

Detention of Terrorism Suspects in the Perspective of Equality Before the Law

Wiwik Afifah^{1,*} Muchammad Yulianto¹ Leomarch I. M¹

¹*Criminal Law Departement, Faculty Of Law, University Of August 17, 1945*

^{*}*Corresponding author. Email: wiwikafifah@untag-sby.ac.id*

ABSTRACT

Indonesia is a state of law as explained in article 1 paragraph 3 of the UUD 1945 Constitution which stipulates that the Republic of Indonesia is a state based on law. As a constitutional state, it is necessary to uphold good human rights, certain groups as well as individuals, vulnerable people, etc. One of which is principle of equal treatment before law of this country described in Article 3 paragraph 2 of Law No. 39 of 1999 concerning Human Rights and Article 28 D paragraph 1 .UUD 1945. But in applying the principle of equal treatment before law, there are specific criminal acts that are not in accordance with these principles related to the period of detention, especially in criminal acts of terrorism where the period of detention from the level of investigation, prosecution and examination in court proceedings is much longer than other special criminal acts, namely 290 days which are specifically regulated in Law No. 5 of 2018 concerning amendments to Law Number 15 of 2003 concerning stipulation of regulations Government In lieu of Law Number 1 of 2002 Regarding Eradication of the Criminal Act of Terrorism into Law. While other specific criminal acts include corruption, money laundering and narcotics crime related to the period of detention from the level of investigation, prosecution and examination in a court of law which is regulated based on the Criminal Procedure Code which has a shorter period of 200 days. Based on this there are differences related to the period of detention between terrorism and other specific criminal acts. Therefore it needs to be questioned related to the application of the principle of equality before the law in the criminal act of terrorism.

Keywords: *human rights, criminal acts of terrorism, the principle of equal treatment before the law*

1. PRELIMINARY

Article 1 paragraph 3 of the 1945 Constitution which states that the Republic of Indonesia is a state based on law. According to Julius Stahl, there are 4 conditions that must be attached to the state law, one of which is, permitted by the government based on the law (*Wetmatigheid van het bestuur*), related to the provisions in the government (*Schilding Van machten*). The existence is in accordance with the regulations of the State Administration (*Administratieve rechtspraak*) in that the rule of law must uphold human rights (*Grondrechten*), which needs to underline human rights in the rule of law. In the opinion of Jan Materson, in Teaching Human Rights, human rights are rights inherent in every human being, without which humans are accepted to be able to live as humans[1].

Based on the provisions of the above definition, an understanding can be drawn that the relationship between the rule of law and the protection of human rights are clearly seen, where human rights are rights inherent in every human being that are natural and fundamental as a gift from God Almighty One must be respected, guarded and protected by each individual community or country. The application of the aspects of Human Rights contains the principle as the basis for the formation of a rule in a democratic rule of law, including the principle of equal

treatment before the law (equality before the law). The existence of the principle of equal treatment before the law (Equality before the law) is a principle that needs to be applied in a variety of legal rules, especially in the Criminal Law rules relating to Special Crimes, where the problem in this study is regarding the period of detention in Special Crimes .Jan Remenlink explained that a special criminal act or special criminal law referred to as *Delicti Propria* is an offense committed by someone with certain qualities or qualifications[2]. Therefore, the special criminal act law must be seen from the substance and applies to whom the special criminal act law is. In this case the authors found the possibility of legal rules in specific criminal acts related to the period of detention that is not in accordance with the principle of equal treatment before the law (Equality before of the law).

In the Money Laundering Act regulated in Act Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Acts, Corruption Acts regulated in Act Number 20 of 2001 concerning Eradication of Corruption and Narcotics Criminal Acts regulated in the Law Law Number 35 of 2009 concerning Narcotics, states that in investigations, prosecutions and hearings in court proceedings are based on the Criminal Procedure Code (KUHAP) where the detention provisions are regulated in article 24, article 25, article 26 with the mass detentiobeing 200 days.

Whereas in the Criminal Act of Terrorism as regulated in Act No. 5 of 2018 concerning amendments to Law Number 15 of 2003 concerning the stipulation of Government regulations in lieu of Law Number 1 of 2002 concerning eradicating Terrorism criminal acts into Law, in article 25 states the period of detention in the context of the Investigation, Prosecution and Examination at the court hearing the terms of detention are 290 days.

From the explanation above regarding detention in specific criminal acts, it appears that there is a difference in the detention of the criminal act of terrorism whose detention period is much longer than other special criminal acts, based on that which may be contrary to human rights, namely the principle of equal treatment before the law (Equality before the law), with this the writer will discuss the problem more deeply related to the inconsistency of norms in Detention in the Criminal Act of Terrorism against the same Treatment before the Law with the title: "Detention of Terrorism in the Perspective of Equality Before the Law".

