

The Optimization of Deradicalization Policy in Overcoming Terrorism Crime in Indonesia

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Abstract: Radicalism in some communities can result from many factors. One of them is poor understanding of religion. Religion radicalism movement in some cases can harm and threaten national stability and Republic of Indonesia Unitary State (thereafter called NKRI). Government's firm policy is very desirable to involve all components of society in socializing the hazard of religion radicalism movement. This study was normative law research. Some constraints were found leading to the less optimum deradicalization policy in the attempt of overcoming terrorism crime in Indonesia. Many factors leading the people to follow radicalism are, among others: social discrepancy triggered with uneven economic distribution and some constraints deriving from community's cultural aspect often alienating ex-terrorist prisoners leading some of them to revive radicalism despite rehabilitation through deradicalization program. Another constraint was that the law enforcement approach conducted still uses punitive paradigm or stringent approach, while soft approach through deradicalization policy has not been implemented optimally yet. The target of deradicalization policy is limited to prisoners and ex-prisoners only, rather than extended to the accused; defendant; convict; prisoner; ex-terrorist prisoner; or people or a group of people that have been exposed with terrorism radicalism. The synergy of many institutions and community components that should engage in deradicalization implementation has not been optimal, for example, Interior Ministry, Foreign Ministry, Ministry of National Education, Ministry of Law and Human Rights, Social Ministry, Religion Ministry, Ministry of Communication and Information, National Intelligence Agency, Indonesian Army's Elements in regions, non-government organization, universities, religion leader, and community leader. In addition, other social approaches such as economic, education, and cultural approaches to prisoners, ex-terrorist prisoners, and family have not been implemented optimally. Viewed from formulation aspect, unorganized institution, community and stakeholder components related to deradicalization policy are also the weaknesses that should be corrected because BNPT (National Agency for Combating Terrorism) impossibly implements deradicalization policy independently.

1 INTRODUCTION

Terrorism is a problem not only to Indonesians but also other nations in the world. Terrorism is an action using violence or violent threat generating terror circumstance or fear widely, that can take a mass toll, and/or result in damage or destruction in the strategic vital object, living environment, public facility, or international facility with ideological, politics, or security disruption motives. ("RI's Law Number 5 of 2018 the Amendment to Law Number 15 of 2003 about the stipulation of Regulation Substituting Law (Perpu) Number 1 of 2002 About Terrorism Crime Eradication to be Law," n.d.)

Terrorism action is a real threat in the world; many incidences have occurred at the global level,

for example, the attack against the twin tower of World Trade Center (WTC) on September 11, 2001 constituting the symbol of American Economic Power, and Defense Department (Pentagon) building in Arlington, Virginia constituting the symbol of American military power, resulting in great destruction due to terroristic invasion. The 11th September attack was the largest terroristic action in America in the 21st Century, particularly viewed from the life tolls reaching about 3000 people. (Suryani, 2017) At the national level, since the 1st Bali Bombing, a series of terroristic attacks have occurred in the homeland, with a large number of life tolls and injured tolls. The terrorists' real threat can be seen, among others, from many terrorism cases handled by a police officer. In 2016, Republic of Indonesia's Police (Polri) handled 70 terrorism

cases increased dramatically from 82 cases in a previous year.(Suryani, 2017)

Indonesia as a state becoming the target of terrorism as well has taken preventive and eradicated measures against terrorism crime through law enforcement. However, this has not been able to prevent the repeated terrorist action from occurring, and even the law enforcement conducted so far generates resentment against the law enforcers. Because the law enforcement approach conducted so far has not touched yet the root of the problem concerning terrorism ideology within the community, terrorism with its new tactic and strategy reappears. Therefore, a more touching, sympathetic and target-appropriate approach is required in order to be acceptable to the community to prevent the terrorist ideology from influencing the community further. Furthermore, viewed from international legal politics, the management of terrorism has been manifested into international conventions entered into by the states in the form bilateral, regional, and global cooperation agreements. Bilaterally, Indonesia has established cooperation with the US and Australian governments. Then, at the regional level, Indonesia puts ASEAN to be an important part in the terrorism handling cooperation. It is because terrorism in Indonesia is believed to have an international network, including in some ASEAN countries.(Gayo & Muchlizi, 2016)

