

RULES OF LAW IN THE IMPLEMENTATION OF INDONESIA ARMED FORCES AUTHORITY TO OVERCOME TERRORISM IN INDONESIA

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ABSTRACT

Terrorism is one of the threats and disturbances facing Indonesia in the future, in the last few years its activities have increased, so that it has an effect on efforts to realize national goals as formulated in the fourth paragraph of the Preamble to the 1945 Constitution. In this case the involvement of the TNI to assist the Police is very much needed. However, not all parties, such as government agencies and the DPR, agree with this because the act of eradicating terrorism for the TNI has its own obligations and creates juridical problems in its implementation. The involvement of the TNI in dealing with acts of terrorism will pose a serious threat to the dynamics of democracy, human rights and the rule of law in Indonesia. A study of the implementation of the TNI's authority through literature studies in order to obtain materials and information needed in accordance with the subject matter: primary legal materials, secondary legal materials. Through interviews by using guidelines/guide questions so as not to deviate from the problems being studied. Followed by analyzing the data qualitatively described using systematic words. The approach used in this study uses a statutory approach. From the problems above and the method used, it can be concluded that it can provide benefits for the development of legal science and the field of administrative law, as a material for consideration in the formation of legislation related to the TNI's authority in dealing with acts of terrorism.

Keywords: TNI's Authority, Overcoming acts of terrorism in Indonesia, State defense system, Legislation

INTRODUCTION

According to H.D Stout, authority is an understanding that comes from the law of government organizations, which can be explained as all the rules relating to the acquisition and use of government powers by subjects of public law in public legal relations. According to Bagir Manan, authority in the language of law is not the same as power. Power only describes the right to do and not to do. Authority at the same time means rights and obligations.

Conceptually, the term authority or authority is often equated with the Dutch term "bevoegdheid" (which means authority or power). Authority is a very important part in the Law of Governance (Administrative Law), because the new government can carry out its functions on the basis of the authority it has obtained.

Authority is the right to use the authority possessed by an official or institution according to applicable provisions, thus authority also concerns the competence of legal action that can be carried out according to formal rules, so authority is a formal power possessed by an official or institution.

Authority has an important position in the study of constitutional law and state administrative law. So important is this position of authority, that F.A.M. Stroink and J.G. Steenbeek called it a core concept in constitutional law and state administrative law.

It is predicted that the spectrum of threats to the sovereignty of the Unitary State of the Republic of Indonesia (NKRI) in the next five to ten years, especially traditional threats in the form of aggression or invasion by other countries, is very unlikely. Potential threats to the Indonesian people are those that arise from within the country or non-traditionally, both transnational and those that arise within the territory of the Republic of Indonesia, while threats originating from outside are more likely to originate from transnational organized crime committed by non-Indonesian actors. Country by taking advantage of unfavorable domestic conditions.

One of the threats and disturbances that will be faced by Indonesia in the future is acts of terrorism, which in recent years have increased their activities, thus affecting efforts to realize national goals as formulated in the fourth paragraph of the Preamble to the 1945 Constitution, namely: "To form an Indonesian state government that protects the entire Indonesian nation and the entire homeland of Indonesia, to promote public welfare, educate the nation's life, and participate in implementing world order based on freedom, eternal peace, and social justice."

In the last decade, Indonesia has experienced many terrorist attacks which not only claimed lives and inflicted enormous material losses, but also spread an atmosphere of extreme anxiety and fear among the wider community. The terms "terror", "terrorist", "terrorism", "act of terrorism", have become a very frightening specter in Indonesia and internationally. The increasing acts of terrorism in Indonesia have made the international community label Indonesia as a "den of terrorism". In the period between 1981 and 2017 there was a series of acts of terrorism in Indonesia and the last one was a suicide bombing at the Kampung Melayu terminal in East Jakarta on Thursday, May 25, 2017 at 01.15 WIB with a total of 15 victims. These events have shown that acts of terrorism in Indonesia (the Santoso armed group) have developed, which are not just extraordinary crimes, but acts of terrorism in Indonesia (related to the ISIS organization) are transnational crimes aimed at separate from the Republic of Indonesia.

Terrorist acts in Indonesia can now be qualified as military threats, namely threats that use organized armed forces which are considered to have capabilities that endanger the sovereignty of the state, the territorial integrity of the country, and the safety of the entire nation. This includes acts of armed terror carried out by international terrorism networks or cooperating with domestic terrorism or domestic terrorism which has high escalation. In this case, the national defense system in the face of military threats places the TNI as the main component as regulated in Article 7 paragraph (2) of Law Number 3 of 2002 concerning National Defense.