2. METHODS

This type of research is a legal research that focuses on Normative Jurisprudence research or library research, where this research is conducted by examining the principles of law and legal doctrine, to understand the relationship between positive law and the science of law that requires a study of legal elements, in legal science research itself has unique characteristics including normative, practical, and prescriptive.

The legal materials used in this study consist of primary, secondary and tertiary legal materials. Where the primary legal material used by the author is in the form of conversion laws, judges' decisions, official records and minutes in the making of laws. Then in the secondary legal material consisting of books, research, scientific articles and scientific journals in the field of law. Finally, as a tertiary legal material used to support primary and secondary legal material in the form of a legal dictionary, a large Indonesian dictionary and other dictionaries.

To collect data, the authors use normative legal research. Primary legal materials used in the form of legislation and conversions are collected by inventory and categorization methods, then secondary legal materials are collected by a card system (Card System), both with an overview card (according to the written summary according to the original, outline and main ideas which contains the original opinion of the author), a quote card (used to contain notes on the subject matter), as well as a review card (contains an analysis and a special note of the author). In normative legal research, the analysis technique used is descriptive through the harmonization method. From the legal material collected by the researcher, the researcher

analyzes the legal material in accordance with the formulation of the problem.

3. FORMULATION OF THE PROBLEM

Is the period of detention of the crime of terrorism in accordance with the right to equal treatment before the law?

4. DISCUSSION

1. The Existence of Equality Before the Law in Laws and Regulations

A. Equality Concept

Equality comes from English, literally interpreted as equality. According to the Encyclopedia of the social sciences, when it is said that humans are the same, even though in reality human is not the same in many characteristics. Among other characteristics are based on differences in sex, color, character / character and so on, also based on a variety of different human institutions such as differences in citizenship, religion, social level and so on[3]. Equality is the right for every human being to be recognized without distinction that impacts the ability for people to access, control resources and receive benefits. In this context, equality of rights becomes an absolute right for every human being, although there are different conditions that affirmative action must be given. Differences due to power relations cause disadvantage, injustice and other adverse effects, including the field of law enforcement.

B. Kinds of Equality

Equality can be divided into four types including:

1. Natural Equality (natural equality), is the equality that every human being carries from birth. Humans have a ratio, so Natural Equality means that humans are the same because they have a mind / ratio that distinguishes humans from animals.
2. Civil Equality, Equal civil rights for all members of the community, recognition of this equality means that every citizen is treated equally and enjoys rights and protection. One of which is the principles of equal treatment before the law.
3. Political Equality, is an equal right for all citizens to participate in state affairs. For example giving the right to vote in general elections. Political equality is the basis of democracy (Political equality is the basis of democracy).
4. Economic Equality, is equality of rights in improving the economic level in life. This equality is emphasized on the occasion and not the yield sharing equality. Because many of the results depend on the efforts of each person in using the opportunities used to improve the economic level.

Based on the above classification, the theory of "Equality Before The law" is included in civil equality, because it is related to the interests of every citizen to get equal treatment before the law and the government. Based on the above theory it can be meant that the implementation of law is fair and equal and everyone is considered equal or equal before the law.

C. Equality Before the Law in Positive Law

The principle of equal treatment before the law (Equality Before The law) is one of the human rights protected by the constitution as stipulated in paragraph (1) article 28 D of the Constitution which states that the state guarantees the right for everyone to be treated, protected with a fair law and to be treated equally before the law.

Then in Law Number 39 of 1999 concerning Human Rights, it is also regulated thus regarding equal treatment before the law as explained in paragraph (2) article 3 which states that the state guarantees the right for everyone to be treated, protected and with fair legal certainty and to be treated equally before the law.

Furthermore, the principle of equality before the law has been ratified by Indonesia in Law No. 12 of 2005 concerning the ratification of the International Covenant on Civil and Political Rights in which the principle of equality before the law is contained in article 26 states that law in a country must guarantee legal standing and protection the same law without discrimination and the state must also prohibit any form of discrimination based on race, color, gender, language, religion, politics, social, birth or any other status.