The problem is that many rules and policies formulated at both global and national levels have not been able to be an effective instrument to deal with and to overcome terrorism problem optimally. At national level, there have been Law Number 5 of 2018 about the Amendment to Law Number 15 of 2003 the Establishment of Government Regulation Substituting Law Number 1 of 2002 about Terrorism Crime to be the Law, Presidential Regulation Number 46 of 2010 about Agency for Combating Terrorism, and Law Number 9 of 2013 about Prevention and Eradication of Terrorism Funding Crime. At the global level, the management of terrorism has been manifested into international conventions entered into by the states in the form bilateral, regional, and global cooperation agreements. For example, Indonesia participates actively in establishing cooperation with *United Nations Counter-Terrorism Implementation Task Force (CTITF)*, *Terrorism Prevention Branch-United Nation Office for Drugs and Crime (TPB-UNODC)*, and *United Nations Counter-Terrorism Executive Directorate (UNITED)*. Furthermore, Indonesia attempts to implement 4 (four) pillars of

the *United Nations Global Counter-Terrorism Strategy (UNGCTS)*.(Indonesia, n.d.)

An attempt and strategy that has been and is being implemented in overcoming terrorism so far use more hard power approach intended particularly to the law enforcement attempt. This approach yields a variety of sufficiently significant and good performance and achievement, and even recognized internationally. Nevertheless, in long-term such, the approach is considered less effective. It is because terrorism is a not only physical violence problem but also involving ideology and related to social, economic, politics, and even cultural factors within society.(Prasetyo, 2016)

Indonesia should complement the strategy and approach building on soft power approach to deal with the development of terrorism inside Indonesia through deradicalization program. This strategy is intended to neutralize the effect of radical ideology, particularly the one originating from Islam religious understanding, underlying the terroristic action occurring.(Golose, 2010)

Article 43 D of RI's Law number 5 of 2018 mentions that deradicalization is a planned, integrated, systematic, and sustainable process conducted to eliminate or to mitigate and to reverse the radical understanding of terrorism occurring.("RI's Law Number 5 of 2018 the Amendment to Law Number 15 of 2003 about the stipulation of Regulation Substituting Law (Perpu) Number 1 of 2002 About Terrorism Crime Eradication to be Law," n.d.) Deradicalization is implemented to the accused, defendant, convict, prisoner, terrorism ex-prisoner, or people or a group of people who have been exposed to radical terrorism. Deradicalization has been implemented by the Government in coordination made by the agency dealing with terrorism through involving related ministries/institution in the following stages: identification and assessment; rehabilitation; re-education; and social reintegration.

An agency assigned to overcome terrorism through deradicalization attempt is National Agency for Combating Terrorism (BNPT), a Non-Ministry Government Institution. ("Article 1 and Article 2 of RI's Presidential Regulation Number 46 of 2010 about Agency for Combating Terrorism," n.d.) This agency is assigned, among others, to give the building to the accused, defendant, convict, prisoner, terrorism ex-prisoner, or people or a group of people who have been exposed to radical terrorism. However, in reality, many actors along with their network have been arrested and punished with

imprisonment and even death sentence, but radicalism among them cannot be changed so that when they have undergone imprisonment punishment completely, they will be ready to spread terror again. That is why terrorism remains to be a threat to the world, including Indonesia.

