THE JURIDICAL ANALYSIS OF THE DEATH PENALTY IMPLEMENTATION FOR TERRORIST CRIMES IN THE INDONESIAN LEGAL SYSTEM

a Gomgom TP Siregar

ABSTRACT

Aims: This research examines terrorist crime is a special crime whose regulations were made after the Bali bomb attack. Terrorism is an action that can cause an unconducive security and order situation, as well as damage/destruction/loss to property/public facilities/vital objects/even loss of human life.

Implications: It is a threat to every country in the world which requires joint efforts and cooperation to eradicate it. Indonesia as a country that has experienced terrorism has legal norms to participate in efforts to eradicate terrorism. However, there are several substantive weaknesses in Terrorism Law, especially those related to the detailed definition and classification of terrorism as well as its procedural laws which are felt to cause violations of human rights.

Method: The research method used in this research is normative legal research methods with a statutory approach, conceptual approach, and comparative studies. The types and sources of legal materials used were primary, secondary, and tertiary legal materials.


Keywords: death penalty, terrorism, legal system.
ANÁLISE JURÍDICA DA APLICAÇÃO DA PENA DE MORTE A CRIMES TERRORISTAS NO SISTEMA JURÍDICO INDONÉSIO

RESUMO

Objetivos: Esta pesquisa examina o crime terrorista é um crime especial cujos regulamentos foram feitos após o ataque à bomba de Bali. Terrorismo é uma ação que pode causar uma situação de segurança e ordem não conducente, bem como danos/destruição/perda de propriedade/instalações públicas/objetos vitais/ata mesmo perda de vidas humanas.

Implicações: É uma ameaça para todos os países do mundo que requer esforços conjuntos e cooperação para erradicá-lo. A Indonésia, como um país que passou por um período de terrorismo, tem normas legais para participar dos esforços para erradicar o terrorismo. No entanto, existem várias deficiências substanciais na legislação em matéria de terrorismo, especialmente as relacionadas com a definição e a classificação pormenorizadas do terrorismo, bem como com as suas leis processuais, que se considera causarem violações dos direitos humanos.

Método: O método de pesquisa usado nesta pesquisa é normativa métodos de pesquisa legal com uma abordagem estatutária, abordagem conceitual e estudos comparativos. Os tipos e origens dos materiais legais utilizados foram os materiais legais primários, secundários e terciários.


Keywords: pena de morte, terrorismo, sistema jurídico.

1 INTRODUCTION

Terrorism is an act of violence that occurs based on motivation or purpose. Regardless of the motivation or purpose, terrorism occurs in the escalation of individual or collective criminal agendas and causes public panic to spread by endangering their lives, taking away people’s freedom or security which causes fear of danger, or attempting to cause destruction to the environment or public or private assets or property, or occupy or control them, or attempt to disrupt national resources (Karsa Rezeki, 2002).

In accordance with Law Number 5 of 2018 of the Republic of Indonesia, Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, Article 6 of Terrorism refers to perpetrators of deliberate rudeness or warning of violence by taking liberty or death to create an impression of general fear or apprehension in the community or cause large-scale violence against victims of other possessions, or causes harm to
important strategic objectives or areas, public or international facilities, is punished with
death or imprisonment for at least 4 (four years) to 20 (twenty) years (Komariah, 2007).

The death penalty in positive law is given for aggravating crimes that disrupt the
stability of the state and order in society. Apart from that, the death penalty is still
threatened in various laws regarding special criminal acts, especially for criminal acts that
are considered very dangerous, such as terrorism, drugs, corruption, and so on. The
number of acts of terrorism nowadays has become a frightening specter that at any time
can become a "National and Global Problem", including humanitarian tragedies, the
emasculating of the nation's dignity, and the history of human rights (HAM) tragedies
(Wahid et al, 2007).

Human Rights (HAM) have lost their existence and lost their sanctity or fairness
in the hands of terrorists who have created barbarism in the form of social, political,
cultural, and economic actions (Wahid et al, 2004). To stop this crime (terrorism), we
need a law that can truly deter the perpetrators. Terrorism is a crime against humanity and
civilization and is a serious threat to the sovereignty of every country because it is an
international crime that poses a danger to security, and world peace and is detrimental to
the welfare of society. So it needs to be eradicated in a planned and sustainable manner
to protect and uphold the human rights of many people. Human rights are the rights that
every human being possesses.