According to The Universal Declaration of Human Rights 1948 article 7, everyone has the same right to legal protection, which is absolute against all forms of discrimination that can be used. From the explanation above it can be concluded that the principle of equality before the law has been applied in every legislation and international conversion, this is because the principle of equality before the law is a very important principle and cannot be separated in the application of human rights in the rule of law,

2. Equality Before the Law in Terrorism Containment Policies.

In the Black's Law Dictionary, terrorism has the understanding as:

"An activity that involves a violent act or an act dangerous to human life that is violation of the criminal law of the United State or of any state, or that would be criminal violation if committed within the jurisdiction of the United State or of any state; and appears to be intended (i) to intimidate or coerce a civilian population, (ii) to influence the policy of a government by intimidation or coercion, or (iii) to affect the conduct of government by assassination and kidnapping"[4]. While in Arabic terrorism is taken from the word *al-ihrab* is an infinitive form (*masdar*) of

the verb *"arhaba-yurhibu-irhaban"* meaning: *akhafa*: creating fear and *fazza'a*: making horror, excitement or shock[5]. however, until now there is no universally accepted definition of terrorism.

The notion of terrorism was first discussed in the European Convention on the Suppression of Terrorism (ECST) in Europe in 1977 there was an expansion of the paradigm of meaning from Crimes Against State to Crime Against Humanity. Crime Against Humanity includes criminal acts to create conditions that result in individuals, groups and the general public in an atmosphere of terror. The criminal act of terrorism itself is regulated in Law No. 5 of 2018 concerning amendments to Law No. 15 of 2003 concerning the stipulation of government regulations in lieu of Law No. 1 of 2002 concerning the eradication of criminal acts of terrorism into law. Article 1 number 2 explains that terrorism is an act that uses violence or threat of violence that generates an atmosphere of terror or widespread fear, which can cause mass victims, and / or cause damage or destruction to vital strategic objects, the environment, public facilities, international facilities with ideological, political or security interference. Terrorism itself aims to completely change the existing social and political order, but sub-revolutionary terrorism aims to change policies or revenge or punish government officials who are not in line[6].

Regarding the detention of terrorism in the context of Investigation, Prosecution and Examination at the court hearing, the detention period is 290 days, during which the detention of terrorism suspects must be carried out by upholding the principle of human rights. but how the principle of equal treatment before the law (Equality before the law) views detention for such a long time.

Ideas related to human rights are built on the principle of equality. Where this principle explains that humans are equal in relation to human dignity. equality requires equal treatment, where in the same situation, and with debate, where in different situations they are treated differently[7]. Detention in the International Convention on Civil and Political Rights as explained in Article 9 paragraph 1 that a person must not be detained arbitrarily. Detention must be accompanied by certain reasons in accordance with legal procedures, namely, "Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his liberty except on such ground and in accordance with such procedures as established by law "

The provisions of the article above implicitly give rise to obligations to the state to determine precisely, legally, deprivation of liberty allowed, the procedure, and make the court act quickly in the case of arbitrary or illegitimate deprivation of liberty (Unlawful) committed by administrative authorities or executive officials[8]. Based on the provisions of the article, it clearly states that the

reasons for detention and the procedure must be based on applicable law, where the law according to H.L. Hart in his book *The Concept of Law* is expected to become an obligation that must be carried out by every member of the legal community[9]. However, in a law enforcement case, it cannot be carried out arbitrarily. the word "arbitrary" in this sense is understood that it consists of elements of injustice (injustice), uncertainty (unpredictability), unfairness (Unreasonableness), Irregularity (Capriciousness), and disproportionality (disproportionality).

Then Article 9 Paragraph (3) provides that a person who is detained on a criminal charge must be promptly prosecuted within a reasonable time or released. Based on these provisions, it can be said that the detention of a person until trial is not a general matter, so that it is possible for him not to be detained while waiting for trial. However, if an act of detention is taken against a person, he must pay attention to the rights of the suspect. Based on the Convention on Civil and Political Rights and the Body Principle for the Protection of All Persons under any detention and imprisonment (the principles for the protection of all persons under any form of detention or imprisonment), the state for any reason is not justified in arresting a suspect over a long period of time or even without time limit. In addition to violating article 9 of the ICCPR, detention in such a model may also violate article 14 which guarantees a speedy trial before a competent and impartial trial, article 7 which prohibits torture and inhuman or degrading treatment, and in article 10 which provides treatment humane during detention.

In the ACT 1995 Criminal code Australia classifies criminal acts of terrorism into several types including; Part 5.3, which explains the criminal act of terrorism, is considered a serious offense which is judged by the judge, with a maximum threat of 7 years in prison or more. Part 72.3 terrorist activities carried out intentionally sending, placing, removing or detonating an explosive device, are threatened with life imprisonment. Whereas part 80.2 C in the provision explains that someone who advocates terrorists and carries out reckless acts and is involved in acts of terrorism, is threatened with a 5 year law

Based on this, it can be seen clearly in the Criminal Code ACT 1995 Australia that there are several classifications of criminal acts of terrorism, these are very different from the rules of criminal acts of terrorism in Indonesia which equate all forms of criminal acts of terrorism.

