

## **Counter Terrorism by The Indonesian National Armed Forces in the Perspective of the Protection of Human Rights**

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### **Abstract**

*Throughout the history of combating terrorism in Indonesia, the Indonesian National Armed Forces (Tentara Nasional Indonesia - abbreviated as TNI) has played an important role in combating terrorist acts. The role and involvement of the TNI in general has been regulated in statutory regulations. Act 5 of 2018 states that the TNI has a duty to combat terrorism, this effort is called military operations other than war. This military involvement will be represented by the TNI Joint Special Operations Command. However, the involvement of the TNI in combating terrorism in Indonesia can also lead to a number of negative implications, such as the occurrence of human rights violations. If the TNI commits human rights violations while arresting suspected terrorists, the public will find it difficult to hold them accountable and monitor the course of the case. Past experience illustrates that there have been many cases of violations of human rights violations committed by the TNI and there is no legal process. Therefore, in order to avoid the occurrence of human rights violations, it is important to formulate the intensity and situations in which the TNI can be involved in combating terrorism. Thus, there are at least three things that are studied in depth in this study. First, analyze the regulations on combating terrorism in Indonesia. Second, analyze potential human rights violations by the TNI in combating terrorism. Third, formulate a counterterrorism design for the TNI to prevent human rights violations.*

**Keywords:***Terrorism, TNI, Human Rights, Regulation, OMSP.*

## **Introduction**

Terrorism is one threat that has become a serious problem in the world, including in Indonesia. Nowadays terrorist groups no longer move in isolated situations, but are increasingly complex with the use of the latest technology, international networks, to close links with other transnational crime. As a consequence of the complexity of these acts of terrorism, counter-terrorism strategies are also demanded to participate in transforming in accordance with the evolving dynamics. In that context, an effort to tackle terrorism is not possible by one institution. Terrorism prevention efforts need to be carried out comprehensively and involve many institutions, one of which is by involving the military.

In general, military involvement in handling terrorism is usually used when the escalation of terrorist attacks has threatened the country's sovereignty, for example attacking vital state objects or in the aim of separatism (Thurston, 2007: 37). However, military involvement in handling terrorism on the Low Intensity Conflict scale is also possible in the assistance mechanism as stated in the framework of Military Operations Other Than War (OMSP) (Ayers, 1996:10). In Indonesia, the regulatory framework for OMSP only regulates the types of engagement and general provisions for mobilization. Not explained further about the mechanism of reading the terror threat itself, the mechanism of engagement to the mechanism of operational implementation related to command, budget and so forth.

In recent years, there has been a debate in the public about the extent to which the Indonesian National Army (TNI) can be involved in dealing with acts of terrorism in the country, especially with regard to discussing the addition of the Law on Terrorism. The issue of involving the TNI in handling terrorism that will be accommodated through the Act also triggers public concern about the possibility of a shift in the mechanism of handling terrorism in Indonesia from a criminal justice model that promotes law enforcement, to a war model that promotes the deployment of military capacity. If the shift occurs, the threat of violations of Human Rights (HAM) will be even greater, given the history recorded many human rights violations that occur when a case is resolved by military approach, for example in the New Order era.

Until May 2018, the Indonesian Parliament and the Government passed Law Number 5 of 2018 concerning Amendment to Law Number 15 of 2003 concerning the Establishment of Government Regulations In lieu of Law Number 1 of 2002 concerning Combating Terrorism. In the amendment to the Law, there are additional articles regulating the involvement of the TNI in dealing with acts of terrorism. Furthermore, further provisions regarding TNI involvement will be regulated through a Presidential Regulation.

Although the Law on the Eradication of Terrorism has been revised, this regulation still does not adequately answer the operational needs and effectiveness of handling terrorism in the field, specifically regarding the fulfillment of human rights. Therefore, this paper will discuss the TNI involvement scheme in dealing with terrorism from the perspective of human rights protection

## **Literature Review**

### **a) Terrorism and Counter Terrorism Strategies**

In terminology, terrorism is still a contentious concept. Until now there has not been a single definition of terrorism that can be applied globally. According to A. Schmid (1984: 43), terrorism is a method of fighting that targets random targets or symbols using violent instruments aimed at creating fear. Another definition of terrorism was also expressed by Paul Wilkinson (2006: 15) who stated that terrorism is a coercive intimidation that uses systematic destruction and killing to terrorize individuals, groups or governments to submit to terrorist political demands. Although there are different definitions of terrorism, RG Frey and Christopher W. Morris revealed (1991: 77-80) at least three main characteristics of terrorism. First, fundamentally terrorist acts have political objectives. Second, the use of violent instruments that target random targets. Third, targeting innocent people is carried out by non-state actors.