This is not because it is given by society, or based on positive law, but solely based
on their dignity as human beings (Donnelly, 2003). Government regulations in Lieu of
Law No. 1 of 2002 which has been ratified as Law No. 15 of 2003 concerning the
eradication of criminal acts of terrorism as the legal basis for eradicating criminal acts of
terrorism in Indonesia, states that terrorism is all acts that fulfill the elements criminal
acts in accordance with the provisions of Article 1 paragraph (1) of the Law. In Article 1
paragraph (1) of Law No. 15 of 2003 concerning criminal acts of terrorism, the elements
of terrorism are unlawful acts carried out systematically to destroy the sovereignty of the
nation and state. In practice, this is usually done using violence or threats, thereby causing
fear in people.

Frequently, it often results in the death of many victims accompanied by the
destruction of property and public facilities. As mentioned in Article 6 of Law no. 15 of
2003, every person who deliberately uses violence or threatens violence creates a
widespread atmosphere of terror or fear of people or causes mass casualties by depriving
other people of freedom or loss of life and property, or causing damage or destruction against vital strategic objects, the environment, factory facilities or international facilities, shall be punished with the death penalty or life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years. Based on Law Article 6 No.15 of 2003, criminal acts of terrorism in accordance with the law are threatened with strict punishment, namely the death penalty, life imprisonment, or 20 years imprisonment.

Terrorist crimes in Law Number 15 of 2003 use a formulation method that only formulates or describes the elements and provides a classification of the criminal act. An example of an article that uses the offense formulation method to describe only its elements without providing the qualifications of the criminal act is Article 6 of Law No. 15 of 2003, which contains the following: "Every person who plans to use violence or threatens violence to create an atmosphere of terror or worry among the community or causing mass casualties, by taking away freedom or loss of life and property of other people, or causing damage or destruction to urgent objects such as living areas or public facilities or international facilities, shall be punished with a death penalty, life imprisonment, imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years”.

At first glance, the regulations in Article 7 Number 15 of 2003 are similar to Article 6 of Law Number 15 of 2003, the difference is that there is an "intention to" content. This means that Article 7 of Law Number 15 of 2003 is a criminal act that has not yet been completed or is a crime that has never been tried. Therefore, Article 7 of Law Number 15 of 2003 must prove that it was intended to create an impression of intimidation or widespread anxiety as well as foster mass targeting, even though the cruelty has not been carried out.

The acts of terror launched by the United States were accompanied by slander to influence the people of a country to overthrow the legitimate government. Thus, terrorism directly involves groups of victims. Terrorism involves groups seeking to overthrow particular regimes, to correct group/national grievances, or to undermine the existing international political order.

2 RESEARCH METHOD

The research method used in this research is normative legal research methods with a statutory approach, conceptual approach, and comparative studies. The types and
sources of legal materials used were primary, secondary, and tertiary legal materials. The primary legal material used in this research was Law No. 5 of 2018 concerning Amendments to Law No. 15 of 2003 concerning the Establishment of Government Regulations in Lieu of Law No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into an Anti-Terrorism Law in the UK, European Union Countries, US Central Intelligence Agency (CIA), US Federal Bureau of Investigation (FBI). The secondary legal materials used in this research were taken from articles, newspapers, legal science journals, and other legal materials related to the research problem.

3 RESULTS AND DISCUSSION

3.1 REGULATION OF DEATH PENALTY SANCTIONS FOR PERPETRATORS OF CRIMINAL ACTS OF TERRORISM BASED ON LAW NUMBER 5 OF 2018 CONCERNING ERADICATION OF CRIMINAL ACTS OF TERRORISM

The Republic of Indonesia is a legal state, which is regulated in the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Based on this article, the state and government have the duty and responsibility to maintain a safe, peaceful, and prosperous life and actively participate in maintaining world peace. According to Aristotle, a legal state is a state that stands on law and guarantees justice to its citizens. Good law is a law that originates from the community's sense of justice and those who govern the country have a just mind, while the leader is only the holder of law and balance. The power possessed by the state is essentially a means of realizing justice and prosperity for its people. Apart from this, protecting the entire Indonesian nation is also a duty that must be carried out by the government, whose obligation is a basic right of citizens without exception.

