attempts to prevent and overcome criminal acts of terrorism.

The following are the areas where the article's language causes confusion and a conflict of legal norms: First, it's unclear what is meant by countermeasures—any specific person who is purportedly brought or positioned in a specific location. All of these arrangements are in conflict with Law Number 39 of 1999 addressing human rights and are not included in the criminal procedural law now in effect in Indonesia, which is Law Number 8 of 1981 concerning Criminal Procedure Law. Second, every
arrangement in this piece, including the ones involving investigators, public prosecutors, and time frames, is open to interpretation. Human rights breaches frequently occur in BNPT and Polri, organizations designated to prevent and control terrorist crimes.

The application of Article 43A in it must be accompanied by pre-emptive policies that include steps to establish equal relations with certain groups of people, so that it is hoped that the expansion of radical attitudes can be eliminated early. This step is only possible if some officials and communities understand the root of the problem. In addition to approaching, socializing, and providing legal assistance connected to terrorist crimes, the government continuously takes preventive measures based on the preservation of human rights and precautionary principles in an attempt to avert pre-emptive strikes. Pre-emptive measures used by the Indonesian government to combat terrorism include: genuine public support; enhanced public responsiveness; and social involvement fostered as a symbol of national commitment. and social engagement in the framework of infrastructure and social environment restoration. (H. Syahrir Kuba, 2017)

C. CONCLUSION

Based on the discussion described above, the conclusions and suggestions in this study are as follows:

1. Conclusion
   a. Acts of terrorism have a particularly negative impact on people, mostly because of how they influence interfaith relations. The reason Muslims are surrounded is that terrorists constantly identify their acts with Islam (jihad). Because of the terror offenders’ deep institutional and cultural ties to these groups, several Islamic organizations also feel besieged. Terrorist attacks may have an impact on Indonesia's interreligious ties.
   b. Related to article 43A regarding countering Criminal Acts of Terrorism, pre-emptive efforts are needed. Pre-emptive efforts can be made through the following methods: 1) Enlightenment of religious teachings by charismatic figures and high credibility in the religious field to eliminate extremism and radicalism of understanding of religious teachings by hardline fundamentalist groups. 2) Adjustment of political and governmental policies. 3) Involvement of political parties and community organizations or non-governmental organizations that have similar visions and ideologies in dialogue with radical groups. 4) Strict designation of terrorist organizations and related organizations as prohibited organizations and disband them. 5) Socio-economic programs, and 6) Imposition of the death penalty against terrorism perpetrators in Indonesia.

2. Suggestion
   a. The government ought to designate BNPT as the exclusive organization in charge of preventing and combating terrorism. BNPT is responsible for promoting terrorism deradicalization since it is pre-emptive. so that many people would eventually comprehend what terrorism really means. Life is greatly endangered by this, particularly life shared in diversity or plurality. Remember to educate others about the risks, effects, and strategies for avoiding the influence of radicalism and acts of terrorism.
   b. The Government and Parliament should revise Article 43A of the Terrorism Law to avoid multiple interpretations and avoid human rights violations.
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