In Indonesia, the definition of terrorism refers to Law No. 5 of 2018. According to this Law, terrorism is defined as an act that uses violence or threat of violence that creates an atmosphere of terror or widespread fear, causes mass

victims, and / or causes damage or destruction to vital strategic objects, the environment life, public facilities, or international facilities with ideological, political or security interference.

Apart from the conceptual debate about the definition of terrorism, every country in the world then set a counter-terrorism strategy in dealing with this phenomenon. The regulation of counter-terrorism strategies certainly faces its own challenges, considering that terrorism is a complex phenomenon (related to other transnational crimes) and in its history has always experienced changes (changes in motivation, funding, support mechanisms, methods of attack and target selection).

According to McCauley, there are at least two approaches to counter terrorism efforts, namely the criminal justice model and the war model approach (Stritzke, 2009: 64-68). The criminal justice model approach views terrorism as a form of violation of the law, so that efforts to overcome it are carried out through law enforcement. This approach was adopted by many liberal democracy countries which saw the importance of law enforcement efforts as the basis of a democratic constitution. In other words, this approach promotes accountability, civil supremacy and human rights principles in handling terrorism.

The second approach, namely the war model sees terrorism as a threat to the sovereignty of a country so as to enable a declaration of war that automatically places the use of military instruments in its handling efforts. Several studies revealed that the war model approach was considered ineffective because excessive handling of military power could weaken the legitimacy of the state, even triggering a greater response from terrorist groups. (Stritzke, 2009: 68) In addition, military involvement has the potential to weaken civilian control of the military which then triggers the emergence of a military regime in which many human rights violations often occur.

**b) Protection of Human Rights (HAM)**

Human rights are a set of rights inherent in the nature of human existence as God's creatures and are His gifts that must be respected, upheld and

protected. The human rights conception which initially emphasized vertical relations was mainly influenced by the history of human rights violations committed mainly by the state, both civil and political rights as well as economic, social and cultural rights.

As a consequence, besides being a governmental task, the main obligation to protect and promote human rights lies with the government / state. This can be seen from the formulations in the UDHR, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The obligations and responsibilities of the state in the framework of a human rights based approach can be seen in three forms:

- 1) Respect: it is the state's obligation not to interfere in regulating its citizens when exercising their rights. In this case the state has an obligation not to take actions that will hamper the fulfillment of all human rights.
- 2) Protect: it is the obligation of the state to act actively for its citizens. The state must act actively to guarantee the protection of the rights of its citizens and the state is obliged to take measures to prevent violations of all human rights by third parties.
- 3) Fulfill: it is the obligation and responsibility of the state to act actively so that the rights of citizens are fulfilled. The state is obliged to take legislative, administrative, legal, budgetary and other measures to fully realize human rights.

Of the three obligations and responsibilities of the states, each of them contains elements of the obligation to act, namely requiring the state to take certain steps to carry out the fulfillment of a right, and the obligation to effect (obligation to result), which requires the state to achieve certain targets to meet measurable substantive standards. In addition to the three main forms of obligation in the implementation of human rights, the state also has an obligation to take steps, to guarantee, to believe, to recognize, to try, and to improve / advance human rights.

**c) Military Operations Other Than War (OMSP) TNI**

OMSP is a series of military operations outside of war in the scheme of assistance to civilian authorities based on the complexity of threats that are tightly regulated through legislation (Ayers, 1996: 10). The implementation of the OMSP is a response of military organizations to critical or emergency situations when civil authorities have limitations in handling them (Huntington, 1993: 43-59). Military assistance to civilian agencies is last resort, under the control of civilian authorities and limited to strengthening the capabilities needed (Schnabel and Krupanski, 2012: 20). In its application, governments of various countries form regulations relating to the regulation of military assistance tasks. In the United States, military assistance is regulated through the Department of Defense's 2005 Homeland Security Doctrine, where military assistance is carried out at the request of the Federal Police when a high threat escalation occurs outside the capabilities of police handling (Buchalter, 2007: 22).

The development of the strategic environment has an impact on the dominance of non-military threats as one of the important aspects in world peace, this is what then drives the increasing role of the military in the CSO scheme (Schnabel and Krupanski, 2012: 10-12). However, this military involvement can have a negative impact if done excessively. Therefore, according to Huntington, military involvement in OMSP needs to be based on the spillover uses of military capability, which is a limited, temporary arrangement and regulated in a strict framework (Huntington, 1993: 54).