Likewise, the use of force by the TNI which resulted in the deaths of Santoso and Muchtar, as well as the arrest of Umi Delima (and immediately handed over to the Police), has shown that the use of force by the TNI in carrying out military operations other than war (OMSP) and assistance to the Police is always based on the principles of international humanitarian law (IHL) and human rights (HAM), including the Criminal Procedure Code (KUHAP). This is an answer to the doubts that arise in the community regarding the involvement of the TNI in overcoming acts of terrorism which will lead to human rights violations (to kill or to be killed) which can lead to abuse of power.

Thus, the involvement of the TNI in overcoming acts of terrorism that endanger the sovereignty of the state, the territorial integrity of the state, and the safety of the entire nation is a necessity. On the other hand, judicially overcoming acts of terrorism is one of the main tasks of the TNI which is carried out through Military Operations Other than War (OMSP) as regulated in Article 7 paragraph (2) letter b number 3 of Law Number 34 of 2004 concerning the TNI (TNI Law). Therefore, it is necessary to draft laws and regulations as a legal umbrella for the involvement of the TNI independently in overcoming acts of terrorism.

In fact, if we refer to several laws currently in force, including Article 7 paragraph (2) of Law Number 3 of 2002 concerning National Defense and Article 7 paragraph (2) letter b number 3 of Law Number 34 of 2004 Regarding the TNI, the TNI's authority in dealing with acts of terrorism has been

regulated separately, so that the TNI can act directly or indirectly without having to go through a request for assistance from the Police.

Article 7 paragraph (2) of Law Number 3 of 2002 states "(2) The state defense system in the face of military threats places the Indonesian National Army as the main component supported by reserve components and supporting components". Furthermore, the explanation of Article 7 paragraph (2) is formulated as follows: "Military threats are threats using organized armed forces which are considered to have capabilities that endanger the sovereignty of the state, the territorial integrity of the state, and the safety of the entire nation.

Military Operations Other Than War or OMSP are military operations carried out not in the context of war with other countries, but for other tasks such as fighting armed insurgencies, separatist movements, acts of terrorism, the task of overcoming transnational crimes, humanitarian aid tasks and peacekeeping tasks.

Thus, if we refer to the formulation of Article 7 paragraph (2) letter b number 3 above, it is very clear that one of the main tasks of the TNI in Military Operations Other than War is "overcoming acts of terrorism". This means that the TNI's authority in dealing with acts of terrorism can be exercised through a request or without a request from the Police as formulated in Article 7 paragraph (2) lift 10 of the TNI Law. In other words, the TNI "could" have the "authority" to deal directly with acts of terrorism, especially armed terror acts that occurred in Indonesia without going through a request for assistance.

The question is "whether the authority of the TNI as stipulated in Article 7 paragraph (2) letter b number 3 can be implemented without waiting for other laws and regulations or implementing regulations?" To answer this question, we need to look at the formulation of Article 7 paragraph (3) of the TNI Law which states "(3) the provisions as referred to in paragraph (2) are implemented based on state political policies and decisions". The formulation of the article above expressly stipulates that the duties of the TNI in OMSP including the TNI's authority in "overcoming acts of terrorism" can only be carried out if there are state policies and political decisions". According to the Elucidation of Article 5 of Law Number 34 of 2004 concerning the TNI that "What is meant by state political policies and decisions are the political policies of the government together with the House of Representatives which are formulated through a working relationship mechanism between the government and the House of Representatives, such as consultation meetings and working meeting in accordance with the laws and regulations".

Currently, there has been a discussion on the revision of Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism in the DPR RI. One of the substances formulated in the draft revised bill is the role of the TNI in dealing with acts of terrorism as formulated in Article 43B of the Draft Revised Law (RUU) Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism. Article 43B paragraph (1) states that "national policies and strategies for countering terrorism are carried out by the National Police, TNI, and relevant government agencies in accordance with their respective authorities, coordinated by non-ministerial government institutions that carry out counter-terrorism". Meanwhile, paragraph (2) of the article explains that the role of the TNI is to provide assistance to the Police.

The discussion of the draft revision of Law (RUU) No. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism will cause problems if the role of the TNI in overcoming acts of terrorism is included in the bill. The problem is that there will be overlapping authorities between the TNI and Polri in various laws, including Law Number 2 of 2002 concerning the Indonesian National Police, Law Number 3 of 2002 concerning National Defense, Law Number 34 of 2004 concerning the Army The Indonesian National Committee and the Terrorism Law are currently under discussion at the DPR RI Working Committee level.

The inclusion of the role of the TNI in the revision of the Terrorism Law has invited pros and cons from various elements of society, including the National Police Chief Gen. Tito Karnavian, who expressly rejects the direct involvement of the TNI in dealing with terrorism because it is considered to trigger a polemic in the future if the Articles in the revision of the Law expressly is confirmed.

