

Eradication of Terrorism Funding from a Corporation

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The objective of this research is to determine how the implementation of freezing without delay principle effects the prevention and eradication of terrorism funding in Indonesia. The method of this research is normative, using literary research with qualitative analysis. The data consist of secondary data that was collected from regulations, journals, books, news and other sources. This researcher's discussion is based on the premise that terrorism is an extraordinary crime, a crime of humanity and civilization, and also one of the serious threats to the sovereignty of every country. The rise of terrorism in the world is the background of tackling terrorism funding. United Nations Security Council through their Resolution No. 1267 requires that the country is committed to the principle of freezing without delay the funds and other financial assets related to the financing of terrorism. The results show that terrorism funding is providing some financial support for terrorism to those who are supporting, planning or doing terrorism. Although the implementation of the freezing without delay principle applied in Indonesia is not easy, but Indonesia is committed to applying the international recommendation and standard to prevent transnational crime in Indonesia.

Key words: *Implementation, Freezing Without Delay, Terrorism Funding, Eradication.*

Introduction

Terrorism is a kind of crime to humanity and civilization and one of serious threat to the sovereignty of each country because terrorism is included in international crime which raises danger to security and world peace, and also harms the welfare of society. The effort in combating money laundering activity and terrorism funding are carried out by establishing a task force which is called with The Financial Action Task Force (FATF) by the Group of Seven (G-7) in the G-7 Summit in French on July 1989 (Sukarno, K.S., Wiwoho, J., Pujiono, Firdaus, S.U., 2020).

The United Nations Security Council through its resolution Number 1267 (UNSCR 1267) dated 15th October 1999 asked that every country has to do “immediate freezing” to the funds and other financial assets or economic sources of the individuals and entities related to Al-Qaida and/or Taliban. Seventeen Indonesian citizens who are listed on UNSCR 1267 (1999) are related to the Al-Qaida network and/or Taliban. These seventeen people are suspected as terrorists who have been expected to be international fugitives. Until now, the Centre of Reporting and Financial Transaction Analysis have frozen three (3) assets of Indonesian Citizens who are suspected in relation to terrorism funding. The freezing of terrorists’ asset is aimed so that the terrorists do not have any funding assets (Pujiyono, 2019).

In the Republic of Indonesia Act Number 9 2013, on the Prevention and Eradication of Terrorism Funding Crime (Act PETFC), it is established that terrorism funding activity is a kind of crime. It is written in UNSCR 1267 1999, that the blocking of some accounts which are suspected as funding assets of terrorism activity has to be done vastly and without delay or freezing without delay. This blocking is intended to cut off the link for funding terrorism. A break of the link of terrorism funding of course needs a clear legal foundation in order to be performed correctly and legally accountable. From the research background, a problem formulation was drawn: how is the implementation of freezing without delay in Indonesia on the prevention and eradication of terrorism funding (Pujiyono, 2019).

Methods

The research method which was used is the juridical normative research method that uses a literature study in the field of law. This study emphasises literary material or secondary data, either by using primary legal material or secondary legal material which consists of law books and some research reports such as dissertation, thesis or scientific work, scientific articles or legal journals, encyclopedias, dictionaries, internet, newspapers or magazines which are related (Pujiyono, 2020).

Results and Discussion

Counter Terrorism Regulation in Indonesia

Acts of terrorism should not be new. From the beginning of independence to the reform of acts of terrorism there have always been different forms, motives and movements and with different coping strategies. During the Old Order era, policies and strategies to counter terrorism were implemented using a security approach through military operations based on the Subversive Law. In almost the same way as the Old Order, countering terrorism during the New Order was also based on the Subversive Law but with more emphasis on intelligence operations. In the era of reform, democratisation, freedom and human rights perspectives in

various sectors have also influenced policies and strategies to combat terrorism that prioritise aspects of law enforcement such as the issuance of Law Number 15 2003, concerning Eradication of Terrorism Crimes, after the 2002 Bali Bombing in Legian Bali (Noorhaidi Hasan, 2002).

In further developments in 2010 the government issued Presidential Regulation No. 46 2010, concerning the establishment of the National Counterterrorism Agency (BNPT) which in 2012 was amended by Presidential Regulation No. 12 2012. The establishment of the BNPT was a state policy in committing terrorism in Indonesia as the development of the Terrorism Eradication Coordination Desk (DKPT) made in 2002 (Noorhaidi Hasan, 2002).

BNPT is a leading sector that is authorised to compile and make policies and strategies and to become a coordinator in the field of combating terrorism. Led by a head, BNPT has three policies in the area of: prevention or protection and deradicalisation; the field of enforcement and capacity building; and the field of international cooperation. In carrying out its policies and strategies, BNPT runs a holistic approach. Resolving terrorism is not only completed by law enforcement and enforcement (hard power) but most importantly tackles the head of the problem with prevention efforts (soft power) (Noorhaidi Hasan, 2008).