In the history of handling terrorism in Indonesia, especially in the New Order era, the TNI has played an important role through a number of incidents of terrorism that were successfully paralyzed. Such as the 1981 Woyla operation and the hostage release operation in Mapenduma in 1996 (Arif, 2003: 4). Along with changes in the political system in the reform era, the approach to handling terrorism legally has shifted from the war model approach to the criminal justice model. The handling of terrorism in the reform era prioritizes law enforcement by placing the National Police as the leading sector.

Nevertheless, the involvement of the TNI in handling terrorism is possible in the task of assistance in the OMSP scheme based on state political decisions as a representation of civil authority as regulated in TNI Law No. 34 of 2004. However, there is no operational mechanism that regulates the implementation of TNI assistance tasks.

## **Method**

This research uses two approaches. *First*, descriptive-analytical, which is a study done by trying to classify objects based on certain categories.(Suriasumantri, 1986: 61-62) Initially, research provided variables independently, which could be called "descriptive". In addition to descriptive research, an analysis which is basically returned to three aspects: classifying, comparing and connecting.

Second, a historical and comparative review. Soerjono Soekanto (1986: 263) in the sub-chapter on the processing, analysis and construction of legal research data said, "A researcher can use historical methods in his review of the law, and has the main obligation to examine the relationship between law and other social phenomena from a historical standpoint".By therefore, the review is conducted on the enthusiasm and early history of involving the TNI in combating terrorism.

## **Resultand Discussion**

### **1. The Development of a Counter Terrorism Strategy in Indonesia**

In Indonesia, terrorism is not a new problem that emerged after the 1998 reform. Long before that, many acts of terror had occurred. One of the biggest acts of terror before the reformation was the hijacking of the Garuda plane in Don Muang or better known as the Woyla incident in 1981. This hijacking was carried out by a group of people calling themselves Komando Jihad under the leadership of Imran bin Muhammad Zein. Although there are various views regarding intelligence engineering in this incident, this is seen as an act of terror, both from the modus operandi (model of operation) used or the view of the Indonesian government at that time(Solahudin and McRae, 2013: 40-41).

According Solahudin and McRae, (2013:45) This incident triggered the formation of a special unit for counter-terrorism within the Indonesian Armed Forces (ABRI), which at that time the TNI and Polri were still in the same organization as ABRI. At that time, the army through the Special Forces Command (Kopassus) established a unit of Detachment 81 or better known as Den 81 Kopassus in 1982 to tackle terrorism. This unit is responsible for tackling terror acts at strategic locations, such as rescuing hostages on buses, trains, airplanes, and in forest areas.

During the New Order era, the handling of acts of terrorism was entirely dominated by ABRI by prioritizing military strength (The Army, The Navy and The Air Force). Although there is no formal or regulatory basis for dealing with terrorism in Indonesia, it can be simply said that the New Order government used a war model approach to place terrorism as a threat to the state, using military force as the front line with the aim of destroying terrorist groups (Mengko. 2017: 77).

However, the end of the New Order and the change in the political system to democracy had a significant impact on ABRI. Through Decree No. VI/MPR/2000, the police were separated from ABRI or there was a separation between the TNI and Polri. Polri is responsible for the security sector (law enforcement) and the TNI is specifically in the defense sector. To support the effectiveness of each institution, the Indonesian government also enacted Law No.34/2004 on the TNI and Law No.2/2002 on the Police. However, this separation of the TNI-Polri basically does not necessarily eliminate the anti-terrorism units that exist within the TNI, these units still exist today (The Habibie Centre, 2017: 12).

In subsequent developments, the Bali bombing I that occurred on October 12, 2002 spread massive terror and fear to all Indonesian people. President Megawati Soekarno Putri at that time took steps to form Perppu No.1/2002 and Perppu No.2/2002. These two regulations later became a reference for the formation of Law No. 15/2003 on the Eradication of Criminal

Acts of Terrorism. This regulation mandates the Police to form a special unit to counter terrorism(Arifin, Ridwan, and Alkadri, 2018: 17-39).

This was welcomed by the Police by forming a Special Detachment 88 (Densus 88) through the Regulation of the Chief of the Indonesian National Police No.30/VI/2003. In the organizational context, the structure of Densus 88 is under the Criminal Investigation and Investigation Agency (Bareskrim) of the National Police Headquarters and is led by a Head of Special Detachment 88 (min. Brigadier Police General). Meanwhile, at the regional police level, Densus 88 is under the Directorate of Investigation (Ditserse) and is led by a mid-level police officer.Densus 88 has the main task of investigating and investigating criminal acts of terrorism(Novian, 2015: 88-90).