According to the National Police Chief, the prosecution of terrorists does not need to be handed over directly to the TNI, so that the involvement of the TNI should remain under the coordination of the Police. Another objection came from Hendaradi from the Setara Institute who argued that the involvement of the TNI in handling terrorism in Indonesia had the potential to worsen the situation and violate human rights. The same thing was conveyed by a member of the Indonesian House of Representatives Charles Honoris, it seems that he also "relentlessly" rejected the involvement of the TNI and considered it a betrayal of reform. The Director of the Imparsial NGO is of the opinion that the involvement of the TNI in dealing with acts of terrorism will pose a serious threat to the dynamics of democracy, human rights and the rule of law in Indonesia.

However, there are also many elements of society who want the TNI to be involved in handling acts of terrorism with the consideration that acts of terrorism in Indonesia have threatened the integrity and sovereignty of the State. Another consideration is the success of several military operations carried out by the TNI in dealing with terrorist acts in Indonesia, both at home and abroad. One concrete evidence of the success of the TNI operation is the shooting of the leader of the East Indonesia Mujahideen (MIT) Santoso alias Abu Wardah on September 14, 2016 by the Battalion Raider 515 Kostrad Task Force and the Liberation of the crew of MV Sinar Kudus who were hijacked in Somali waters on March 16, 2011. Another consideration is that the TNI has a special anti-terror unit (Detachment 81 (Kopassus AD), Detachment Jala Mangkara or Denjaka (Marine AL), Bravo 90 (Paskhas AU) and PRRC Kostrad and other TNI units whose ability to be involved in overcoming acts of terrorism in various situations and conditions. The role of the TNI in dealing with future acts of terrorism should be at all stages starting from the stages of prevention, prosecution and recovery.

With reference to the international strategy and practice of involving the military in handling acts of terrorism in several countries as well as the existence of acts of terror in Indonesia that threaten the sovereignty and territorial integrity of the Republic of Indonesia, the involvement of the TNI in handling acts of terrorism in Indonesia should not be debated anymore. The problem is that the government and DPR and other components of the nation are still hesitant to involve the TNI in handling acts of terrorism in Indonesia. In addition, the granting of authority to the TNI in dealing with acts of terrorism still creates juridical problems in its implementation, as the researchers described above.

From the above problems and the method used, it can be concluded that it can provide benefits for the development of legal science and the field of administrative law, as a material for consideration in the formation of laws and regulations related to the TNI's authority in dealing with acts of terrorism.

METHOD

This research was conducted using a normative juridical research method by conducting a comprehensive study based on legislation and empirical juridical research, namely conducting an assessment based on observations of the handling of acts of terrorism in Indonesia involving the TNI. The research methods can be described as follows: 1) data collection methods; a) literature study. In this study using library research in order to obtain materials and information needed in accordance with the subject matter. Researchers collect materials to be used include primary legal materials and secondary legal materials. Primary legal materials are materials consisting of basic norms or basic rules, namely the 1945 Constitution, Laws, Government Regulations in Lieu of Law (Perpu) and other materials related to research. b) Interview method. The interview technique was carried out directly on the research sample, namely officials who are competent in the field of forming legislation within the Ministry of Defense of the Republic of Indonesia, the Ministry of Law and Human Rights and the TNI Headquarters. Interviews were conducted using a question guide so as not to deviate from the problems studied. 2) Data analysis method. The data has been obtained from the results of the study and then continued with qualitative data analysis, namely analyzing data based on its quality and then described using words so that a discussion or explanation is obtained in the form of a systematic and understandable sentence, then conclusions are drawn.

This analysis is used to process data that cannot be measured in the form of laws and regulations so that it requires elaboration through descriptions. From the data and information that has been collected, it will be selected and adjusted to the topic of research discussion. Then this data is processed qualitatively, namely describing it in words so that it is a description of sentences that can be understood, understood and can be accounted for. This qualitative analysis was carried out by taking into account the data derived from library materials as well as data obtained from sources in the field. 3) The approach used. In legal research there are several approaches, and with these approaches researchers will get information from various aspects regarding the problems that are being tried to find answers. The approach used in this research is to use the approach of legislation. This approach is carried out by conducting an assessment of the laws and a regulation related to the central theme of the research and is used to analyze the two problems in this research. Normative juridical research is research that explains the legal principles contained in the provisions of the legislation.