Some cases of terrorism actions occurring in Indonesia were committed by terrorism convict, Yayat Cahdiyat, the suspect terrorist in pan bomb case in Bandung, for example. According to information obtained from the ex-terrorism convict Agus Marshal, the terroristic action involving ex-terrorism convict is among others, the action of throwing a Molotov bomb in front of Oikumene Church in RT 003 Number 32 of Cipto Mangun Kusumo Street, Kelurahan Sengkotek, Loa Janan Ilir Sub District, Samarinda, East Borneo. The acts committed by Juhanda alias Jopada on November 13, 2016, makes a child burnt, and died during hospitalization. Polri's spokesman confirmed that the actor throwing the Molotov bomb was ex-prisoner in the case of a bomb in Puspitek Serpong, affiliated with Pepy Fernando's group. Having been free, Jo joined JAD group of East Borneo and had a link to Anshori group in East Java. This group remained to be observed by the police because there was an indication that it would elicit guns from the Philippines. Ex-terrorist convict perpetrating more crime was Sultan Aziansyah, by invading Police office in Cikokol, Tangerang on October 20, 2016. The actor of invasion against the three police officers finally died after bleeding on his way to the hospital. Police Headquarter explained that the perpetrator was shot on his abdomen and foot because he attacked the police officers first, including the Head of Sector Police Office in Cikokol Tangerang. A number of attack cases involving ex-terrorism convict result in a perception that deradicalization program has failed. There is a cynicism that the implementation of deradicalization program by the government through the National Agency for Combating Terrorism (BNPT) has failed.

Considering the phenomena above, the author will conduct an in-depth analysis of why deradicalization policy in overcoming terrorism crime conducted by BNPT has not been optimal yet. Furthermore, it will find out what attempts should be taken to optimize the deradicalization policy in overcoming terrorism crime implemented by BNPT.

2 PROBLEMS

1. Why has deradicalization policy not been optimal yet in the attempt of overcoming terrorism crime in Indonesia?
2. What are the attempts of reinforcing deradicalization policy in overcoming terrorism crime in Indonesia?

3 METHODS

This study was normative law research. A normative law research is the one studying literature or secondary data, using statute approach by conducting an analysis on a variety of legislation governing the eradication of terrorism crime in Indonesia and conceptual approach by studying perspectives and concepts of law and terrorism from many legal scholars and professional in terrorism field. Then data analysis was conducted using reasoning or deductive thinking method, the reasoning process starting from general statement to arrive at a particular conclusion related to deradicalization in terrorism crime, making the positive norms relevant to the terrorism the main source to justify the legal problem object studied, the less optimal implementation of deradicalization policy in terrorism crime. (Wignjosoebroto, 2013)

4 DISCUSSION

4.1 The Constraints Making the Deradicalization Policy Not Optimally Overcoming the Terrorist Crime in Indonesia

Penal policy can be defined as an attempt of realizing criminal legislation corresponding to condition and situation at a certain period of time and in the future. (Barda Nawawi, 2002) The word *corresponding to* means fulfilling the prerequisite of justice and efficiency. (Barda Nawawi, 2002)

Furthermore, according to Barda Nawawi Arief, criminal law policy essentially contains the state's policy in governing and limiting the power, including both the common people's authority of acting and behaving and the ruler/law enforcer's power or authority of undertaking its duty to ensure that the people are obedient and subject to the specified rule. Criminal law policy is a series of a process consisting of three stages:

- a. Legislative/formulating policy;

- b. Judicative/applicative policy; and
- c. Executive/administrative policy. (Arief, 1998)

Considering the elaboration of criminal law enforcing policy above, it can be found three powers/authorities: legislative/formative power in the terms of stipulating or formulating the punishable deed oriented to the basic problem in criminal law including unlawful deed, fault/criminal accountability, and the sanction that can be imposed by the legislator. In relation to the legislation related to terrorism crime, it can be seen that viewed from the aspect of crime formulation, criminal sanction and criminal responsibility have been formulated very well as it includes all deeds of putting into, producing, accepting, obtaining, submitting, mastering, bringing, having supply or ownership, storing, carrying, hiding, or releasing chemical, biological, radiological, microorganism, nuclear, radioactive weapons or its components from Republic of Indonesia state intended to committee terrorism crime will be punished with imprisonment minimally 3 (three) years and maximally 20 (twenty) years, life imprisonment or death sentence (Article 10 A).