In the area of prevention, BNPT uses two first strategies, counter radicalisation, namely efforts to instil Indonesian values and non-violent values. In the process this strategy is carried out through both formal and non-formal education. Counter-radicalisation is directed at the general public through collaboration with religious leaders, educational leaders, community leaders, traditional leaders, youth leaders and other stakeholders in providing national values. The second strategy is deradicalisation. The field of deradicalisation is aimed at sympathisers, supporters, nucleus and militants carried out both inside and outside prison. The purpose of deradicalisation is that: core groups, sympathetic militants and supporters abandoned the methods of violence and terror in fighting for their mission and moderate their radical ideas in line with the spirit of moderate Islamic groups and in line with national missions that strengthened the Republic of Indonesia (Noorhaidi Hasan, 2009).

In 2016, the government proposed a new terrorism countermeasure law to revise Law No. 15 2003. The old terrorism countermeasure law was deemed no longer relevant to facing the dynamics of terrorism. After two years of discussion, coupled with the momentum of the Surabaya bombing incident in 2018, the government and parliament agreed to issue Law No. 5 in 2018. This latest law defines terrorism as: acts that use violence or threat of violence that creates an atmosphere of terror or widespread fear, which can cause mass casualties, and/or cause damage or destruction to vital strategic objects, the environment, public facilities, or international facilities with ideological, political motives, or security disturbances (Noorhaidi Hasan, 2008).

Law No. 5 2018 revised several provisions in Law No. 15 2003, as well as providing new provisions that were not contained in the previous anti-terrorism law. Changes in the new law include: the addition of a definition of terrorism with political motives; the imposition of criminal sanctions for leaders or leaders of terrorism groups; the expansion of penalties for people involved in planning terrorist acts; the involvement of the TNI in combating terrorism; and wider protection against victims affected by terrorism or against witnesses. The new law also regulates the prevention of criminal acts of terrorism which consists of three components namely: national preparedness, counter radicalization and deradicalisation. The law defines acts of prevention of terrorism carried out including counter narrative, counter propaganda and counter ideology that are intended to stop the spread of "radical terrorism". Whereas, deradicalisation is defined as an effort to reduce or eliminate the understanding of "radical terrorism" from the perpetrators or terrorist suspects. In carrying out these three components, broader coordinative cooperation between government institutions is needed (Noorhaidi Hasan, 2006).

The new terrorism law also strengthens the institutional function of the National Counterterrorism Agency (BNPT) as a counter-terrorism agency. Before Law No. 5 2018, BNPT was established on Perpres Regulation 46 2010 and updated with Perpres 12 2012. On the basis of the Perpres, BNPT was tasked with formulating policies, strategies and coordinating related institutions in combating terrorism. With the Presidential regulation, the BNPT cannot be free compared to other bodies that have regulations based on the law. While Law No. 5 2018 gives BNPT the legitimacy to move more broadly (Bakti 2014, p. 88). In article 43, Law No. 5 2018, it states that the BNPT is placed under the President and is responsible to the President, being the Centre of crisis analysis and control that serves as a facility for the President to determine policies and measures to deal with crises, including the mobilisation of resources in dealing with terrorism. While the task of BNPT in article 44 is to compile and determine national policies, strategies and programs in the area of combating terrorism; coordinate national policies, strategies and programs in the area of combating terrorism; and implementing national preparedness, counter radicalization and deradicalisation.

The Problematics of the Definition of Radicalism and Terrorism Set by the National Counterterrorism

BNPT is considered to have a vital role of coordination in combating terrorism. This is related to the terrorism trend that has continued for more than a decade in Indonesia. After the 2002 Bali bombings, a series of terrorism attacks in Indonesia were recorded in 2003, 2004, 2005, 2009, 2010, 2011, 2012, 2013, 2016, 2017 and 2018. Major General Agus Surya Bakti, Deputy BNPT 2014-2016, assessed Indonesia as facing an emergency of terrorism, as well as causing the international community to consider Indonesia as a "hotbed" of terrorism

after Afghanistan and Pakistan (Bakti 2014, p. 10). While the type of terrorism that develops is "right" terrorism or terrorism which is identical to religious identity, specifically terrorism in the name of Islam (Bakti 2014, p. 34; Sinaga et al., 2018, p. 11-15). The Head of BNPT 2011-2014, Inspector General Ansyaad Mbai, assessed that the existence of religious terrorist groups in Indonesia is inseparable from the combination of the remaining influence of the Indonesian Islamic State rebellion and the ideology of jihad.

