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## THE URGENCY OF THE BASIC LEGAL CLARITY OF THE TASK OF ASSISTED TNI AND POLICE IN HANDLING TERRORISM

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#### Abstract

The Government of Indonesia has passed Law No. 15 of 2003 on The Establishment of Replacement Government Regulation Law No. 1 of 2002 on the Eradication of Terrorism Crimes, Becoming Law. In the sense that, terrorism is an issue that must be eradicated by the model of law enforcement, so the Police Is a law enforcement agency that has a primary duty in dealing with acts of terror. In addition, in the provisions of the terrorism law, there is one article that expressly involves the involvement of the TNI in countering, cracking down, and recovering all the impacts caused by acts of terror, it is also mentioned that the TNI in dealing with acts of terror is in order to carry out its basic duties carried out by means of Military Operations Other than War (OMSP), but the problem is that there is no basic clarity of the legal task of the assistance of the two agencies so as to create a lower unit in carrying out the task of aiding the , considering throughout the history of the two agencies has been an unforgettable conflict. This article discusses what factors make the importance of the basic legal clarity of the task of the TNI and Polri in the handling of terrorism and to know how the scenario of the assistance task is applied.

**Keywords:** Military Operations Other than War, Assistance Duty, Terrorism, Indonesian National Army, Police of the Republic of Indonesia.

#### I. INTRODUCTION

The Unitary State of the Republic of Indonesia is a Legal State based on Pancasila and the 1945 Constitution. The law was created or created with the intention of creating a just rule of society, based on true human rights. At its core is to create an orderly, safe, peaceful society and a balance in people's lives. He is the All-fulfilling, the All-15. Therefore, the law must be tasked with equally dividing human rights and interests, dividing authority, and regulating how to solve/resolve problems in order to maintain the rights and obligations that exist in each individual. <sup>1</sup>

Indonesia as a country of law, determined to enforce its laws which is a series of processes to maintain security and public order and describe values, ideas, minds that are quite abstract and become the purpose of the law. The purpose of the law or the mind of the law basically contains moral values, such as justice and truth. Law

<sup>&</sup>lt;sup>1</sup> Zaenai Asyhadie dan Arief Rahman, Pengantar Ilmu Hukum, PT Raja Grafindo Persada, Jakarta, 2013, p.116

enforcement as a means to achieve the purpose of the law, then it should be all the power and ability in the deployed so that the law is able to work to realize moral and legal values. The success of law enforcement will determine as well as be a barometer of the legitimacy of the law amid its social realities. The law is made to be implemented, therefore the law is inseparable from the influence of society itself as the basis of the running of the law. Therefore, in every legal country, the law always exists between the world of values or ideas with the world of reality itself. In law enforcement requires a legal institution that is a classic element in realizing the purpose of the law. In addition to these legal institutions developing their own values in addition to factors outside the law that also play a role, therefore law enforcement does not work in a vacuum and is resistant to influence, but rather always interacts with the reality of where the law is located. In fact, enforcing the law contains the supremacy of subtancial values that is justice.<sup>2</sup>

In order to achieve the purpose and function of the State in people's lives without being hit by the interests of its neighbors, then all the country itself must do is pay attention to the aspects of justice. The principle of justice is the essence of the law itself. Justice according to Aristotle is a policy relating to the relationship between people. The word adil contains compound meanings. Fair can mean something in accordance with the law, it can also mean something comparable or proper. A person is unfair if the person takes something from the proper.

In order to achieve this goal, especially within the scope of a country, the government must maintain and uphold its sovereignty and protect every citizen from any threat of criminal acts that could harm the nation and the country. One very important form of crime that is considered and needs to be eradicated is the crime of terrorism. The issue of terrorism has been a hotly discussed issue since the Bali Bombings first occurred on October 12, 2002, in addition to the horrific events caused by terrorist acts, namely the blasting of the twin towers of the WTC (World Trade Centre) skyscraper as a symbol of economic development in New York and the Pentagon Defense Building symbolizing the superiority of American defense in Washington DC.