DISCUSSION

Some of the factors causing the implementation of the TNI's duties in overcoming acts of terrorism directly through independent operations include: first, the limitation in Article 7 paragraph (3) of the TNI Law which states "The provisions as referred to in paragraph (2) are implemented based on policies and state politics. What is meant by state political policies and decisions as explained in the explanation of Article 5 of the TNI Law which states "What is meant by state political policies and decisions are the government's political policies together with the House of Representatives formulated through a working relationship mechanism between the government and the House of Representatives, such as consultation meetings and work meetings in accordance with statutory regulations. The meaning contained in the explanation of the article is that the implementation of OMSP tasks can only be carried out by the TNI if there are State political policies and decisions that are formulated jointly between the Indonesian Parliament and the Government through cooperation such as consultation meetings and work meetings.

The results of the interview with the Dirkom Strahan Kemhan Anang Puji Utama stated that currently the preparation and discussion of the implementing regulations (PP/Perpres) of OMSP tasks as formulated and Article 7 paragraph (2) letter b numbers 1 to 14 are being obtained. from the Directorate of Law and Legislation of the Ministry of Defense of the Republic of Indonesia that of the 14 (fourteen) tasks of OMSP there is only 1 (one) implementing regulation/derivative as the implementation of Article 7 paragraph (3), namely the Government Regulation on the Security of the President and Vice President. Meanwhile, the other 13 (thirteen) tasks of OMSP are still in the process of preparing and discussing the interkem. Second, acts of terrorism are categorized as criminal acts, so that the pattern of handling them is through a law enforcement approach carried out by the police as law enforcement officers and the involvement of the TNI is only limited to providing assistance to the Police. Third, acts of terrorism in Indonesia are still considered as ordinary criminal acts that disrupt public security and order, and are considered not to have threatened and endangered state sovereignty, territorial integrity and the safety of the entire nation, so that the TNI has not involved.

In practice, the involvement of the TNI in dealing with acts of terrorism in Indonesia is of a auxiliary nature (for example, the TNI is seconded to the Police with the status of Operational Control (BKO), in order to strengthen Brimob troops in the hunt for the Santoso group in Blue Mountain, Poso Pesisir District, Poso Regency, in operation with the Tinombala cipher). The legal basis for the assistance task is Article 7 paragraph (2) letter b number 10. The consideration for the assistance task of the TNI is because the act of terrorism carried out by the Santoso group as the leader of the East Indonesia Mujahideen, is disturbing the security and public order in Poso and the operations carried out by the group. The police are law enforcement so they are considered not to have endangered the sovereignty of the Republic of Indonesia.

In the future, direct involvement of the TNI, either through independent operations or integrated operations, should begin at every stage, namely prevention/deterrence, prosecution and recovery which are adapted to the functions of the TNI as formulated in Article 6 which states that (1) TNI as a means of state defense, functions to as: a) a deterrent to every form of military threat and armed threat from outside and within the country against the sovereignty, territorial integrity and safety of the nation; b) action against every form of threat; and c) restoration of state security conditions that have been disrupted due to security disturbances.

In the OMP Persuade and OMSP Persuasion what is meant by: a) deterrent means that the TNI's strength must be able to realize deterrence against every form of military and non-military threats from outside and within the country against sovereignty, territorial integrity and national safety. The deterrent function is intended so that real forces have a psychological impact and are taken into account by the opponent, so as to discourage and prevent the opponent's intentions that will threaten the sovereignty of the state, territorial integrity and national safety. b) To take action, the TNI's strength must be able to be mobilized to destroy enemy forces that threaten the sovereignty, territorial integrity and safety of the nation. c) Recovery, TNI forces together with other government agencies assist government functions to restore state security conditions that have been disrupted due to chaos of war, rebellion, communal conflict, riots, terrorism and natural disasters. In the restoring function in international relations, the TNI plays an active role in realizing world peace through the task of world peace in accordance with foreign policy policies under the auspices of the United Nations.

The concept of the TNI in the prevention/deterrence of acts of terrorism is carried out by maintaining safe conditions in the community and early detection and prevention, in collaboration with Ministries and Institutions as well as other components of the nation in accordance with statutory regulations. Meanwhile, efforts to take action against acts of terrorism are carried out through military operations other than war by directly deploying TNI forces based on the provisions of national law and ratified international law provisions. Meanwhile, efforts to recover from acts of terrorism are carried out through rehabilitation and reconstruction measures, which involve the TNI, Polri, Ministries/Government Agencies and other relevant agencies under the coordination of BNPT. The forms of operations carried out by the TNI in dealing with acts of terrorism on a national scale are integrated operations and independent operations with the nature of combat operations, while in acts of terrorism on an international scale, operations are carried out in an integrated manner with forces spread across various institutions.