The 5th Pancasila principle also states: "Social justice for all Indonesian people", it can be explained that it is related to the law which is the right of the Indonesian people to justice in truth. One of the state's or government's efforts to maintain a safe, peaceful, and prosperous life and actively participate in maintaining world peace is to establish laws or regulations that regulate all actions that cannot be carried out by the entire

---

3 Jawade Hafidz Arsyad, Korupsi Dalam Perspektif HAN (Hukum Administrasi Negara), Cetakan Pertama, Sinar Grafika, Jakarta, 2013, hlm. 85
4 Farhan Munirus Su’a’idi dan Abdullah Arief Cholil, Law Protection on Wife Whose The Claims Fall Due To Husband Refuse His Recompensation On Implementing Of Divorce Pledge, Jurnal Daulat Hukum, Vol. 2 No. 4, Fakultas Hukum Universitas Islam Sultan Agung, Semarang, Desember 2019, hlm. 548
community, including committing a criminal act of terrorism. Terrorism directly involves groups of victims (perpetrators).  

Terrorism involves groups that seek to overthrow certain regimes, to correct group/national grievances, or to undermine the existing international political order. The main element of terrorism is acts of violence, political differences are the main motive, which is carried out both individually and in groups by spreading fear of opposing parties so that the regime in power fulfills its demands. Several countries carried out terror by murdering several people (genocide), as was done by Hitler. America as a superpower country in 1996 issued a list of countries considered supporters of terror, namely Cuba, Iran, and Iraq as stated by Lailatul Nur Hasanah dan Sri Endah Wahyuningish in their article entitled The Application of Justice Principles Of Rapid Simple Fee In Criminal Justice System In The State Court (Case Study in State court of Pati).

In Indonesia itself, the terror that had a big impact on Indonesia and was felt by all was when a bomb exploded in Legian Bali on October 12, 2002, in addition to other "small" terror incidents that had occurred in various regions in Indonesia. Targets and objectives are often aimed at groups of people in the community (in malls, beaches, hotels, offices, etc.) who are very vulnerable to these events and are completely unpredictable. Experts call such targets soft targets. Those terror cases that occurred in America and Indonesia, as well as those experienced by many other countries throughout the world, are still ongoing. After the WTC case, the number of terror attacks did not decrease, therefore experts believe that terrorism is a form of blowback against American hegemony. Terrorism, according to Chalmers Johnson, is the price and consequence that must be paid by the "American Empire".

Historical facts prove that there is a strong relationship between Washington's involvement in international issues and the increase in attacks against America. The term blowback was initially only used by those within the American Intelligence Service (CIA) and began to spread throughout the world. Terrorism becomes a powerful weapon for parties who do not have power. People say terrorism is the power of the powerless.

The Republic of Indonesia is a country based on law, which has duties and responsibilities to maintain a safe, peaceful, and prosperous life and actively participates in maintaining world peace, as stated in the Preamble to the 1945 Constitution of the

---

Republic of Indonesia, then The state and government are obliged to maintain and uphold the sovereignty and protect every citizen from any threats or destructive actions, both from within the country and from abroad.\(^6\)

Juridically, criminal acts of terrorism are regulated in the Republic of Indonesia Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism.\(^7\) Law of the Republic of Indonesia Number 15 of 2003 which has been amended to become Law of the Republic of Indonesia Number 5 of 2018 was created to provide a deterrent effect to perpetrators of criminal acts of terrorism and give fear to people who have the potential to become perpetrators of terrorism so that they not commit criminal acts of terrorism, by implementing the death penalty as a strict sanction against perpetrators of criminal acts of terrorism. Looking at the existing reality, the effectiveness of the death penalty in Indonesia seems to always be influenced by various factors that make it difficult to stop the movement of terrorist acts in Indonesia.