Therefore, in relation to the event, Indonesia as a legal country, seeks to realize the principles of the State of Law in the life of the people, the nation and the state. The Government of the Republic of Indonesia in its efforts is encouraged to be more vigilant and consider the issue of terrorism is an important issue to discuss and discuss, concerning that terrorism is a humanitarian crime and a cross-border crime that could jeopardize the threat of sovereignty and territorial integrity of a particular country. In the end, the government's efforts to produce products that are not wasted until then from October 18, 2002 the Government of the Republic of Indonesia issued the Government Regulation of Substitute Law (Perppu) No. 1 of 2002 on "Eradication of

<sup>&</sup>lt;sup>2</sup> Satjipto Rahardjo, Penegakan Hukum Suatu Tinjauan Sosiologis, Yogyakarta, 2009, p.9

Terrorism Crimes" and affirmed on April 4, 2003, it was passed as Law no. 15 of 2003 on "Determination of Government Regulation in Lieu of Law No. 1 of 2002 on Eradication of Terrorism Crimes".<sup>3</sup>

In establishing the Government Regulation of The Replacement of Law into Law, means that the government in dealing with terrorism in Indonesia focuses more on the criminal justice model that prioritizes law enforcement and automatically the Police are the Leading Sector. In doing its job of dealing with terrorism the Police can ask the TNI for assistance to facilitate its task in tackling terrorism. Basically, military involvement in tackling terrorism is limited to operational, and is usually used when an escalation of a terrorist attack has threatened the sovereignty of the country, such as an attack on a vital object of the state or in the purpose of separatism. Nevertheless, military involvement in the handling of terrorism on a Low Intensity Conflict scale is also possible in the assistance mechanism stipulated in the framework of Military Operations Other Than Role (OMSP). In Indonesia, omsp regulatory framework settings only regulate the type of engagement and general provisions of deployment. Not explained specifically about the mechanism of engagement until implementation, operations related to command, regulation of assistance mechanisms, and so on.

In the absence of regulation of the assistance mechanism that will specifically make it difficult in terms of implementing the involvement of the TNI in the task of assistance to the Police, as often in reality in the field appears a rivalistic nature between the two agencies. Whereas this regulation or policy is very important to know how the assistance mechanism is carried out, and from that regulation we can know the extent of the limitations of engagement is carried out, and in the context of when and conditions how the Police should ask the TNI for assistance, The absence of clear rules, and a strong position legally certainly makes the participation of the lower unit, especially those in the area, especially the regional commandos of the TNI AD in implementing the request for assistance from the Police. When historically, there have been clashes in some places from both agencies, resulting in strong sectoral egos among the relevant agencies, and very strong making the impression of being reluctant to ask other units for help.

Therefore, in this study aims to know what factors make it important from the task of assisting the TNI and Polri in the handling of terrorism and how the scenario of the assistance task is applied so that it is expected that in the future can reduce the awkwardness and confusion, as well as to eliminate the sense and competitive nature of the two strongholds because there has been a strong legal basis in carrying out their respective duties in accordance with the existing regulations.

<sup>&</sup>lt;sup>3</sup> Imtihan Muhammad, "Analisis Politik Hukum Islam Terhadapa Undang-Undang Nomor 15 Tahun 2003 tentang Pemberantasan Tindak Pidana Terorisme (Skripsi Fakultas Syariah Universitas Islam Negeri Raden Intan Lampung, 2017)

#### **II. DISCUSSION**

#### a) Overview of the Meaning of Terrorism

So far, many definitions of terrorism have been used by experts, so with the diversity of these definitions there is no universal definition of terrorism. According to A. schmid, terrorism is a method of combat that targets random victims or symbols using violent instruments aimed at creating an atmosphere of fear. Etymologically the words "terror" (action) and "terrorism" come from the Latin "Terrere" which means to thrill or tremble. The word terror also evokes horror. In the English dictionary, terrorism is the use of violence or threats to degrade, scare and especially for political purposes. Conceptually, terror and terrorism are acts committed by humans on the basis of political, ideological, economic and other motives whether carried out individually or in groups that can cause fear and unrest of physical and humanitarian destruction and are carried out using violence committed in peacetime.<sup>4</sup>

In the Black's Law Dictionary, terrorism has the sense of being an act committed with the intent of (i) intimidating to influence the civilian population. (ii) affect the regulations and policies issued by the government, or (iii) affect the implementation and implementation of areas in government by means of kidnapping and murder.<sup>5</sup> According to Webster's New World Dictionary terrorism, it emphasizes political reasons because the definition of counter-terrorism itself is an act of terrorism, glorifying the power or threat to eliminate, intimidate, and subjugate primarily using political or policy weapons.<sup>6</sup>

In Law No. 5/2018 on Changes to Law No. 15/2003 on The Establishment of Government Regulation stipulated in Replacement Law No. 1 of 2002 on eradicating terrorism crimes into law makes it clear that terrorism is an act that uses violence or threats of violence that pose an atmosphere of terror or widespread fear, that may cause mass casualties, and/or inflict damage or destruction on strategic vital objects, the environment, public facilities, or international facilities with ideological, political, or security motives. From some of the notions mentioned above, we can conclude that the activities of terrorism will never be justified because of its main characteristics :

- a. Actions are used using violent means and threats to create public fear.
- b. Shown to a specific state, community or individual or community group
- c. In such acts of terror can have an impact on the neglect of human rights either on a small scale or large scale.
- d. Committing violence with the intent to obtain support in a systematic and organized manner.