At this point, it can be said that there has been a change in the approach to counter-terrorism strategies in Indonesia. The military is no longer placed as the front line in dealing with acts of terror, but the government prioritizes the police and views terror acts as a crime or violation of the law. In this context, legally formally, Indonesia uses a criminal justice model approach in handling terror acts in the country.

This change in approach certainly cannot be separated from the current of democratization in Indonesia and the impact of the separation of functions between the TNI and Polri during the reform period. However, the Indonesian government still allows the involvement of the TNI in tackling acts of terror, but only as a supporting guard or as stipulated in Article 7 paragraph 2 of the TNI Law No. 34/2004, concerning Military Operations Other Than War (OMSP). In this provision, the TNI is declared to have the task of OMSP to deal with acts of terrorism and it is possible to assist the Indonesian National Police in the framework of the task of security and public order as regulated by law.

However, in accordance with the basic principles of OMSP in various countries, the TNI cannot necessarily be directly involved in the implementation of OMSP tasks. In this case, the TNI can only be involved if there is a state political decision as stated in Article 7 paragraph 3 of the TNI Law. The state political decisions in question are the government's political policies together

with the House of Representatives (DPR) which are formulated through a working relationship mechanism between the government and the DPR, such as consultation meetings and work meetings in accordance with statutory regulations (Explanation of Article 5 of the TNI Law). The defense white book (2011: 53) also explained that the implementation of OMSP (including the handling of terrorism) can only be carried out if the usual methods or functional measures are no longer effective or are expected to cause large casualties, severe infrastructure and property damage (Ministry of Defense, 2011).

The basis of regulation is in Law No. 15/2003 concerning Criminal Acts of Terrorism and the TNI Law. No. 34/2004 later became the basis for the Indonesian government to deal with various cases of terrorism in the country until now. The existence of these regulations also formally confirms the criminal justice model approach used by the government to deal with acts of terror.

## **2. Legal Uncertainty on TNI Involvement in Countering Terrorism**

Regulations that give authority to the TNI to be involved in dealing with terrorism in Indonesia have actually been around for a long time. TNI involvement in dealing with terrorism is possible in co-administration through OMSP as stipulated in Law Number 34 of 2004 concerning the TNI. Based on this law, in the context of OMSP, the TNI can be involved in assistance tasks including handling terrorism, based on state political decisions as a representation of civil authority. However, this regulation has a weakness, namely there is no operational mechanism that regulates the implementation of TNI assistance tasks.

The vacuum of the mechanism prompted the formation of an MoU between the TNI Commander and the National Police Chief regarding TNI Assistance to the Police in the Context of Maintaining Community Security and Order. This MoU was formed in 2013, which was renewed in 2018 (Detik.com, 2018). The MoU on the task of assistance enables the Police to share tasks with the TNI in handling security and public order issues such as demonstrations, mass unrest, social conflicts, and community activities that have vulnerability,

and other situations, including handling terrorism. In terms of handling terrorism, this MoU is the basis for the implementation of Operation Tinombala which succeeded in crippling the Santoso terrorist group in 2016 (Kompas.com, 2018). This success then became a reflection of the weaknesses of the capability of the National Police in an ambush mission in the forest that could be carried out very well by the TNI. In addition, the success of Operation Tinombala is also one of the reasons for the emergence of a discourse involving the involvement of the TNI permanently in handling terrorism.

After the Tinombala Operation in 2016, the Government and the DPR discussed the revision of Law No. 15 of 2003 concerning Eradication of Terrorism Crimes. Efforts to revise the Terrorism Law currently underway appear to be leading to a change in the criminal justice model approach to a war model. One of the main points in the revision is to give the TNI the authority to be permanently involved in combating terrorism or in other words be given the authority equivalent to the Police to be the frontline in dealing with terrorism in Indonesia (Markas Besar TNI, 2018)

Until May 2018, the Indonesian Parliament and the Government passed Law Number 5 of 2018 concerning Amendment to Law Number 15 of 2003 concerning the Establishment of Government Regulations In lieu of Law Number 1 of 2002 concerning Combating Terrorism. In the amendment to the Law, there are additional articles regulating the involvement of the TNI in dealing with acts of terrorism. Unfortunately, in Law No. 5 of 2018 there is only one article that regulates the involvement of the TNI in combating terrorism, namely article 43I. The article stipulates that combating terrorism is part of the OMSP, combating terrorism in accordance with the main tasks and functions of the TNI, further provisions regarding combating terrorism by the TNI are regulated by presidential regulations.

