Terrorism as Transnational Organized Crime and Government’s Attempt to Eliminate Terrorism

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Abstract: One of the international crimes that recently become a serious problem is terrorism. Terrorism attack is a serious threat to individual, society, country, and international community and it is the enemy of every known religion in the world. Terrorism is not an ordinary crime but it is an extraordinary crime that becomes the common enemy for every human being (Hostis humanis generis). The crimes of terrorism which happened to date have disrupted humanity, security, and order of society and have become serious threat to sovereignty of the nation. Indonesia has also stipulated anti terrorism law in government regulation in lieu laws (Perpu) Number 1 year 2002, which on April 4th 2003 has been validated as 2003 Act No. 15 about the Elimination of Terrorism. However, the crime of terrorism is still occurring.

Keyword: Terrorism, Transnational Organized Crime, Eliminating Terrorism, Government’s Attempt

1. Introduction

Terrorism is one of the international crimes that recently become serious problem. Terrorism is not an ordinary crime but it is an extraordinary crime that becomes the common enemy for every human being (Hostis humanis generis). This crime of terrorism is seen as extraordinary crime which can happen to anyone regardless their age, gender, race, and religion. They freely conduct their terrorism attack, such as on 11 September 2002 and 12 October that destroyed the twin building of World Trade Center (WTC) which killed more than 3000 lives [1]. The terrorist attack on 11 September 2002 and the tragedy of 12 October on Legian Bali are some actual examples that terrorism is a ruthless act that ignore and deny the value of humanity [2]. The crimes of terrorism which happen to date have disrupted humanity, security, and order of society and have become serious threat to the sovereignty of the nation.

As the member of United Nations, Indonesia has ratified various conventions and conducted resolution of UN in fighting terrorism [3]. However, the crime of terrorism is still occurring. Regarding the above explanation, it is interesting to have a research about the relationship of terrorism as organized transnational crime and governmental attempt to anticipate those crimes.

Based on the above background explanation, the formulation of the problem that will be discussed in this legal paper are: (1) Why is terrorism categorized as an organized transnational crime?; and (2) What are the government’s attempts to overcome and prevent crime of terrorism?

2. Methodology

The method of this legal research is juridical normative and the research specification used is descriptive analytic. The data used to arrange this legal research is secondary data as summarized from many literatures. The data were collected by using literature and document searches both physically and electronically. The collected data were analyzed by employing content analysis combined with the principles of statutory laws as well as prescriptive analysis.
3. Findings

3.1 Terrorism in the Perspective of Transnational Crime

Based on Oxford Paperback Dictionary, Terrorism means a use of violence and intimidation, especially for political purpose. Black’s Law defines terrorism as the use of threat or violence to intimidate or cause panic, i.e. as a means of affecting political conduct [4]. Muladi stated that terrorism is an extraordinary crime, thus it needs to employ extraordinary measure for many reasons [5]. Completing the above definitions, James J. Wolfe mentions some characteristic of terrorism as follows: [2]

a) Terrorism can be based on political or non-political motives.

b) The target of terrorism act is usually both civilian (supermarket, mall, school, Religious building, hospital and other public facilities) and non civilian (military facility, military camp).

c) The objective of terrorism act is to intimidate or to influence governmental state policy.

d) Act of terrorism is done through conduct which disrespect the international law or ethic.

The provision about transnational [6] [7] crime including its characteristic has been formulated in Convention Against Transnational Organized Crime 2000. Transnational crime is part of international crime which effect is crossing the territorial border of a country. Transnational crime can be done individually and/or in group or organized.

Based on that convention, a crime is considered transnational if the stated elements are met in article 3, Convention Against Transnational Organized Crime 2000. Terrorism is not only an international crime but also an organized transnational crime [8]. Terrorism as organized international crime, which has developed into transnational crime, has an organized nature and widespread network [9]. This can be seen as stated on paragraph 1, article 5 (Criminalization of Participation in an organized criminal group) of the convention.