The use of penalty means using criminal law as the main means, both material and formal criminal laws.\(^8\) Combating crime using criminal law or penalties is a method that has been known to the general public for a long time as an effort to provide a deterrent effect to criminals, through the criminal justice system which consists of state institutions, namely the police, prosecutor's office, courts, and correctional institutions convict. According to Wirjono, criminal law aims to fulfill a sense of justice.

Apart from that, Wirjono also stated that among legal scholars it is stated that criminal law aims to scare people so that they do not commit crimes, either by scaring many people or by scaring certain people who have committed crimes so that in the future they will not commit crimes again.\(^9\)

Concerning overcoming criminal acts of terrorism that use penalty, since 2002 Indonesia has issued a legal product that provides strict testimony in the form of the threat of the death penalty for perpetrators of criminal acts of terrorism. The threat of the death penalty is established with the hope of achieving the objectives of criminal law, namely

---


providing justice and guaranteeing security for the entire community. The legal product is Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism which has been stipulated as Law of the Republic of Indonesia Number 15 of 2003, then revised to become Law of the Republic of Indonesia Number 5 of 2018.

Currently, the problem is the threat of the death penalty, which is regulated in the Law on the Eradication of Criminal Acts of Terrorism, has not been able to stem the movement or development of terrorist networks in Indonesia. This problem occurs because criminal policies that use penal means have limitations which can be seen from the nature of the criminal law functions. In essence, the use of criminal law is only a temporary remedy to overcome symptoms (kurieren am symptom) and not a complete solution by eliminating the source of the crime. In this context, criminal law functions after a crime occurs, meaning that criminal law does not provide a preventive effect so that criminal law is unable to reach the roots of the crime itself which resides in people's lives.

3.2 ERADICATING CRIMINAL ACTS OF TERRORISM THROUGH A CRIMINAL POLICY APPROACH

In particular, in 2000 the United Nations (UN) Congress in The Prevention of Crime and The Treatment of Offenders, in Vienna, Austria outlined specifically related to terrorism in Indonesia. Specifically, it is stated that it strongly condemned the bombings on the island of Bali and conveyed deep condolences and sympathy to the government and people of Indonesia as well as to the families of the victims and a resolution in the form of a call to cooperate, support and assist the Indonesian government in arresting and exposing all the perpetrators related to this incident and bringing them to justice.

According to Randi, terrorism has become a common enemy because it is a serious crime, contrary to human values for two reasons, namely:

1. Democracy and political freedom are incomplete if you don't feel safe. The reform movement aims to make us all safer in our homes and more comfortable in our national life. We all take responsibility to fight terrorism that wants to take away a sense of security.
2. Terrorism is a crime against humanity in the form of an organized movement. Nowadays, terrorism has a wide and global network that threatens national and international peace and security.

The roots of terrorism, especially in the 21st century, can be traced to the bombings aimed at the WTC Twin Towers in the United States as mentioned above. After conducting in-depth research, the US stated that the bombing was carried out by the Al-Qaeda group under the leadership of Osama bin Laden. After the bombing, various forms of terror were also carried out by a group calling itself the Islamic State of Iraq and Syria (ISIS), which was masterminded by a figure named Abu Bakr al Baghdadi. This last group not only launched attacks on US symbols but also carried out massacres towards Muslim minority groups such as Shi‘ites, Sunnies, and even Kurds who stated that they did not want to join ISIS (Ali Asghar, 2015: 197).

At the political level, since its independence, various forms of terrorism have occurred in Indonesia, both during the Old Order and the New Order, for example, Darul Islam/Tentara Islam Indonesia (DI/TII). Even in the current era, movements have emerged that promote religious ideologies, especially Islam, such as the Islamic Defenders Front (FPI), the Indonesian Mujahideen Council (MMI), Hizbut Tahrir Indonesia (HTI), including Ahmadiyah, which often carry out their actions by creating a tense atmosphere (terror). Certainly, the groups mentioned above within the Unitary State of the Republic of Indonesia must be viewed and placed within the framework of the rule of law.