TNI has not been able to carry out Independent Operations to Overcome Terror Actions. Considering that the terrorism that is happening in several countries including Indonesia is now becoming increasingly clear and has become a scourge for modern civilization and the nature of actions, actors, strategic goals, motivations, expected and achieved results, the targets and methods of Terrorism are now increasingly broad and varied. So that the handling of terrorism must involve all components of the nation, including the TNI, which has the ability to deal with acts of terrorism in all its forms and motives. The government must make concrete efforts to deal with the threat of terrorism, and the war against terrorism needs to be carried out in a coordinated manner across agencies, across national levels, preemptive, preventive and repressive by thoroughly investigating the perpetrators of the crime of terrorism. And to convict the perpetrators and intellectual actors behind the incident.

The National Police of the Republic of Indonesia as an institution that has the authority to handle state security issues, including in dealing with terrorism, will not be able to eradicate terrorism alone in Indonesia. This is due to the complexity of the issue of terrorism. According to Tri Poetranro, S.Sos, the handling of terrorism cannot only be left to a single institution (the Police), but must be handled across departments/agencies by working in full cooperation between the Police and the TNI and involving all components of the Indonesian people up to the RT and RT levels RW.

The police must reflect on whether their own institutions are capable of handling all national security issues, because objectively it must be recognized that with the current limited facilities and infrastructure and human resources of Polri members, it is believed that the Polri institutions will not be able to independently handle problems related to national security, especially the handling of terrorism.

Even though the National Police has so far uncovered several acts of terror, this does not mean that this institution has succeeded in uncovering the roots of a larger terrorism network, this is due to the incomplete capacity of the police to handle acts of terrorism themselves. In addition, the Police still lack experience in dealing with radical activities that occur in Indonesia compared to the TNI, which is full of experience in operating tasks.

In the future, the TNI needs to be given the authority to carry out both independent operations and integrated operations in eradicating acts of terrorism so that it is not only limited to TNI assistance to the Police. The TNI can directly deal with acts of terrorism through independent operations because in Article 7 paragraph (2) and in other provisions, nothing regulates the role of the TNI in dealing with acts of terrorism in the nature of assistance either to the Police or to other ministries/agencies. Even in the Defense Law in Article 7 paragraph (2) and its explanation, it places the act of armed terrorism as one of the military threats which in the Indonesian state defense system the military threat places the Indonesian National Army as the main component supported by reserve components and supporting components.

Provisions regarding assistance tasks in OMSP are regulated in Article 7 paragraph (2) letter b, namely number 9. Assisting the tasks of local government; number 10. Assist the State Police of the Republic of Indonesia in the framework of the task of security and public order as regulated by law; number 11. Assisting in securing state guests at the head level and representatives of foreign governments currently in Indonesia; number 12. Helping to cope with the effects of natural disasters, evacuation, and providing humanitarian assistance; number 13. Assist in search and rescue in accidents (search and rescue); and number 14. Assist the government in securing shipping and aviation against piracy, piracy, and smuggling.

In the OMP and OMSP Master Manual published by the TNI Babinkum, an understanding of independent operations is given, namely operations carried out by the TNI alone, without involving forces outside the TNI institution. While integrated operations are operations carried out by the TNI together with other institutions/institutions. The TNI's authority in dealing with acts of terrorism in Indonesia is not without a legal basis nor does it take over the role of other institutions, but the involvement of the TNI in overcoming terrorism is an authority mandated by the TNI Law and the Defense Law. Thus, the TNI has the right and power to act in the event of an act of terrorism.

According to H.D Stoud, this is the authority delegated to the agency that implements it, so it must first be determined in the provisions of the legislation. The same definition was given by S.F Marbun who said that authority means the ability to carry out a public legal action, or juridically is the ability to act given by the applicable law to carry out legal relationships. Whereas in the Black Law Dictionary, authority is defined more broadly, not only exercising power, but authority is also defined in the context of implementing and enforcing the law, the existence of definite obedience, containing orders, decisions, jurisdictional supervision and even authority associated with authority, charisma and even physical strength. .

Based on the definition of authority according to the experts above, the researcher argues that authority is a right that is owned by an official or institution that acts to carry out its authority based on the applicable laws and regulations. It can also be said that authority is the ability to act on the basis of legitimate power. Thus, if it is related to the TNI's authority in dealing with acts of terrorism as mandated in the TNI Law and the State Defense Law, it is in line with the understanding of the authority of several experts as described above, namely that authority is a legitimate right and power possessed by the TNI to act in carrying out its authority based on legislation.