Furthermore, Article 12 A governs the corporate legal subject as the perpetrator of terrorism crime. Article 15 governs the evil conspiracy, preparation, trial, or assistance in terrorism crime to be threatened with punishment. In addition, in procedural law, there are a specialty facilitating the law enforcers such as the authorized investigator to arrest the accused of maximally 120 (one hundred and twenty) days and if it is considered as inadequate, it can be extended to 20 days with the application filed to the Head of District Court. Similarly, Public Prosecutor is authorized to arrest the accused of up to 60 days and extended to 30 days with the Head of District Court's permission. In addition, the investigator is authorized to perform tapping (Article 31 A). Then, investigator, public prosecutor, judge, advocate, reporter, expert, witness, and penitentiary officer, as well as its family in terrorism crime case, are entitled to be protected by the state from potential threat endangering their life and/or property, before, during, and after the case examination process. Furthermore, deradicalization is governed in Article 43D, BNPT institution's authority in combating terrorism in Article 43 E, and the involvement of Indonesian Army (TNI) in combating terrorism in Article 43 I. Viewed from the aspect of sanction threat, Law Number 5 of 2018 has provided sanction up to death sentence.

Judicative/applicative power is the law enforcer or court's power in implementing the criminal law, and executive/administrative power is the implementation of the criminal law by punishment executing apparatus. Considering the three stages of law enforcement policy above, the criminal tackling is always oriented to the attempt of achieving community wellbeing. As suggested by Barda Nawawi Arief, (Barda Nawawi, 2002) the criminal policy or the criminal overcoming attempt is essentially an integral part of the social defense and social welfare attempts.

In reality, the applicative policy implemented so far is predisposed more to the law enforcement that is punitive in nature, the policy of condemnation according to the sanction threat as formulated in the norm. But in fact, this punitive cannot give wary effect, as indicated with many ex-terrorists finally repeating their crime or becoming recidivism. Therefore, the legislator has provided a non-punitive instrument, deradicalization policy, as governed in Article 43 D, intended to the accused, defendant, convict, prisoner, ex-terrorism prisoner, or people or a group of people who have been exposed to radical terrorism. However, this policy has not apparently been implemented optimally yet. It is because the deradicalization program implemented by TNI-Polri (Indonesian Army - Police) is just limited to policymakers at headquarter or central levels such as in Coordinating Ministry for Political, Law and Security Affairs and BNPT and has not been implemented to the foremost unit level such as Koramil (Babinsa) and Polsek (Bhabinkamtibmas).

In a recent development, the synergy of deradicalization program has not apparently been able to anticipate many problems yet. In the term of conceptualization, deradicalization is not only limited to rehabilitation, because in fact this program also involves terrorist prisoner families. Then, deradicalization essentially aims to neutralize ideology. For that reason, there should be an expansion of coverage thereby involving not only the prisoners but also their families and relatives. Deradicalization program developed as a building and guiding attempt to eliminate or at least to reduce the predisposition of radicalism amid community to prevent it from developing and threatening the living within society, nation, state, and religion has not been implemented optimally yet. Terrorism deradicalization has not touched the grass root yet, and TNI and Polri have not synergized massively so that the program has not run comprehensively, integrally, holistically and in an integrated manner yet. Unclear chain of command in coordination,

communication, and cooperation of TNI-Polri in the implementation of deradicalization and poor SOP become crucial constraints. In addition, the quality and quantity of the human resource in TNI-Polri apparatus should be improved. (Prasetyo, 2016)

Criminal policy, according to G. Peter Hoefnagels, is a science of policy as a part of larger policy: the law enforcement policy, while the law enforcement policy is also a part of social policy. Meanwhile, according to Sudarto, criminal politics is briefly defined as the community's rational attempt to tackling crime. (Sudarto, 1986) Therefore, G.P. Hoefnagels stated that "criminal policy is a policy of designating human behavior as a crime".(Arief, 2011)

Viewed from law enforcement, deradicalization attempt is a non-penal attempt or called social policy, aiming to make the people prosperous (social welfare policy), and social defense policy. Social defense policy is included in criminal policy aiming to achieve its objective using both penal and non-penal instruments so that penal and non-penal policies are an integral part of the social defense and social welfare attempts.