Movements that promote violence based on certain religious ideologies can easily ignite violence itself if the trigger arises. As happened some time ago, when Islamic groups accused the Governor of DKI of tarnishing the Islamic religion. Even though the court has found the governor guilty, no one can deny the religious nuances behind the movement. The blasphemy against the Islamic religion alleged by groups, one of which is the FPI, has given rise to a massive and continuous movement until the case was brought to court and the defendant was found guilty.

Radical movements with religious nuances or more broadly SARA (tribe, religion, race, and inter-group), have the potential to arise when there are factors that trigger them and they take advantage of the weaknesses of the security forces and state institutions in general. Minority groups try to impose their will not only in subtle ways but even in more crude ways, such as movements that are carried out by the groups which can lead to acts
of anarchy and persecution. The violent ways often used by radical groups are a manifestation of terror movements in general as formulated in the terrorism law.

Terrorist movements often collide with democratization which is growing rapidly in the country. The causal relationship between democracy and terrorism has been demonstrated by several authors, including Eubank and Weinberg, who stated that there is a relationship between terrorism and the type of regime --- authoritarian or democratic -- and terrorism, finding that acts of terrorism are far more common in democratic societies than in society led by an authoritarian regime.

Both of them also believe that countries undergoing a transition process towards democracy tend to experience more frequent terrorist attacks. Terrorism more often affects established democratic countries and even if it is found in other countries, the victims of these attacks are mostly from democratic countries. It certainly makes sense, that democratic countries, especially those that are still developing, will always give their citizens the freedom to express opinions, establish organizations, and carry out several actions which within certain limits can still be tolerated. However, at a higher level, these various actions are sometimes directed against certain groups by prioritizing non-deliberative methods.

Before explaining the regulation of the death penalty in the corruption law, the regulation of the death penalty in the Criminal Code as lex generalis is first described. The death penalty in Indonesia has been introduced in the Criminal Code, contained in the first book of General Rules Chapter II Article 10 concerning crimes. The death penalty is a classic form of punishment, which is assumed to be capable of deterring those who have not committed a crime.

The death penalty is a punishment that has the power to deter other people. The ideal substance of punishment when applied is the extent to which the punishment is capable of psychologically terrorizing other people to not commit similar acts. In various cases, recidivist criminals commonly continue to commit crimes repeatedly because of the light punishment. The rejection of the death penalty is often only based on the humanity of the perpetrator without considering the humanity of the victim himself, his family, relatives, or the community that depends on the victim. The exception is that if the victim's family has forgiven the perpetrator, the sentence can be certainly changed with clear prerequisites.
The crime of terrorism, in addition to various other forms of radicalism, is a crime that is classified as an extraordinary crime. Moreover, it is a crime against humanity which has received strong condemnation from every nation in the world. Terrorism in all its manifestations is a serious crime and threatens human values, disrupts the public safety of people and goods and is often directed at state or military/security defense installations, as well as at officers who run state institutions such as heads of state and government in general, vital and strategic objects as well as other public centers.

People from certain communities often become innocent victims because they are targeted by terrorist groups, as was done by Amrozi and his friends when they carried out the explosion in Legian Bali in 2002. The perpetrators at that time stated that their actions were based on their hatred for the United States. This can be traced chronologically because the bombing in Bali happened not long after the attack on the Twin Towers of the World Trade Center (WTC) and the Pentagon on September 11, 2002. Since the bombing in Bali, there have been successive attacks on vital places such as the US embassy in Jakarta, as well as the suicide bombing that occurred at the JW Marriot Hotel on August 5 2003 which killed the suicide bomber and 12 other people, as well as 150 people were injured. The two incidents above are examples of several cases of terrorism that have occurred and were aimed at symbols of foreign countries such as the US.

What about in Indonesia? Legal regulations specifically regarding the eradication of terrorism only emerged after the first Bali Bombing tragedy with the issuance of a Government Regulation in Lieu of Law of the Republic of Indonesia Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism (which was later enacted as a Law through Law of the Republic of Indonesia Number 15 of 2003 concerning Stipulation of Government Regulation in Lieu of Law of the Republic of Indonesia Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism). The Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP) cannot/are inadequate to eradicate terrorism even though in practice the Criminal Procedure Code is still used in cases of criminal acts of terrorism.