Although the Law on the Eradication of Terrorism has only been revised, this regulation still does not adequately address operational needs in the field to the effectiveness of handling terrorism by the TNI. The lack of articles in Law No. 5 of 2018 concerning the involvement of the TNI resulting in the emergence

of legal uncertainty about combating terrorism, as a result the rules are blurred so that the potential for human rights violations is given the approach used by the TNI in dealing with terrorism is the war model approach.

### **3. Combating Terrorism by the TNI in the Human Rights Perspective**

In the previous discussion, it was explained that there are two approaches that can be used to counter terrorism efforts. First, the criminal justice model sees terrorism as a form of violation of the law, so that efforts to overcome it are carried out through law enforcement. In other words, this approach promotes accountability, civil supremacy and human rights principles in handling terrorism. The second approach, namely the war model sees terrorism as a threat to the sovereignty of a country so as to enable a declaration of war that automatically places the use of military instruments in its handling efforts. The war model approach has the potential to weaken civilian control of the military which then triggers the emergence of a military regime in which many human rights violations often occur.

Thus, the implications of military involvement in the legal system in Indonesia are also important to consider. So far, the National Police has a mechanism of accountability through the general court in the case of human rights violations and has the authority to search (with court permission) for terrorism cases. This is clearly different from the TNI which does not yet have a mechanism for accountability through the general court.

Nevertheless, operational support for the TNI in practice is needed by law enforcement officials who are leading sectors in combating terrorism. For example, in the Operation Release of the MV Sinar Kudus ship hostage in 2011 and Operation Tinombala in Poso which succeeded in crippling the Santoso terrorist group in 2016. This success left a note of the lack of capability of the National Police in the hostage release mission and ambush mission in the forest which could be done very well by TNI. Therefore, it is important to formulate rules on involving the TNI in combating terrorism in order to realize human rights protection.

In order to create human rights protection and the running of the rule of law process, there are several important things that must be met by the TNI when engaging in counter-terrorism actions. *First, the* involvement of the TNI in handling terrorism must be in line with Law Number 5 of 2018 concerning Eradication of Terrorism Crimes. Basically, the Act uses the criminal justice model approach, considering that in Law No. 5 of 2018 which became the leading sector in dealing with terrorism in Indonesia are the National Police and the National Counterterrorism Agency (BNPT) where both institutions use criminal justice models in combating terrorism.

*Second,* military involvement is possible if the situation is beyond the capacity of the police through the CSO. In the act of terrorism, the TNI must still work in synergy with the Anti-Terror Detachment 88 team and the BNPT. After the TNI was seconded in handling terrorism, the next process was handed over to the police for legal proceedings. Thus, the involvement of the TNI as a military instrument in dealing with terrorism must be within the framework of civil supremacy and democracy that is in line with the security sector reform agenda.

*Third, the* decision on the deployment of the TNI needs to be based on a state political decision, namely a Presidential Decree with the approval of the DPR as a civil authority. This provision becomes very important considering the sovereignty of the Indonesian state is not in the hands of the military but in the hands of the people / civilians who have delegated their authority to the President and the Parliament. Therefore, the TNI's actions in combating terrorism must be in accordance with the wishes of the people. *Fourth, the* implementation of assistance is based on strict and temporary principles and arrangements, bearing in mind that the main task of military forces is to fight. This strict and temporary arrangement becomes important in order to avoid abuse of power by the TNI apparatus, given the past experience of frequent violations of human rights by the TNI because there are no strict rules and no time limit.

## **A. CONCLUSION**

In several acts of combating terrorism in Indonesia, the involvement of the TNI has proven effective in crippling acts of terror. The problem is the emergence of concerns from the public about human rights violations, given the approach used by the TNI tends towards war model. In the context of realizing human rights protection when there are Military Operations Other Than War (OMSP), there are four things that must be fulfilled; (i) the terrorism eradication approach that must be used by all parties including the TNI is the criminal justice model; (ii) Military involvement is only possible if the situation is beyond the capacity of the police; (iii) the decision on the deployment of the TNI needs to be based on a state political decision, namely a Presidential Decree with the approval of the DPR as a civil authority; and (iv) the implementation of TNI OMSP is based on strict and temporary principles and regulations.

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