Barda Nawawi Arief stated that in relation to the limitations and the weaknesses of criminal law in which the handling or "rehabilitation" through criminal law conducted so far is only symptomatic rehabilitation/treatment rather than causative treatment, and its condemnation (treatment) is individual/personal in nature, the penal use or intervention should be implemented carefully, precisely, parsimoniously, selectively, and limitedly. (Arief, 1998)

Departing from that argument, it can be seen that law enforcement against terrorism implements so far still uses sanction imposition paradigm, exerting wary effect, while the use of penal instrument cannot settle a crime completely, because criminal law cannot reveal and analyze the factors leading an individual to commit crime, and the attempt to be taken to deal with it. Therefore, for the social defense policy to be achieved optimally, the use of penal and non-penal instrument should be integrated integrally. The use of both should be balanced, meaning that the imposition of the penal instrument in the form of hard criminal sanction should be compensated with the non-penal instrument, the soft deradicalization policy.

Additionally, the implementation of deradicalization is limited to the rehabilitation of prisoners only, because in fact this program only involves ex-terrorism prisoners and their families. This policy has not been touched much. In addition,

deradicalization essentially aims to neutralize ideology. For that reason, there should be an expansion of coverage thereby involving not only the prisoners but also their families and relatives. Deradicalization program developed as a building and guiding attempt to eliminate or at least to reduce the predisposition of radicalism amid community to prevent it from developing and threatening the living within society, nation, state, and religion has not been implemented optimally yet. Terrorism deradicalization has not touched the grass root yet, and TNI and Polri have not synergized massively so that the program has not run comprehensively, integrally, holistically and in an integrated manner yet. Unclear chain of command in coordination, communication, and cooperation of TNI-Polri in the implementation of deradicalization and poor SOP become crucial constraints. In addition, the quality and quantity of the human resource in TNI-Polri apparatus should be improved.

4.2 The Attempt of Reinforcing Deradicalization Policy in Overcoming Terrorism Crime in Indonesia

- a. Deradicalization conducted using soft approach by revitalizing the synergy of TNI-Polri as the main components and developed by involving stakeholders as reserve component and broader supporting component is expected to result in more optimal terrorism handling and significant outcome. Eventually, the successful synergy of TNI-Polri in terrorism deradicalization in order to establish the stability of security can be realized and the nation's ideological and national security will be stronger.
- b. The management of terrorism should use not only hard power approach but also soft power approach. This approach is the deradicalization program that should be supported with adequate regulation and government policy. In addition, it should also be supported by the quality and quantity of the human resource, particularly in TNI and Polri institutions.
- c. The optimization of deradicalization needs the synergy of all nation components including community leaders, religious leaders, educators, academicians, custom leaders, youths, activist, and peace lovers. Deradicalization needs role and contribution of

various ministries and institutions, either physical (infrastructure) or non-physical (mental and spiritual) support. Ministry of religion can give building and enlightenment to *mubaligh* and *khatib* related to accommodative, contemporary, and acculturative religious insight to ward off the radical-anarchistic religious thought. So far, indeed they have contributed, but they have not synergized and focused yet on the attempt of warding off radicalism.

d. Economic empowerment approach can be conducted by the Ministry of Cooperatives and Small- and Medium-scale enterprise, for example by giving the ex-terrorism prisoners the business capital in the form of a rotating fund without interest. Such a loan can be targeted to ex-terrorist family, network, and those indicated as radical, including the victims of a terrorist act. Deradicalization Directorate of BNPT has conducted such economic approach to the inmates, despite less optimality. Therefore, the Ministry of Cooperatives can take apart.