In particular, for the case of the Bali Bombing I, the Indonesian Government issued Government Regulations in Lieu of Law of the Republic of Indonesia Number 2 of 2002 concerning the Implementation of Government Regulations in Lieu of Law of the Republic of Indonesia Number 2 of 2002 concerning Eradication of Criminal Acts of Terrorism in the Bomb Explosion Incident in Bali 12 October 2002 (which was later
enacted as Law through Law of the Republic of Indonesia Number 16 of 2003 concerning Stipulation of Government Regulations in Lieu of Law of the Republic of Indonesia Number 2 of 2002 concerning Implementation of Government Regulations in Lieu of Law of the Republic of Indonesia Number 2 of 2002 concerning Eradication The Crime of Terrorism in the Bomb Explosion Incident in Bali 12 October 2002). The issuance of this legislation is intended to legally ensnare the perpetrators of the Bali Bombing I which was carried out before the issuance of Law Number 1 of 2002.

It legally violates the principle of "Nullum Delictum Noela Poena Lege Praevia" (no crime can be imposed without prior regulations containing criminal sanctions first - Article 1 paragraph (1) of the Criminal Code) and the principle of "non-retroactive" (the law cannot apply retroactively). However, from several points of view, based on the reasons and grounds that serious human rights violations have occurred, these two principles can be set aside. However, in reality, it was ultimately canceled by the Constitutional Court because it violated the non-retroactive principle.

In 2006, as a manifestation of the war against terrorism, the Indonesian Government ratified the international convention for eradicating the financing of terrorism through Law Number 6 of 2006 concerning Ratification of the International Convention for the Suppression of the Financing of Terrorism, 1999. In the Explanation Section of this law, the Government of the Republic of Indonesia states that "the eradication of terrorism and its funding will be more effective if carried out through international cooperation in the formation of international rules that become a common reference". Thus, it is the basis for consideration for the Government of the Republic of Indonesia to participate as one of the one party to the convention.

Regarding this convention, the Government of the Republic of Indonesia also provides reservations, namely regarding Article 24 paragraph (1). The Government of the Republic of Indonesia does not agree with the contents of this article which essentially regulates the provisions for resolving differences in interpretation or disputes regarding the implementation of the Convention, namely that the International Court of Justice has the authority to adjudicate such disputes upon request of one of the States Parties to the dispute. Regarding this article, Indonesia states that they are not bound because they insisted that submitting a dispute to the International Court of Justice can only be done based on agreement between the parties to the dispute.
The next question is: are the current legal regulations in Indonesia substantially adequate to eradicate criminal acts of terrorism? A thesis written by Vety Zurrifatul Laily (2003) with the title "Study of Terrorism in the Perspective of Indonesian Criminal Law (A Review of Laws of the Republic of Indonesia Number 15 and Number 16 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 and Number 2 concerning the Eradication of Criminal Acts of Terrorism)"), in its abstract clearly states that there are fundamental weaknesses in these laws and regulations, namely: the laws and regulations, limitations regarding terrorism itself, classification of criminal acts, scope enforceability, relation to other laws and regulations including evidence and legal processes.

Therefore, it is necessary to improve various weaknesses to resolve the problem of terrorism and must always adhere to the principles, among others; protection of civil liberties, respect and protection of individual rights, limitation and prevention of abuse of power by the state. A discussion about terrorism also raises the pros and cons of the substance of the Terrorism Law. One of the problems that arises is the definition of terrorism that applies universally and is accepted by all parties. Unanimously, each party defines terrorism according to their perceptions.

However, the lack of agreement regarding the definition of terrorism does not mean that terrorism is out of the reach of the law. One thing that is the same is the vision that terrorism in any form and mode must be fought and eradicated. Articles related to criminal procedural law and Human Rights Law are also issues of substantive weakness in the Terrorism Law. For example, Article 25 paragraph (1) of the Terrorism Law states "Investigations, prosecutions, and trials at court in cases of criminal acts of terrorism shall be carried out based on applicable procedural law unless provided in others Government Regulation in Lieu of this Law."