<sup>&</sup>lt;sup>4</sup> Jawahir Thontowi, Dinamika dan Implementasi Dalam Beberapa Kasus Kemanusiaan, Yogyakarta, 2002, p.87

<sup>&</sup>lt;sup>5</sup> Henry Campbell Black,1990, Black's Law Dictionary 6th Edition, West Publishing,St. Paul-Minn, p. 1473, URL : republicsg.info/dictionaries/1990\_black's-law-dictionary-edition6.pdf, diakses 10 Maret 2017.

<sup>&</sup>lt;sup>6</sup> URL : yourdictionary.com/terrorism, diakses 10 Maret 2017.

#### b) Factors of The Onset of Terrorism

Based on research, there are generally six factors that are the cause/motivation of the onset of terrorism, namely economic, socio-cultural, identity, education, political and psychological factors. First, the economic factor. Terrorism can happen anywhere, but most studies show that labia terrorism occurs more in developing societies than in misikin countries or rich countries. Economic problems that cause a psychiatric boost in a society to commit terrorism crimes. That is why the uneven and unequal distribution of income in society is one example of an element that can be a trigger for a person to act.

A.C, Manullang stated one of the triggers for terrorism is poverty and hunger. The fear of extreme poverty will easily fuel acts of violence and conflict, which are also fertile lava for the movement of terrorism. Second, socio-cultural factors. Cultural change can lead to social life. In other words, people's lives are part of cultural change. If changes in social structures are too fast and only occur in certain parts of society will be able to make others do not develop and lag far behind so that there can be imbalances and can lead to social inequalities.<sup>7</sup>

Third, the identity factor. Indonesia is a unitary state and is home to a wide variety of races, cultures, languages, and some. Then with dissatisfaction with the injustice in the distribution of economic, political, and social resources, the onsanion of social inequality and inequality so that it can be used as a basis to act to do something to be recognized its existence in the sense that they act for recognition. Fourth, the Education Factor. An education system that is not developed and spread evenly that causes the in full needs of the community can be one of the factors of the onset of terrorism, because of the problem will cause a sense of public dissatisfaction. There is discontent in this society that has led the community to take action with the use of force to make ends meet. People who live in an area and do not get enough education in general labia are easily eaten by propaganda from parties who want to destabilize the country. People like this are easy to become like from terrorist organizations and movements because it is already doctored.<sup>8</sup>

Fifth, the political factor. According to Wawan H. Purawanto, the threat of terrorism in Indonesia is not separated from the current order of the political system and now the national political system is also controlled by the global political order now controlled by the US and its allies. Sixth, psychological factors. Those who do not have sufficient abilities usually dislike the rules, places, and positions in which they are located. They assume that they don't get respect, attention, and love from society. On that basis they

<sup>&</sup>lt;sup>7</sup> *Ibid,* p. 30

<sup>&</sup>lt;sup>8</sup> Ibid, p. 31

commit crimes and behave aggressively and commit other acts to gain attention and respect from others as their self-expression.<sup>9</sup>

## c) The Danger of Terrorism to The Security and Sovereignty of the State

Terrorism is a complex issue, it can be understood from the many definitions given by experts to decipher terrorism, in identifying actions, characteristics and root causes and from these various definitions, thus coming to the conclusion that the absence of uniformity and a single definition can represent the phenomenon of terrorism around the world. Terrorism as an extraordinary crime, because it has a wide and cross-border scope then the danger posed by the impact of terrorism is also very large and can even jeopardize the sovereignty of the state and the integrity of the territory of the country.