By referring to the formulation of Article 7 paragraph (2) letter b number 3 (TNI Law) and Article 7 paragraph (2) along with their explanation (National Defense Law), it can be said that the involvement of the TNI in overcoming acts of terrorism can be carried out either directly through independent operations. as well as integrated operations and can be accounted for politically and legally. Therefore, everyone must eliminate the thought or assumption that the TNI in implementing OMSP has no legal basis and takes over the role of other government agencies. In addition, it is necessary to set aside the narrow perception of the assessment concerning "National Security" as the domain or the full

authority of the National Police because the assessment is not correct. The problem of national security is a problem for every citizen, including the TNI institution.

In the Academic Paper of the Draft Law on National Security it is stated that "National security must be placed as a public property that can be enjoyed by every citizen in regulating, managing and forming a national security system in accordance with the provisions of the legislation". It must also be understood that security and defense issues are two meanings that cannot be separated because defense is part of security. Thus the universal defense and security system in which the TNI and Polri are the main elements in dealing with acts of terrorism must always coordinate and synergize with other government agencies or with other components of the nation, because with support and coordination in detecting and overcoming various terrorist problems, it will be easy to deal with. Terrorism acts in Indonesia cannot be allowed to develop because it will threaten the integrity and sovereignty of the state which in turn will hinder the smooth running of national development. According to Tri Poetranto, the handling of acts of terrorism should not only be carried out by prosecuting the perpetrators and punishing them severely as is often practiced by the Police, but the most important thing is to prevent these actions from happening in the future so that they can be avoided. Loss of life and property. The tasks of handling acts of terrorism will be able to be carried out by TNI institutions because "TNI Soldiers" who are full of experience in their duties and more specifically are full of experience in military operations other than war, both at home and abroad will be able to help the Police to work together. dealing with acts of terrorism in Indonesia, whether they are "preemptive" (preemptive), prevent (reventive) and suppress (repressive) by thoroughly investigating the perpetrators of the crime of terrorism and punishing the perpetrators and intellectual actors behind the incident and the TNI carrying out the handling of terrorism acts together with functional agencies (Polri) in a synergistic integrated effort according to the form of threat, by prioritizing pre-emptive and preventive actions compared to repressive actions because the success of pre-emptive and preventive actions will be able to avoid victims and greater negative impacts.

Obstacles to the Terrorism Act that Qualify as a Crime. An illustration is given that acts of terrorism are crimes against humanity and civilization as well as a serious threat to the sovereignty of each State. Besides that, terrorism is already an international crime that poses a danger to security, world peace and harms the welfare of the community, so it is necessary to carry out a planned and sustainable eradication, so that the human rights of many people (the public) can be protected and upheld.

In addition, the commitment of the international community to prevent and eradicate terrorism has been realized and various international conventions affirm that terrorism is an international crime that threatens the peace and peace of mankind, so that all members of the United Nations (UN) including Indonesia are obliged to support and carry out the UN Security Council resolution which condemns and calls on all UN members to prevent and eradicate terrorism through the establishment of national laws and regulations of their countries.

The Government of the Republic of Indonesia has responded to acts of terrorism as an extraordinary crime through efforts to anticipate and overcome these acts of terrorism with the enactment of Law No. RI. 16 of 2003 concerning the stipulation of a government regulation in lieu of law no. 1 of 2002 concerning the Eradication of Terrorism became a law which was passed by the President of the Republic of Indonesia on April 4, 2002 with the approval of the DPR. In addition, it is also strengthened by Law no. 15 of 2003 concerning Stipulation of Government Regulation in Lieu of Law no. 2 of 2002 concerning the Enforcement of Government Regulation in Lieu of Law No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism (UU PTPT), in the Bali Bombing Incident on 12 October 2002 became a law which was passed on 4 April 2003 with the approval of the DPR.

When looking at the title of Law no. 15 of 2003 which uses the nomenclature "Eradication of Terrorism Acts", it can be interpreted that the purpose of the establishment of the Law is to make terrorism a criminal act in Indonesia and terrorism is categorized as a special crime that must be completely eradicated to its roots. In Law No. 15 of 2003 concerning Eradication of Criminal Acts of Terrorism, qualifies criminal acts of terrorism as follows: 1) Material offenses contained in Article 6, 2) Formal offenses contained in Articles 7 to 12, 3) Assistance offenses Article 6 letter g, 4) Participation offenses are Article 13 and Article 15, 5) Planning offenses are contained in Article 14.

Legal subjects who can be classified as perpetrators of criminal acts of terrorism according to Article 1 point 2 and Article 3 of the Law on combating terrorism, in committing a criminal act of terrorism can be in the form of human or individual behavior. The formulation of the article states that the subject of the perpetrator in a criminal act of terrorism is any person defined as a person, several persons or corporations and the group consisting of civilians or military or police, companies, foundations, and other organizations.