5. CHARACTERISTICS OF TERRORISM CRIMES

As a new form of organized crime, special acts of speech have different characteristics from acts of public service.

Not only in the setting that is not codified but refers to the specialist lex. The types of actions or evil actions carried out have unique characteristics and the concept of proof and punishment in a material manner is specific in accordance with the form of the crime. Terrorism is an example of a specific criminal crime, in addition to money laundering, corruption, crimes related to child protection and several other crimes.

Specific criminal acts of terrorism have several characteristics including, namely:

- Crimes are carried out in a structured manner on organizations and groups (including up to family and cell / individual)
- Actions are carried out systematically in the recruitment, regeneration, doctrination, terror planning, implementation of terrorism, preparation of legal aid. Therefore the group movements are organized and must be dismantled up to the newest cadres
- Using hidden and illegal resources to make, distribute and distribute weapons and weapons.
- Intellectual terrorist acts of terrorism are an educated group and not infrequently young people and political elites, businessmen, to ordinary people. So that it takes longer and more specific and strategic research actions by the police to make disclosure of terrorism cases. This can be a justification for understanding terrorism suspects that takes longer than general crime
- Actors of criminal acts of terrorism have networks up to the individual level and family level that are not easily recognized or monitored by their movements. They are often positioned as being inactive or have a problem and change their identities or disguises themselves. This is a challenge for law enforcement in uncovering the cruelty of terrorism. So the process of proceeding requires a longer time.

Based on the regulation of the detention of terrorism and the characteristics of acts of terrorism speech, the researcher views the detention of terrorists in accordance with the principle of equality before the law. This reflects the level of complexity of the character of criminal acts of terrorism, however, the law must not be arbitrary.

6. CONCLUSIONS

Terrorist detention is in accordance with the principles of Equality before the law because Terrorists continue to have the full rights of all rights related to suspects and defendants, including the right of suspects to immediately be examined by investigators, the right to be immediately brought to justice, the rights of suspects / defendants to get legal assistance and others in accordance with Criminal Procedure Code. Regarding different periods of detention, it does not violate the principle of Equality before the law

due to the different characteristics of other specific criminal acts.

The difference in detention is not intended to reduce the use of the principle of Equality before the law but because of the characteristics of criminal acts of terrorism which require a more detailed process in disclosing facts. Terrorism detention is longer than other specific criminal acts because the perpetrator has a network up to the family or individual level that is not easily recognized or monitored by his movements, weapons and disguises, to the distribution of the perpetrators so that the police need more time in detention. In the concept of Equality before the law, the police must proceed immediately and expedite the processing of the perpetrators for the transfer of documents to the court with the provisions that pay attention to the period of detention in the level of investigation, prosecution and examination in court in accordance with Law No. 5 of 2018 concerning Terrorism. In Civil equality with the principle of equality in civil society, where the context of equality is true that the person has the right to be fulfilled and receive benefits from equality rights.

7. SUGGESTION

Further research is needed, in an effort to classify actors, main actors, inclusion and funding in criminal acts of terrorism, because differences in roles in criminal acts of terrorism result in differences in the handling and threat of criminal offenses.

REFERENCES

- [1]Aryumardi Azra, *Demokrasi Hak Asasi Manusia Masyarakat Madani*, Jakarta: 2003.
- [2]Ruslan Renggong, *Hukum Pidana Khusus*, Kencana Jakarta, 2016.
- [3]Ramly Hutabarat, *Persamaan di Hadapan Hukum (Equality Before The Law) di Indonesia*, Jakarta:1985.
- [4]Henry Campbell Black, *Black's Law Dictionary 6th Edition*, West Publishing, st.Paul-Minn, 1990.
- [5]Louis Ma;luf, *Qamus al-Munjid fi al-lughawa al-a'lam*, (Kairo: Dar al-Kastulikiyyah, 1987).
- [6]Grant Wardlaw, *Political terrorism, New York*; Cambridge University Press, 1996.
- [7]University Press, 2003, hlm. 7-21 dan Maurice Cranston, what are human Rights? New york: Taplinger, 1973 dalam Rhona K.M. Smith, et, al.,

Hukum hak asasi manusia, Yogyakarta: PUSHAM,UII, 2008.

[8]Vide C.de Rover, *To serve To Protect, Human Rights and Humanitarian Law for Police and Security Forces*, Geneva: ICRC, 1998, P.223. yaitu dikatakan bahwa:”...it obliges a state to define precisely, the cases in which deprivation of liberty is permissible and the procedures to be applied, and to make it possible for the indepent judiciary to take quick action in the event of arbitrary or unlawful deprivation of liberty by administrative authorities or executive officials.”

[9]H.L. Hart *The Concept of law*, new york;oxford University Press, 1994.