Based on article 3 and article 5 of Convention Against Transnational Organized Crime 2000, transnational crime is against the nature and dignity of humanity or is considered as the common enemy of mankind (hostis humani genesis).

3.2 Government Policy in order to overcome Terrorism Crime

Policy is the government instrument, which government is not limited to state apparatus but also governance regarding a good and profitable management of a country [10]. According to Hoefnagels, the attempt to overcome crime can be conducted as follows: Criminal law application; Prevention without punishment; Influencing views of society on crime and punishment through mass media [11].

Based on the above opinion, the government policy in attempt to prevent and eliminating terrorism is established in two ways which are: penal (criminal law) and non penal (non-criminal law) [12]. The penal policy contains policies that employ application of criminal law, while non penal policy contains preemptive and preventive attempts.

3.2.1. Penal Policy. The employment of legal effort, including criminal law, is one of the attempt to overcome social issues which include law enforcement policy. Because its purpose is public welfare, then the policy of law enforcement is included in social policy field, which means as any rational attempt to achieve public welfare [13]. The legal policy is conducted by ratifying some international conventions and to form legal rule regarding terrorism. Some international conventions about terrorism have been legalized as laws by Indonesian government such as Indonesia Act No. 2, 1976, concerning the ratification of 1963 Tokyo Convention, 1970 Hague convention, and 1971 Montreal Convention. International Convention for the Suppression of Terrorist Bombing 1997 which is ratified into Act Number 5, 2006. International Convention for the Suppression of the Financing of Terrorism 1999 is also
ratified into Act Number 6, 2006 and United Nation Convention Against Transnational Crime 2000 is ratified into Act Number 5, 2009.

In order to follow up the UN Security council resolution to prevent and eliminate terrorism, Indonesian government issues enactment of government regulation in lieu of law which are Act Number 15, 2003, regarding the enactment of government regulation in lieu of Law Number 1, 2002, about the elimination of terrorism crime and Government regulation number 2, 2002, and the enactment of government regulation number 1, 2002.

3.2.2. Non Penal Policy. The non penal policy of overcoming the crime of terrorism is more about prevention before the event of crime itself taken place. The non penal policy approach is a basic approach because it is oriented on the attempt to overcome conducive factors of the cause of crime based on social circumstances. These conducive factors are circled around the currently running issues or social conditions which directly or indirectly cause or encourage crime [11]. For Indonesia, prevention and elimination of terrorism need careful observation of people culture and circumstances, and also government political stability. Those three factors have significant influence on the effectiveness of law. Indonesian people acknowledge the existence of multi religion and ethnic that live side by side peacefully. The non penal settlement of terrorism is done through preemptive and preventive measure.

In the strategy to overcome terrorism in non-penal manner, BNPT is also involved, such as de-radicalization of terrorist in the correctional facility; to conduct re-education for any group/community with the potential of becoming terrorist: to conduct re-socialization, for terrorist convict who have finished their sentence on correctional facility; to conduct any contra radicalization act in order that the society will not be influenced by radicalism thought; and to conduct contra media literacy on the widespread of radicalism thought through social media. In addition, BNPY also has had a dialog with some state and private university and Islamic Society organization about how to reduce radicalism by preventing the negative content, not the sites.

4. Conclusion

Based on the elaboration which has been explained on the previous chapters, some conclusions can be drawn:  
1. Terrorism as international crime can be categorized as organized transnational crime if the characteristics are met. The characteristic is on article 3 and article 5 of Convention Against Transnational Organized Crime year 2000. As transnational crime which threat international peace and security, each country is obligated to enforce its national law regulation and to conduct any necessary bilateral and multilateral cooperation in order to prevent and eliminate transnational crime.

2. Indonesia, in its attempt to overcome terrorism has issued some penal and non-penal policy. The non-legal policy with preventive and preemptive measure is meant to prevent terrorism, to spread information to society, and to cut down terrorism networking cell.

5. References

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