Referring to the description above, the researcher can conclude that the PTPT Law is a law whose substance contains elements of a criminal act of an act of terrorism. Thus, because acts of terrorism are qualified as criminal acts, the pattern of handling them is through a law enforcement approach carried out by law enforcement officers, namely the police as the institution authorized to carry out law enforcement processes against perpetrators of acts of terrorism.

The use of the title "Eradication of Criminal Acts of Terrorism" in the PTPT Law is one of the obstacles or obstacles in eradicating acts of terrorism in Indonesia. This is because the PTPT Law does not regulate efforts to prevent actions and is only used after the occurrence of terrorist acts. In addition, the existence of restrictions on acts of terrorism as a criminal act has indirectly limited the TNI and other components of the nation to be directly involved in dealing with acts of terrorism in Indonesia, considering that the TNI does not have the authority to enforce the law against perpetrators of terror acts.

Terrorism should be placed as a form of non-traditional threats that can threaten the sovereignty of the state. Terrorism that occurs in Indonesia is a dangerous threat and needs serious handling from the government and security forces. This act of terror is not only directed at the security forces (police), but the civilians have the potential to become victims of terror. Many people have become victims of the massive bomb explosions carried out by terrorists in a planned manner. This is why terrorism is also said to be a Crime against Humanity.

The process of handling and eradicating terrorism must of course involve all elements and all components of the nation. Both the Police and the TNI have the authority to deal with acts of terrorism considering the threat of terrorism is now so great, for example, ISIS. The ISIS movement, which was centered in Iraq and Syria, turned out to have spread to Indonesia several years ago. It is appropriate if terrorism is referred to as an International Crime (International Crime).

Acts of terrorism are one of the "Non-traditional" threats as formulated in the OMP Bujukin and OMSP Bujukin which mention non-traditional threats as threats that can endanger state sovereignty or territorial integrity or national safety in the form of terrorism, separatist movements, transnational crimes, acts of radicalism, conflict. Communal, sea and air violations in the area of national jurisdiction, as well as disasters caused by nature or humans. The inclusion of armed terrorism acts as a non-traditional threat that threatens state sovereignty, territorial integrity and the entire nation, will give the TNI the authority to be directly involved either through independent operations or integrated operations in overcoming acts of terrorism as stipulated in Article 7 paragraph (2) of the Law The Law on National Defense in which the act of armed terrorism is one of the military threats that places the TNI as the main component in its handling.

The police, who have been carrying out crackdowns and eradication, have not been able to destroy terrorist networks in Indonesia. Regarding the ISIS issue, the National Police through Inspector General Boy Rafli Amar once stated that his party could not identify the origin of ISIS in Indonesia. Even in his statement Boy stated that the arrest of ISIS members could be carried out if there were terrorist activities. The Police statement did not help the eradication of terrorism at all. This is just an attempt to cover up the weakness, incompetence and lack of courage of the National Police in facing threats to state security.

Thus, if you look at the current development of several acts of Indonesian terrorism networks, such as the East Indonesia Mujahidin (MIT), Jamaah Islamiyah (JI), West Indonesia Mujahidin (MIB), Jakarta Mujahidin (MJ), Laskar Jihad, Jamaah Anshaarut Tauhid, and Daulah Islamiyah. Nusantara, whose actions are aimed at establishing a caliphate by imposing Islamic law in Indonesia, the researcher can conclude that acts of terrorism in Indonesia are included in non-traditional threats that can be categorized as crimes against the sovereignty of the State who want to change the ideology of Pancasila. Acts of terrorism in Indonesia are not merely ordinary crimes/crimes, but include crimes that endanger

state sovereignty, territorial integrity of the state, state security and the safety of the entire nation that must be faced by involving all components of the nation in order to increase national vigilance.

Efforts to anticipate and overcome the problem of criminal acts of terrorism by involving the TNI are in line with the preamble of the 1945 Constitution. In addition, the Republic of Indonesia as a unitary state based on law and having duties and responsibilities to maintain a safe, peaceful and prosperous life and actively participate in maintaining world peace, the government is obliged to maintain and uphold sovereignty and protect every citizen from every threat or destructive threat both from within the country and abroad. Thus, strategically and judicially, the government and the DPR must involve the TNI in handling acts of terrorism as a threat to the sovereignty of the state, starting from the prevention stage, the prosecution stage, to the recovery stage.

