Implementation of law no. 15 year 2003 concerning combating terrorism, impact on human rights

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Abstract

Bali bomb terrorist incidents on the 1st of October 2005 to the circuit and a proof that terrorism in Indonesia more severe and never recede. implementation of the law 15 of 2003 did not necessarily solve the problem of terrorism instead raises new problems in the field (HAM) Human Rights. In the application of Law No. 15 2003 more revealed weaknesses when applied to the field too accentuate the formal legal approach and repressive. Finally contradiction with the right of a person as a human race. Therefore, the application of the Act can actually increase and cultivate embryonic existence of terrorism in the future. This research method using sociological juridical and criminological approach using qualitative methods to find out about the weaknesses in the implementation of Law No. 15 of 2003 on the field. Law enforcement should be in accordance with the principle of upholding (HAM) Human rights. Granting vast powers to investigator to violence against people suspected of being terrorists, the government will soon revise Law No. 15 of 2003 on combating terrorism in Indonesia.

Keywords: Law Enforcement, Terrorism, Human Rights

1. Introduction

1st Bali bombing terrorism events on October 12, 2002 Bali bombing II and on October 1, 2005, Jw Marriot bomb on August 5, 2003 and July 17, 2009 and the bomb in front of the Embassy of Australia, is a series of and proof that terrorism in Indonesia is getting worse and never subsided though have been treated of Law No. 15 of 2003 about the eradication of criminal acts of terrorism. The arrest of some of the perpetrators of the Bali bombing I and II as well as the lives of Dr. Azhari and Nurdin m. Top and some of his followers, neither set Abu BakarBaasir planned indictment violated law No. 15 of 2003 but still very repressive police in the arrest did not appreciate fundamentals rights as human beings with such acts even the enhance of existence and resistance against the apparatus of police force.

The population of Indonesia totalling 250 million people from various ethnic tribal culture and religion with the majority of Muslims in the world is a lush place to forming of cadres terrorism and a safe place to hide for terrorism activities. Compared with neighboring countries such as Malaysia, Singapore, the Philippines and others in Asian region and more specifically in Southeast Asia, it appears that, the activities of terrorism in Indonesia is increasingly booming.

The development of the latest terrorism is a military training in Aceh and at the start with a series of robberies they were captured and carried out an intensive examination. The success of
the police to arrest the perpetrators of terrorism we can be proud but terrorism in Indonesia is still not over.

Indonesia, as a legal state, in criminal law enforcement against certain particularly the criminal act of terrorism very first of law characterized by the rule of law and justice. The enactment of the act no. 15 / 2003 about eradicating terrorism increasingly seen as an offense frailty. Mercy when applied in practice in the field.

However, in the development of science and technology in the crime following proven with new kinds of crime but the level of 2000 is talking about the crime. This means that criminal law a very fast with new regulations in this case also means that fundamentals of criminal law and the criminal law as it applies to be changed or even might not be used again.

A shift in the development of criminal law and the principle of criminal law in Indonesia of conventional modern way must be aware of it by the government as a maker of laws to anticipate the step that must be taken in dealing with the crimes which no longer in common its nature. The pengeseran characterized by mode of criminal methods conducted at random and tend to modern could no longer reach out to the criminal act of conventional.

In terms of the political program of the law the Government has also been influenced by the development of modern crimes that happen around the world. This has been done by many Governments have been treated with laws that are specific of which RI law No. 15 of 2003, and the determination of the Government Regulation No. 1 of 2002 of the eradication of terrorism, into law. Indonesia had enough devices regulations that govern about terrorism or related to the problem of terrorism in the form of national and international legislation. However, in order to measure a country in preventing or tackling terrorism is not depending on how the number of such legislation by a country, which is essential to what extent the effectiveness of the implementation of the legislation so that in this case, the Convention the Convention has been ratified that need to be implemented into the national laws of Indonesia. International cooperation is also an important thing to be done by the Government of Indonesia in terms of tackling terrorism.

Given the problem of terrorism is a very important issue then the Ministry of Justice and human rights to open the horizon by analyzing and evaluating the legislation that governs about terrorism and the related regulations, with more in depth both the present national, Regional, and international level.

In the criminal justice system in Indonesia all elements of judiciary, beginning from the stage of the investigation, the investigation, the prosecution until the proceeding until the implementation of the execution the Court, must be continuous with one another, so that created a structure of an integrated criminal justice system the integrated Criminal justice system as well as in the handling of the matter a criminal act of terrorism in the institution of the judiciary should be intertwined with each other and mutually coordinate as an effort in the eradication of criminal acts of terrorism.