e. Terrorism must be dealt with by means of upholding the code of conduct or the rule of engagement so that whatever done in combating terrorism is free of pros and cons issues thereby getting legality and legitimacy. Hard approach conducted so far has not completely overcome terrorism effectively. In addition to resulting in the loss of connector chain when a large number of perpetrators are shot dead, it also inhibits the information about terrorist cell and organization. Therefore, the hard approach should be followed with touch and enlightenment to cease resentment making the governmental apparatus the target of revenge. The management of terrorists should not stop in the actors (perpetrators) only but should be continued with the attempt of approaching their family and community. The hard approach remains to be required, but its use should be limited to the most emergency condition only. A number of alternative field operations can be done and become standard procedure. Soft approach is commonly done through deradicalization programs such as prioritizing the function of intelligence and community building.

f. Deradicalization program basically departs from an assumption that terrorism starts with radicalism. Therefore, the attempt of combating terrorism can be accomplished more

effectively through deradicalization. In combating terrorism, law, social and cultural aspects of the nation should be taken into account unless it will create the counterproductive condition. Therefore, the terrorism handling strategies will vary between one state and another. Soft approach is deradicalization attempt conducted by Polri cross-sector against the root of terrorism crime. It can be accomplished by means of infiltrating in community life through early detection, preventive measure, and building to ex-terrorists and their supporters. The priority in this approach includes terrorist family and community that have been handled.

g. Fundamentally, the management of terrorism is related not only to the overcoming only but also other aspects involving other institutions such as Interior Ministry, Foreign Ministry, Ministry of National Education, Ministry of Law and Human Rights, Social Ministry, Religion Ministry, Ministry of Communication and Information, BIN (National Intelligence Agency), Army Elements in region, and other elements. Other stakeholders including non-government institutions, universities, religious leaders, community leaders should also be involved.

5 CONCLUSIONS

Deradicalization policy has not overcome the terrorism crime optimally yet in Indonesia. It is because, among others: the law enforcement approach conducted still uses punitive paradigm or hard approach, while soft approach through deradicalization policy has not been implemented optimally yet. In addition, the target of deradicalization policy is still limited to prisoner and ex-prisoner, rather than extended to the accused; defendant; convict; prisoner; ex-terrorist prisoner; or people or a group of people that have been exposed with terrorism radicalism. Additionally, the synergy of many institutions and community components that should engage in deradicalization implementation has not been optimal, for example, Interior Ministry, Foreign Ministry, Ministry of National Education, Ministry of Law and Human Rights, Social Ministry, Religion Ministry, Ministry of Communication and Information, National Intelligence Agency, Indonesian Army's Elements in regions, non-government organization, universities, religion leader, and community leader.

In addition, other social approaches such as economic, education, and cultural approaches to prisoners, ex-terrorist prisoners, and family have not been implemented optimally. Viewed from formulation aspect, unorganized institution, community and stakeholder components related to deradicalization policy are also the weaknesses that should be corrected because BNPT (National Agency for Combating Terrorism) impossibly implements deradicalization policy independently.

The attempt of reinforcing deradicalization policy in overcoming terrorism crime in Indonesia should be governed explicitly, among others, in relation to the regulation formulation of other institutions involved in deradicalization policy. Deradicalization policy as mentioned in Article 43 D should be governed further and in more detailed in Government Regulation. There should be the balanced use of criminal law instruments, either penal (criminal sanction) or non-penal (deradicalization), in overcoming terrorism. Synergy and participation of all nation components in overcoming terrorism using deradicalization medium should be optimized including Interior Ministry, Foreign Ministry, Ministry of National Education, Ministry of Law and Human Rights, Social Ministry, Religion Ministry, Ministry of Communication and Information, BIN (National Intelligence Agency), Army Elements in region, and other elements, and other stakeholders including non-government institutions, universities, religion leaders, community leaders. Other social approaches such as economic, education, social and cultural approaches are equally important to be conducted to not only prisoners and ex-terrorism prisoners but also their family.

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