CONCLUSION

Implementation of the TNI's authority in dealing with acts of terrorism in Indonesia: a) The TNI has not been able to implement its authority directly through independent operations in dealing with acts of terrorism and the involvement of the TNI is still in the form of assistance to the Police in the context of law enforcement b) The TNI has not been able to carry out the task of independent operations in overcoming acts of terrorism because terrorism is qualified as a form of criminal act in the legislation so that the enforcement is under the authority of the Police. c) There is no statutory regulation to implement the provisions in Article 7 paragraph (2) letter b number 3 concerning the Duties of the TNI in OMSP to deal with acts of terrorism. Suggestions from the researcher, the TNI's authority in dealing with acts of terrorism must be implemented, starting from the prevention, prosecution and recovery stages which can be carried out either directly through independent operations or integrated operations. Immediate establishment of implementing regulations from the provisions of Article 7 paragraph (2) letter b number 3 of Law Number 34 of 2004 concerning the Indonesian National Army, namely in the form of a Presidential Regulation whose substance contains the role of the TNI in overcoming acts of terrorism starting from the stages of prevention, prosecution and recovery.

REFERENCES

- A. Gunawan Setiardja, *Dialektika Hukum dan Moral dalam Pembangunan Masyarakat Indonesia*, Yogyakarta: Kanisius, 1990.
- Amarullah Salim, *Perbuatan Melawan Hukum Yang dilakukan oleh Penguasa Menurut Hukum Perdata Beserta Masalah Ganti Rugi*, Bahan Kuliah Pekan Orientasi dan Penataran Peradilan Tata Usaha Negara, Jakarta, 1994.
- Arifin P. Soeria Atmadja, *Keuangan Publik dalam Perspektif Hukum; Teori, Kritik, dan Praktik*, Rajawali Press, Jakarta, 2008.
- Ateng Syafrudin, *Menuju Penyelenggaraan Pemerintahan Negara yang Bersih dan Bertanggung Jawab*, Jurnal Pro Justisia Edisi IV, Bandung, Universitas Parahyangan, 2000.
- Azhary, *Negara Hukum Indonesia Analisa Yuridis Normatif tentang Unsur-Unsurnya*, UI-Press, Jakarta, 1995.
- Bagir Manan dan Kuntana Magnar, *Peranan Peraturan Perundang-undangan dalam Pembinaan Hukum Nasional*, Armico, Bandung, 1987.
- Diana Halim Koentjoro, *Hukum Administrasi Negara*, Ghalia Indonesia, Bogor.
- E. Utrecht, *Pengantar Hukum Administrasi Negara Indonesia*, Pustaka Tinta Mas, Surabaya, 1988.
- Fajar Purwawidada, MH., M.Sc., *Kontra Terorisme Indonesia, Konflik dan Perbatasan*, <http://analisis Hankamnas.blogspot.co.id/2014/02/kelompok-teroris-mujahidin-indonesia.html>, diakses pada 29 mei 2017, pukul 18.30 wib
- F.A.M. Stroink dalam Abdul Rasyid Thalib, *Wewenang Mahkamah Konstitusi dan Aplikasinya dalam Sistem Ketatanegaraan Republik Indonesia*, Bandung: Citra Aditya Bakti, 2006.
- I Dewa Gede Atmadja, *Penafsiran Konstitusi Dalam Rangka Sosialisasi Hukum: Sisi Pelaksanaan UUD 1945 Secara Murni dan Konsekwen*, Pidato Pengenalan Guru Besar dalam Bidang Ilmu Hukum

- Tata Negara Pada Fakultas Hukum Universitas Udayana 10 April 1996
- Indroharto, *Asas-Asas Umum Pemerintahan yang Baik*, dalam Paulus Efendie Lotulung, *Himpunan Makalah Asas-Asas Umum Pemerintahan yang Baik*, Bandung: Citra Aditya Bakti, 1994.
- Indroharto, 1993, *Usaha memahami Undang-Undang tentang Peradilan Tata Usaha Negara*, Pustaka Harapan, Jakarta
- J.G. Brouwer dan Schilder, *A Survey of Dutch Administrative Law*, Nijmegen: Ars Aequilibrari, 1998.
- Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, (Jakarta: Gramedia Pustaka Utama, 1998
- Nurmayani S.H.,M.H. *Hukum Administrasi Daerah*. Universitas Lampung Bandarlampung, 2009
- Philipus M. Hadjon, 2005, *Pengantar Hukum Administrasi Indonesia*, Gadjah Mada University Press, Yogyakarta.
- Philipus M. Hadjon, *Tentang Wewenang*, Makalah, Universitas Airlangga, Surabaya, tanpa tahun,
- Prajudi Atmosudirdjo, *Hukum Administrasi Negara*, Ghalia Indonesia, Jakarta. 1981
- Suwoto Mulyosudarmo, *Kekuasaan dan Tanggung Jawab Presiden Republik Indonesia, Suatu Penelitian Segi-Segi Teoritik dan Yuridis Pertanggungjawaban Kekuasaan*, Surabaya: Universitas Airlangga, 1990.