Of the stage began investigation how the law enforcement officials can jelly find out and find a situation or event that deals with terrorism or suspected as terrorist. Investigation stage as an effort to find and collect evidence that crimes of terrorism found can be bright, and in order to determine the culprit and continue. The prosecution as the next phase which serves as a way to prove an act or event that carried out someone criminal acts of terrorism in front of the trial as a series of action to prove whether a person involved a criminal act of terrorism or not based on the error.
2. Research Methods

2.1 The kind of research

To get the results of research good and more substantial then required a research which is basically for scholarly activities conducted by the use of the methods by titling, the research methodology used an author in this arrangement is as follows:

a. method of approximation

The method of the approach used in this study is the Juridical sociological approach kriminologis approach using qualitative methods, namely by using this method the researchers hope to find out the extent of the police in this case did the arrest and investigation of suspected terrorists, the real state of the research in the community with the intent and purpose to find the facts and then continued with the found problem then leads to identify the problem and ultimately leads to the completion of existing in a way seen in terms of Juridical i.e. Act No. 15 of 2003 about the eradication of criminal acts of terrorism.

2.2 A Kind of Data

a. Primary Data : Data obtained directly in the research in the field has to do with the matter investigated to obtain primary data conducted interviews direct from the source.

b. Secondary Data : Data obtained from studies of library literature that derives from legislation that regulates about criminal acts of terrorists, namely law No. 15 of 2003

2.3 Data Collection Techniques

a. Interview : Which is a data collection method by means of integration in sistimatik and based on research purposes.A technique used free namely pokok-pokok interview about who will be asked.

b. Data Analysis : After data collected and the author analyzing data in the form of diskripsi analysis of data is obtained from the field research about the object of research about the arrests against suspected terrorists by police in tinjau( prespektif human rights of human rights and analyzed based on theories that there are problems to solve this in writing.

2.4 References

[1] Bill no 15 year 2003 on the eradication of criminal acts of terrorism
[2] The constitution of the republic of indonesia 1945 article 281 about the respect for the right to life is not tortured and held in an arbitrary manner.

3. The Results of Discussion

Now being discussed in this article there are two basic problems is as follows :

3.1 How the implementation of law no.15/2003 about eradicating terrorism
Implementing the act of no 15 year 2003 on the eradication of terrorism being material that are attractive. Almost all the experts said that expert of criminology and criminal crimes extraordinary crime and terrorism is not ordinary crimes, but will be but kent roach from (Canada and Adnan buyungnasition and criminal law experts). Among other coalition for civil society rejected this view. For they and ordinary crimes of terrorism is not necessary with the act specifically about the eradication of terrorism, very repressive.

Recently implemented in the field, and the act no 1/2003 gave the police to arrest act freely in, and investigation no legal protection against people suspected of involvement in terrorist to defend the arrest. The problem of terrorism is actually quite with the application of the provisions kuhp. Can solve the problems of terrorism in Indonesia.

Handling the case of terrorism in Indonesia towards tragedy Bali bomb dragging the convict some who sentenced to death by a court at the trial. It would be considered as the government success in handling the criminal act of terrorism in Indonesia.

But from a feat that obtained law enforcement officials we mentioned above, is it too we can say as the success of the government to combat the practice of terrorism, while after the incident there is still a tragedy or the occurrence of another who of preventive allegedly as a form of the criminal act of terrorism in terms of repressive, but the perspective the government is considered not ever puts forward so as to resolve or to prevent acts of terrorism in the future.

Applying the act of the police for this neglect of the culture and cultural keindonesiaan so friendly in a variety of aspects in the habit of Indonesian people. A legal product that are repressive, it will cause resistance in the community, not resolve the problem that occurred in the community in terms of the terrorist activities.

It is implemented the act of no 15 year 2003 on the eradication of terrorism must be based on humanist approach in the way the approach of religious and moral, and involve elements sepert the nation religious figures more productive than accentuates the positive law made the government instead will not solve the problem of terrorism in contrast with the implementation of the bill would create an embryo in the future new terrorism that will come. Because the effects of the implementation of the act applied by the police create a wound so deep on family and children his parents or his family suspected terrorist, or a person who was involved in terrorism.

To this article writer offer some strategic to prevent the spread terrorist in the future to come the government must be more effective programs that touch the heart of the parties or were alleged terrorist should involve the participation of various parties with diverse backgrounds, the field of scientific institution states such as the ministry of religious affairs ministry and the ministry of social communication the academic, religious organizations ngos the mass media and others, has to be active in cushion pahan-pahan radicalization through milti this approach must be a synergy with training programs that exist.

This approach should meet the many aspects. Humanist first aspect, this aspect must be in line with the practice of enforcement of rights apply universally. This aspect also consider a sense of justice to avoid similar things in the future, in addition to that aspect is also expected to open spaces after they can be used later on the welfare of the prisoners.

The social approach to be done through the form of communication that synergy and expect legal authorities to promote the principle of non violence and non intimidation. Expected by the communication as this transfer of social values can be accepted by the suspects and convict when the role of the wider community. This program not only addressed to the suspects and convict terrorists, but also can be applied to the community where the potential radicalism can
appear setiap time when the interaction between a terrorist group with the environment was done in intense and radicalism could be followed and disseminated to the wider community.