The ultimate goal of terrorist groups in Indonesia is the formation of an "international global caliphate" to hegemony the citizens of the world (Mbai 2014, p. 13). Terrorist groups have misused the term khilafah. Initially the khilafah connotes a government system like a kingdom that does not have religious justification in the scriptures, but then it was misinterpreted by terrorist groups to be as an institution that must be established to carry out other obligations in religion (Golose 2015, p. 57). The use of Islamic teachings as a justification for action by terrorist groups in Indonesia actually harms Islam and the Muslim community in general (Mbai 2014, p. 19; Bakti 2016, p. 81).

BNPT believes that there are two macro strategies in overcoming terrorism in Indonesia (Bakti 2014, p. 83). First is the counter-radicalisation of the "radical" ideology of terrorist groups. "Radical" ideological propaganda can transform a person to become a terrorist. Counter-radicalisation is carried out by counter radical ideological propaganda narratives. Various findings indicate a relationship between religious radicalism and terrorism (Bakti 2016, p. 60). Radical understanding by terrorist groups is built on exclusive, scriptural and rigid religious interpretations. On the other hand, BNPT is of the view that religious discourse that is moderate, inclusive and compatible with nationalism should be built. In addition, the spread of "true" Islamic teachings and propaganda of Islamic interpretations that are full of tolerance and in line with the values of the Unitary Republic of Indonesia (NKRI) must be carried out (Bakti 2014, p. 111). Concrete steps BNPT has carried out include several activities through lectures, publishing books, talk shows, and building strategic partnerships with mainstream Muslim communities such as Muhammadiyah, NU and MUI to develop pluralism and tolerance discourse.

The goals of the first strategy are aimed at support groups, sympathisers and the general public. What is meant by support groups are individuals or groups that provide supporting facilities for acts of terrorism. While sympathisers are groups that carry radical ideas that have the potential to support the terrorism movement even though they are not directly involved. The characteristic of sympathisers is to provide ideological support even though they are not directly involved in acts of terrorism. This characteristic can be seen from the rhetoric of support groups that revolve around the importance of upholding the Islamic caliphate or the Islamic state, or the like. Da'wah and recitation groups on campus and spiritual groups at the school level become a strategic place for sympathisers to recruit. The

general public is also seen as a strategic place to spread radical ideology (Bakti 2014, p. 85-86). Head of BNPT, Komjen Pol. Drs. Suhardi Alius stated that academics and vulnerable students were the target of ideological infiltration of radical groups. Because of this, BNPT routinely holds anti-radicalism and anti-terrorism seminars at various universities.

The second strategy applied by BNPT is de-radicalisation. Deradicalisation is aimed at people or core groups and terrorist militant groups (Bakti 2014, p. 83). Deradicalisation is done so that the core groups and militant groups can abandon the way of violence and foster a spirit of nationalism. BNPT presents "moderate" scholars from the Middle East to give "enlightenment" to terrorist prisoners (Mbai 2014, p. 165). This was done because BNPT assessed that the perpetrators of terror in Indonesia understood "narrowly" the scriptures regarding jihad (Mbai 2014, p. 169). Deradicalisation, later with the fostering of independence and social ex-convicted terrorists, is a combination of various strategies needed to tackle terrorism, while simultaneously being able to ward off the latent danger of radicalism and terrorism in society (Bakti 2014, p. 88). The state must not be minimalistic in responding to terrorist groups' threats; on the contrary countries with various instruments must be more anticipatory.

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The rampant action of terrorism in Indonesia has become the background for the effort to fight terrorism funding through the publishing of Act PETFC. Although the actions used in preventing terrorism funding has many similarities to something which is used in combating money laundering, but the terrorist funding can also be from clean sources. Therefore, the source of terrorism funding can be obtained lawfully and unlawfully, whereas the source of money which gets laundered is always the proceeds of crime (Pujiyono, 2019).

Indonesia has to pay more attention to the regulation of terrorism Funding eradication which is arranged with some purposes, including to overcome the existing gap in the regulations related to terrorism funding crime so that it ensures: law certainty and the order in society; knows and regulates a clear procedure and mechanism of the prevention and eradication effort of terrorism funding through follow the money approach but does not inhibit the activities of financial service manager; and fulfills the recommendation of the Financial Action Task Force on Money Laundering (FATF) especially the nine special recommendations (Pujiyono, 2019).

The PETFC Act is written with the background of a reality that the effort of combating terrorism crime will not run optimally without being followed by some effort of preventing and combating terrorism funding. As a country which has several times experienced terrorism attacks, Indonesia needs to expand the range of prevention and eradication effort of terrorism

funding crime by means of cutting off the flow of terrorism funding besides doing some efforts to catch and punish the terrorist physically. But, based on the result of Mutual Evaluation (ME) assessment, the handling of anti-terrorism funding in Indonesia is regarded as still weak (Pujiyono, 2019).

