

The Law of Anti Terrorism in the Human Right Perspective

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The desire to combat the crimes of terrorism has been done by many countries since the middle of the 20th century, for example is the born of the Convention for the Prevention and Uppression of Terrorism in 1937. This Convention defined terrorism as a crime against the state. The Convention, which had been born before the United Nation was born, was used to answer the challenge at that time, that was to use violence along with the demand of independence from the independence movement in the colonial regions (Dr. Indriyanto Seno Adji, 2003: 3). It was concluded that this Convention was not applied effectively because it did not fulfill the the condition to be ratified.

Eventually, the world society kept to see the violence actions of terrorism done by individuals or groups as a methode to get their objectives and or the objectives of the organizations who gave them support. An empirical fact showed that it was not only individuals or private groups who did the terrorism, but also the states and the apparatus. Terrorism fenomena done by the non-state actor was actually rooted in the injustice problems in the field of social, politics, economics and law. When the law and political system is not able to respond the justice demand of the society, it is not avoidable that the society finds their own way to change the system. There is one group of people who tries to struggle in a peace way, meanwhile there is a group of people who do it violently.

When latter group kidnaps, takes hostages, and kills many people, and also destroys many things to get their demand, we see that a despair could cause harm and great disaster to the human life. Terrorism done by the state and the apparatus is for and for the sake of power, political stability and elite economic interest. For that reason, the state thinks that it is his right to use any kind of violence to repress and to wipe out the critical groups, as well as the groups who struggle for their inspiration by bearing arms. What the United State and Vietnam regime did toward the people of Vietnam by creating bomb carpet clearly fulfilled the qualification of terrorism actions. It is not different from kidnapping and torturing the pro-democracy activities and it looks to be a model of repression by authoritarian regimes, which is actually a terrorism action. One of the state terrorism was the tragedy of 27th July 1996 (Abdul Hakim G. Nusantara SH, LLM, 2001: 2).

Generally, the politicians, the government figures and the NGO activists agree that any motives and objectives of terrorism actions are crimes which destroy the human life and civilization. Therefore, many countries and societies need to prevent and wipe out the terrorism actions. It should be conformed that the state and the society need to solve the root problem causing the terrorism fenomena totally and fair.

After the two bombing tragedy by terrorists in two recreation objects in Bali in October 2002, Indonesian government had passed on the *Peraturan Pemerintah Pengganti Undang-undang (PERPU)* about combating the crimes of terrorism (*PERPU* No. 1/2002). According to the government opinion, the crimes of terrorism involve many

actors such as planner, doer, funding supporter and others, as well as having a wide-range network, which exceed the state borders. That is why the government thinks it is a need to create a national law referring to the international convention and other laws related to the terrorism.

Chapter III *Perpu* No. 1/2002 describes in details about various crimes of terrorism and the punishments to the actors. The form of the crimes of terrorism among others are:

Article 6 “Anyone on purpose using violence or violence threatening causes terror situation or fear toward the people in a wide range or causes massive victims by seizing one’s independency or his life and his property or causes damage or destruction toward vital objects, which is strategic or toward environment or toward public facilities or international facilities, will be sentenced to a death sentence or life imprisonment or an imprisonment ranging from 4 years to 20 years.

Article 7 “Anyone on purpose using violence or violence threatening intends to cause terror situation or fear toward the people in a wide range or causes massive victims by seizing one’s independency or his life and his property or causes damage or destruction toward vital objects, which is strategic or toward environment or toward public facilities or international facilities, will be sentenced to life imprisonment at the most.

Perpu No. 1/2002 also put in a special regulation on law of criminal procedure to strengthen and ease the police to do his duty that is to combat the crimes of terrorism. For

the sake of investigation and prosecution, the police as the investigator has an authority to detain the suspect for 6 months at the most. This detainment is obviously much longer than a usual criminal detainment where the police as the investigator has an authority to detain the suspect for 20 days at the most.

To get enough preliminary evidence, the police as the investigator could use every intelligence report in condition that the report has to be examined and determined by the Head or vice-Head of the District Court.

Perpu No. 1/2002 obtains supports from some people in the society and it has already had the approval from the People's Representative (*DPR*). However, in other hand that *Perpu* has invited worries among the people in the society. People worried that a huge campaign on the crimes of terrorism could justify the birth of any repressive law products and any state actions that violated the human rights. Before the court, the defendants of the Bali bomb case admitted that they experienced pressures and tortures by the policeman. Furthermore, most people worried that the campaign against terrorism could justify the birth of a new authoritarianism.

Considering those worries related to *Perpu*, that are the protection of human rights and the need of a proper law to combat the crimes of terrorism, the society gave some warnings to the government:

1. There would be an accuracy and clear definition of the terrorism actors including the doers, followers, supporters which are not limited in funding and the result caused by those actions.
2. A proper protection is given toward the rights of the suspects and witnesses in the law process.
3. The law does not create an extraordinary institution which is bypassing the authority of judicial functions in the process of criminal court such as the police, the prosecutor and the court.
4. *Perpu* or the Law of Anti Terrorism may not abolish or limit the rights over the freedom of speech, expression, including freedom of the press which recently played a role to reveal the crimes of terrorism phenomena.
5. *Perpu* or any other regulations may not abolish the rights over the freedom of gathering and united which is an important pillar for the growth and development of democratisation.

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