3.2 How impacts in the implementation of Law no 15 2003 against human rights

The impact on human rights and human rights in the application of law no 15 years in 2003 because it is reasonable for this in implementasinya in the field has made restless people are more specifically to the family the son of the wife sister even relatives of people allegedly involved terrorist .In its implementations law no year 2003 on the eradication of terrorism by police in this densus 88 greatly exaggerated , but it is a task that deberikan by the act of very represip that the neglect of women and human dignity .

So far the implementation of the act no. 15 / 2003 about the arrest of a man suspected of involvement in terrorism information intelligence not only of the law but through an arrest in the crackdown police have been tortured and physically and mentally people are.Even a wife kindred of suspected terrorists to

trauma mentally not to mention the matter as housing and property destroyed even environmental of suspected terrorists as in issuing police arrest sometimes shot blindly certainly create public order in the location uncomfortable effectively in the implementation of human rights ( ham ) on the implementation of the act.

The arrest in the case of terrorism in the reasons for the completion and the prosecution.The court there was a special investigation delik terrorism on bill no 15 / 2003 authorities to provide investigators to stifle one unexpected terrorist with a very long namely six months set in the draft article 8 verse 2 bill no

15 / 2003 on terrorism eradication, if during detention had no solid proof that he is not guilty of automatic implementation of law no. 1 / 2003 the rights of every citizen.

If we examine carefully the existing clauses in law No. 15 of 2003 about the eradication of terrorism is none of the articles that discuss the issue of the rights of a person is a suspect or unpredictable terrorists, only 1 article that is contained in article 19 was also strictly limited the suspects under the age of 18 (eighteen) years of age not to be sentenced to death or a lifetime.

We are concerned with a method of handling by police in the operation of anti terrorist lately .In a note the contrast , the suspected terrorists were killed dropped with the number of large enough .Some efforts to ambush also not accompanied by legal procedure which deserves .Impressed with argument against evil remarkable , police compromise only obligation to eliminate suspected terrorist , further there are efforts to extend the process of detention to the party suspected terrorist because police had difficulty in obtaining evidence .Whereas efforts against evil remarkable , is a necessity and the state responsibility in fulfilling the right safety of every citizen .

However , the situation any segenting police must uphold human rights in the category of non- derogablerighte , penhormatan over the right to life is not tortured and held in arbitrary is rights that cannot be reduced .This is an obligation not to mengkompromikan non-derogable rights in the constitution was declared the republic of indonesia and the constitution of 1945 article 281 law no 12 in 2005 regarding the ratification of international konvensi-konvensi civil and political rights .

Using an instrument of weapons by police with the game off the target can be justified if there are concrete threat to his soul and must be done in propositional is a need for urgent
necessity ) ( , legally ( lawfulness and can responsibility ( the principle of accountability is universal standards .

In the commission for missing persons in 2010 there have been asking why the dead victim in a total of 13 people temporarily in some cases after shooting a police have not indentitas offering obviously. Some even ordinary masyarakat victims are undergoing any fire. This shows the ambush against the alleged terrorist it was not prepared to consider it carefully and the human rights abuses might occur in contrast to the commission for missing persons record violation of human rights in the many suspected terrorists examined without accompanied by lawyers and no notice of his family in which a period long enough.

Extend the detention of against someone who is suspected of terrorist without accompanied by a lawyer opened space for to take firm measures penyeksaan or the act of degrading human dignity.

4. Conclusion

Based on previous discussion, then summed up as follows:

Legal instruments that there are too repressive and will not solve the problem of terrorist instead will create an embryo terrorist dimasa will come because it does not see the aspect of culture and sociological Indonesia society therefore it must be reviewed with humanist approach and the approach of religion and government must create the economy in areas that often arise deradikalisme

There are still kesimpangsiuran about understanding what can be categorized as evidence the beginning and the limits of what it can be inserted into the category of intelligence reports, intelligence report defines and exactly how that can be used as evidence the beginning.

The provision of authority that is so vast to investigators to take the spoil independence namely arrest the the suspected person has committed a felony terrorist. Is yet to be proved in a court was infringe on the rights of fundamentals as a citizen.

To immediately revise the act of no 15 year 2003 on the eradication of crime of terrorism especially clauses to be empirical and theoretical about " problems in the implementation of the bill as outlined in this report .

Humanist approach need to curb terrorist crimes in the future will come involving elements of society such as religious figures, NGOs, the government, and other institutions more effective than the approach of positive law that applied not solve the problem of terrorism otherwise fertilize the embryo of terrorism in the future would come .

The government should create a policy for the eradication with a de-radicalization deceive economic terrorist, improving education and moral Pancasila in places where radicalization terorime potentially arising.

6. Reference

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[9] Peter Mahmud tentangpenelitianhukum