The danger of this threat to terrorism is, however, the responsibility of the state to follow through. The danger of terrorism to the security and sovereignty of this country arises and becomes the responsibility of the state because however the people are entitled to a sense of security from all threats and also avoided from situations that threaten the sovereignty of the country as sourced from the people, stated in Article 1 paragraph (2) of the Constitution of the Republic of Indonesia year 1945 which states "sovereignty is in the hands of the people and implemented according to the Constitution". From this article the government mandated by the people to regulate and manage everything including in this case there is security and sovereignty in daily life has a great responsibility.<sup>10</sup>

In this case based on the opening of the Constitution of the Republic of Indonesia year 1945, the country aims to protect all Of Indonesia and all indoensia bloodshed and advance the common welfare, educate the life of the nation and participate in implementing a world order that aims for lasting peace and social discontinence to take decisive action against all forms of threats that interfere with the security of citizens and interfere with the sovereignty of the country including the threat of terrorism crimes and activities that support terror acts. Terrorism is a serious issue that needs to be eradicated, terrorism is a humanitarian crime that is cross-border, organized, and has a wide network, thus threatening national and international peace and security, therefore requiring central, integrated, and coordinated restitution.<sup>11</sup>

## d) Important factors of assisted living duties

#### a. Internal Factors

Historically, the TNI-Polri relationship has been difficult to forget for both agencies, so today there is still a grey area that gives rise to polemics where the diversity still does not find a satisfactory answer for both. Each agency has a claim to the same authority in

<sup>&</sup>lt;sup>9</sup> Ibid, p.32

<sup>&</sup>lt;sup>10</sup> Jumarni Lompo, "Tinjauan Yuridis Terhadapa Tugas dan Fungsi Tentara Nasional Indonesia dalam Penanganan Tindakan Terorisme, Fakultas Hukum Universitas Hasanuddin, 2018.

<sup>&</sup>lt;sup>11</sup> Jumarni Lompo, *opcit, p.*60

dealing with various threats, especially terrorism. The absence of a National Security Act makes each agency do not have the main guidelines agreed together to deal with the threat of terrorism. In the end, the Police continued to use the law, and so did the TNI. This condition is exacerbated by a series of conflict events between the TNI-Polri that increasingly show the absence of synergy between the two agencies.

Based on the study, it can be seen that the relationship of the TNI-Polri is still often in the negotiations of trivial problems, especially at the officer level downwards. Whereas at that level, it is very much blinded by its cooperation in carrying out counter-terrorism operations. Arrests in special operations obviously have to involve quite a lot of TNI-Polri personnel who are not only at the level of officers upwards. Therefore, the synergy of the TNI-Polri should be considered so that the sectoral egos of both parties, especially in the lower union can be eliminated, so that in the implementation of the assistance duties of the two agencies there is no longer a sense of superiority, grudge, or some other feeling that can hinder the smooth ness of the assistance task.

#### **b. External Factors**

In fact, in the discussion of external factors this is a continuation of internal eradication, in the sense that these two factors are not separate areas of factors, but rather two areas of factors that are related to each other. Because of the internal factors in the previous discussion will have implications on external factors. As we know, historically both agencies both military agencies and law enforcement agencies (police) have had a tragic and terrible experience where according to IPW (Indonesia Police Watch) data, between 2005-2014 there were at least 37 clashes and led to the deaths of 11 people. So from that fact it will have an impact on the continuation of the relationship between the two agencies, where the relationship between the two agencies is a reflection of national stability, but it is unfortunate that if there is still conflict in the lower unit caused by the feelings of both sides it will result in disruption and obstruction of the two relationships. So the mechanism of engagement is a factor in the assistance task required and necessary presence in hopes of conding the tendency of rivalistic feelings and so on.

The word mechanism comes from the word mecanik which means the way it works used for the operation of the operation of something necessary in order for the lancer to take advantage. Mechanism is a process of carrying out an activity carried out by a person or several people using the rule order as well as the flow of communication and division of tasks in accordance with professionalism. Mechanism according to Islam is a process of carrying out activities carried out by a person or some people using the rule order in accordance with sharia and other provisions. In relation to the handling of terrorism by military agencies and law enforcement agencies, the mechanism of engagement of assistance duties is as a supporting factor so that the legal basis of the assistance task can be established immediately and determined so as to avoid legal emptyness and certainly be used as a guideline by both agencies in its application in the field so that it is expected that there will be no confusion and confusion by the subordinate units of the two agencies.