Thus, the Criminal Procedure Code is used for procedures in handling criminal acts of terrorism. Continuing in Article 26 paragraphs (1), (2), and (3) of the Terrorism Law, it is stated that to obtain preliminary evidence, investigators can use every intelligence report where the intelligence report is examined by the Chairman or Deputy Chairman of the District Court in private to determine whether the intelligence report containing preliminary evidence that is strong enough to be followed up in the investigation process.
The problem is that the closed examination process could lead to arbitrariness by the authorities in arresting or determining suspects for criminal acts of terrorism without any control from other parties (the community). If it happens, there is a violation of human rights. Former Coordinating Minister for Political, Legal, and Security Affairs Widodo AS also expressed voices wanting changes to the terrorism law. He argued that "eradicating terrorism requires a broader role for the Indonesian National Army (TNI). The involvement of the TNI in counter-terrorism efforts is a strengthening of national efforts that need to be covered by legislation, on the scale and escalation of certain terror threats require the mobilization of certain resources and capabilities that may be beyond the capacity of the National Police.

For example, ship hijackings on the high seas, airplane hijackings, hostage-taking in remote areas, and the use of weapons of mass destruction. Considering the increasingly complex problems in dealing with terrorism, we need to consider Amendment Law 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism. Especially regarding the position and role of intelligence and the National Police, so that they can optimally and effectively deal with terrorism." It is a good opinion and needs special attention, considering that overcoming and eradicating terrorism requires good cooperation and putting aside sectoral egos between authorities and agencies to achieve common goals, namely a conducive state security situation and public order that is free from the threat of terrorism. The Terrorism Law currently does not facilitate the inclusion of the TNI in efforts to eradicate terrorism.

4 CONCLUSION

Efforts to overcome criminal acts of terrorism in Indonesia can be carried out by using criminal policies in dealing with crime problems, using both penal and non-penal means. The penal means refers to the use of criminal law as an effort to provide a deterrent effect to criminals, through the justice system. Meanwhile, non-penal means are social assistance and education in developing the social responsibility of community members. Policies using non-penal means are believed to be able to reach all the roots of crime consisting of economic, family, environmental, and religious factors. The factor that most influences the increase in the number of terrorism cases in Indonesia is the religious factor. Therefore, two efforts can be carried out by the Indonesian Government, namely preventive (non-penal) efforts and criminal (penal) efforts. Preventive efforts that must
be taken are to focus on monitoring places of worship, places holding religious activities, and even places of education with an Islamic religious background that are suspected or confirmed to have spread the doctrines of radicalism. If there are things that are deemed to lead to radicalism or terrorism in the monitoring process, the Government is obliged to take final action, namely law enforcement or punishment.

From a human rights perspective in Indonesia, the death penalty or capital punishment for perpetrators of terrorism can be applied, as long as this is regulated in a statutory regulation based on the principle of legality in Indonesian criminal law. The principle of legality in criminal law in Indonesia guarantees the human rights of a defendant in cases where the crime is punishable by death, to achieve legal certainty in realizing true justice. Apart from that, the protection of human rights must also be implemented during the inquiry and investigation stage. In the process of applying the death penalty or capital punishment to perpetrators of terrorism, law enforcers must be careful so that the actions or decisions taken during the inquiry, investigation, prosecution, trial examination, and judge's decisions do not conflict with statutory regulations and Human Rights values recognized in Indonesia.
REFERENCES


Komariah Emong SuparDjaja,“Permasalahan Pidana Mati di Indonesia,” dalam Jurnal Legislasi Indonesia, Vol 4, No. 4 Desember 2007

Mardenis. (2001). Pemberantasan Terorisme (Politik Internasional dan Politik Hukum Nasional Indonesia, hlm. 89, Raja Grafindo Persada, Jakarta


Poltak Partogi Nainggolan (Ed.), Terorisme dan Tata Dunia Baru, Pusat Pengkajian dan Pelayanan Informasi, Sekretariat Jendral DPR RI, Jakarta, 2002,