Principally, terrorism funding is the provision of financial support for terrorism either for the parties who are supporting, planning or doing terrorism. What is meant by terrorism until now has not been successfully agreed on, but in the International Law regulations, in order to get a definition of terrorism, it listed in Article 1 paragraph 2 of the Convention for the Prevention and Punishment of Terrorism 1937, that is as a crime which is directed to the state and is intended to create some fear in the minds of certain people or group or the general public (Sukarno, K.S., Wiwoho, J., Pujiono, Firdaus, S.U., 2020).

In the Article 2 of the Regulation of Bank of Indonesia Number 1/1/28/PBI/2009 on the Application of Anti Money Laundering and Prevention of Terrorism Funding for General Bank Program, it is written that every bank is required to apply the program of Anti Money Laundering and Prevention of Terrorism Funding. In Article 2 of the Regulation of Bank of Indonesia Number 11/28/PBI/2009 it is explained that in the application of Anti Money Laundering and Prevention of Terrorism Funding Program, the bank has to be guided to the provision which is set in this Bank of Indonesia regulation.

The United States Security Council has a forum to cooperate with all countries in order to limit access and to cut off terrorism funding networks. But there are prolonged difficulties or failures in formulating the definition of terrorism in many international conferences. The way taken is previously regulating certain aspects of terrorism in many international agreements in sectorial, such as the terrorism funding problem by establishing the International Convention on the Eradication of Terrorism Funding, that is International for the Suppression of the Financing of Terrorism, 1999 (Convention of SFT). Initially, Convention of SFT was only ratified by some countries. But as the result of the World Trade Centre incident in 2001, all countries which have become the member of the United Nations were approached to ratify the convention related to the terrorism funding. Ratification nowadays is the authority of state in taking some legislative and executive steps to legalise this convention. In its application all countries have to adopt the policy and take action to ensure effective implementation upon the Convention of SFT based on the national legal system of each country.

The freezing without delay principle is applied in Indonesia but it is not easy to adopt the United Nations Law. It is different with Australia which has adopted the UN Law which appropriately executes combating terrorism funding crime. Australia is one of countries that have comprehensive regulation on the prevention and eradication of terrorism funding. Related to the eradication of terrorism crime, the Australian Government uses national law

(Commonwealth Criminal Code and Proceeds of Crime Act 2002) and international law which is adopted directly to become national law, and also international cooperation. International law which is adopted into Australian national law comes from the United Nations Security Council resolution and the recommendation of FATF. This is in line with the constitution that gives a foundation to the international law which may apply after the parliamentary agreement exists (including in the form of resolution and recommendation).

Principally, freezing without delay principle in the application of UNSCR 1267 is the funds or other assets which in whole or jointly owned or managed, directly or indirectly by someone who has been appointed, as terrorists, who give some funding to terrorism activity or terrorists organisation; and which is produced or obtained from funds or other assets which are owned or controlled directly or indirectly by someone who have been appointed as terrorists who give funding to terrorism activities on terrorist of terrorism organisation.

In fact, Indonesia has been entered on a blacklist or state's black book because it has been considered that Indonesia does not obey the recommendation to do freezing without delay to the assets owned by the seventeen people whose name had been listed in the list of UNSCR 1267. The United Nations wants that the freezing without delay principle in the application of the termination of the chain of terrorism funding in Indonesia. It is because at this time, Indonesia has had ACT PETFC. This Act is evidence of Indonesia's commitment in applying the international recommendation and standard to prevent transnational crime in Indonesia.

In this Act it is stated that "Every person who are intentionally providing, collecting, or lending some funds either directly or indirectly for terrorism funding, will be threatened with 15 years prison sentence and fined at most Rp. 1 Billion". Another thing which means Indonesia cannot implement the freezing without delay principle in accordance to the list of UNSCR 1267 is that Indonesia has the PETFC Act that states that "The freezing of assets has to go through a court process". As a law state, this process is a form of Indonesia's respect to human rights and the due process of law in the eradication of terrorism. The adoption of UN Law in the application of UNSCR 1267 in Indonesia rapidly is considered not important. Something which is needed is only a cooperation between the Financial Intelligence Units (FIUs), supervisors and regulators of charity institutions, the financial sector regulator (Central Bank), Police, Customs, Court, etc.

Conclusion

Terrorism funding is providing financial support for terrorism for those who are supporting, planning or doing terrorism. In Article 2 of Convention of SFT, terrorism funding occurs when someone, either directly or indirectly, legally or illegally, provides or collects funds with the purpose that the fund is used or consciously knowing that the fund will be used



either in whole or in part for the sake of carrying out a terrorism action. Based on UNSCR 1267, it is enforced that every country is obligated to apply the steps to freeze funds without delay or freezing without delay over the funds and other financial assets which are related to the source of terrorism funding. Related to the application of this principle, Indonesia does not necessarily do the freezing without delay principle because in the Act of Prevention and Eradication of Terrorism Funding Crime it is stated that the asset freezing has to go through court process.

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