The scope of the mechanism of engagement factor is in the question of when, in the sense of when the Police as the leading sector in dealing with terrorism involves the power of the TNI, Given that the handling of terrorism in Indonesia is more emphasized to the criminal justice model, where polri as the leading sector, then the mechanism of involvement of the TNI is needed in counter-terrorism if the Police can no longer handle it. Furthermore, the author will quote the opinion of Edy Prasetyono, in his opinion, he explained that terrorism should be viewed from two different points of view, namely, first: terrorism as a criminal offence that places police and law enforcement agencies as the leading sector in the eradication of terrorism. So the mechanism of engagement of the TNI is to the extent of assisting the police and other law enforcement institutions. Second, see terrorism as a national security threat. From this perspective, the state conducts an assessment of the security situation which is the basis for the deployment of security instruments including TNI forces in the eradication of terrorism.

From his opinion we can conclude that the TNI can be involved when the state determines that the security situation has been threatened and takes political decisions to deploy military force then terrorism is no longer seen as a criminal offence, in the sense that when the situation and conditions can still be handled by the police then the police take the lead in the handling of terrorism, but when the government has established the situation and conditions that the Police can no longer handle terrorism then the TNI force is involved on the basis of political decisions in order to maintain sovereignty and conditions territorial integrity of the Unitary State of the Republic of Indonesia.

#### e) Help Task Scenario

This discussion, in relation to the task of thi and polri assistance in counter-terrorism in Indonesia, there needs to be a formula of scenario-based planning legislation, in the sense that this scenario formula contains a connection to the task of assisting the TNI and Polri so as to facilitate the two agencies in their working pattern relationship. In this case, there is a need to set the rules of engagement of the two agencies in the application of assistance duties to deal with the threat of terrorism. There are at least four possible scenarios. Those four scenarios are First, a scenario where the terror threat can still be managed by law enforcement instruments, the police are in control of operations in dealing with terrorism. Second, at a time when the intensity of the threat is increasing, civilian authorities can request assistance from the military through the TNI's engagement mechanism in terms of assistance duties. Third, this third scenario contains conditions where the intensity of the terror threat is increasing and requires operations led by military institutions. In other words, the military takes over operations and law enforcement authorities (police). Fourth, the intensity and characteristics of the threat from the beginning are considered to require active military involvement. The military, in this scenario, becomes the main instrument of countermeasures. The terakhi scenario can be accompanied by a declaration of a military emergency in which normal enforcement can be delayed, replaced by an emergency law in the name of national security.

The process of assessing the intensity of the threat is carried out by civil authorities by hearing input from some parties. Under ideal conditions, threat assessment should be carried out by the National Security Council led by the President and members by the Vice President, The Minister of Defense, the Minister of Foreign Affairs, the Minister of Home Affairs, the Commander-in-Chief of the TNI, the Head of the National Police and the Head of the State Intelligence Agency as well as non-permanent members consisting of government and nongovernmental officials who are deemed necessary according to the problems at hand. The mechanism of engagement of the TNI in terms of the task of assisting law enforcement agencies to tackle terrorism must be based on the policies and political decisions of the country as stipulated in Law No. 34 of 2004 on the Indonesian National Army and Law No. 3 of 2002 on The Defense of the State. In situations and conditions that are not possible or urgent where the direct deployment of TNI forces, the President must report to the House of Representatives within 2x24 hours from the issue of the decree of the deployment of the TNI forces. This must be done to ensure that civilian superpowers remain in the military and maintain accountability of the TNI in order to counter terrorism.

#### **III. CONCLUSION**

The legal basis of the Task force and the Police in the handling of terrorism is urgently needed and must be established immediately, because if it is not immediately established it will have implications for factors that strongly affect it, in terms of its influence on internal factors is seen in terms of historically the TNI and the Police experience various conflicting events that cause the discussion of conflict between the two does not end in a satisfactory answer. So from that fact it raises the tendency of both parties to be rivalistic or inclined to have a sense of vengeance that can hamper it and disrupt the coordination relationship between them, especially in the lower unit.

In addition, if the problem is not resolved immediately, then it will also have an impact on other things, for example is the mechanism of involvement of the TNI in the sense that so far there has been no legislation that regulates specifically regarding the mechanism of engagement of the TNI, thus making the law blank and can cause confusion and confusion of the lower units of both parties in their work patterns in the field to deal with terrorism. The scenario of the assistance task is also the resulting implication if the urgency of the clarity of the TNI and Polri assistance tasks is not immediately established and established, because in this case, the parties concerned will experience confusion because they do not know how the scenario of the assistance task should be applied. So it is hoped that in the research can provide new knowledge about the urgency of clarity of the task of aiding the TNI and Polri in the handling of terrorism and can be used as a recommendation of the government to immediately create and establish the legal basis of the task of assisting the TNI and Polri in the handling of terrorism.

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