

Gender Bias in Combating Terrorism: A Case Study of Returnee Families

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ABSTRACT

Counter terrorism in Indonesia still leaves a number of homework, after one year after the enactment of Law No. 5 In 2018 the government still faces a number of other challenges related to policy. Among them after being pounded by Islamic State of Iraq and Syria (ISIS) troops in Syria, a problem arose with the status of Indonesian Citizens (WNI) who are currently waiting for certainty and assistance for returning to Indonesia. the issue poses a dilemma concerning humanity, justice and human rights, even so, a number of rules, policies and programs to combat terrorism in Indonesia must use the principles of Human Rights (HR), especially gender justice, which in the legal process and deradicalization do not look at gender background. The latest development, terrorism does not only involve male groups, but women also show their involvement both as perpetrators, followers, families of perpetrators so that seeing this development gender justice must be a principle in efforts to tackle terrorism in Indonesia. This paper wants to answer the problem of how far the handling of terrorism is in line with the principle of gender justice in the case of returnee families.

Keywords: *gender Bias, terorism, legal framework*

INTRODUCTION

The term terrorism in Indonesia is more familiar than violent extremism, in some countries violent extremism has become one of the challenges in recent years. The Islamic State of Iraq and Syria (ISIS)[1] group has taken its own direction in the development of the puritan Islamic group movement in the world. The use of technology and massive propaganda campaigns by utilizing a number of social media and internet platforms is one of the directions of the group's progression to reach people in various parts of the world including Indonesia.

Based on Sydney Djones[2] data, there have been around 1,000 Indonesians since 2014 joining ISIS in Iraq and Syria. Hundreds of them failed to enter Syria, because they were deported by the Turkish government, most of them departed privately and others departed in an organized manner after previously in Indonesia joining a network of terrorist groups in Indonesia. Indonesian citizens (WNI) mostly also include women and children, they go to Syria and Iraq at the invitation of families, husbands or individual departures.

On 13 and 14 May 2018, three Indonesian families blew themselves up attacking or planning to attack targets in Surabaya, East Java. The bombings raised fears that suicide bombings with young children might be a new deadly tactic; that the technical skills of Indonesians belonging to the pro-ISIS Jamaah Ansharud Daulah (JAD)[3] had increased; and that ISIS's defeats in the Middle East were sparking a renewed commitment to violence at home. Five months later, the attacks seem to have been an idiosyncratic act by a small group of friends, all JAD members, who were convinced the end of the world was imminent and wanted to ensure their place in heaven. Their intention to carry out suicide bombings was known to and encouraged by the JAD East Java leadership but the families were left to themselves to plan the details. Their decision to use their own children was condemned by some other extremists, including JAD founder Aman Abdurrahman, and there is little likelihood that others will be inspired to do the same.

Thus, the existence of JAD is what recruits, consolidates, took allegiance, coordinates military training of ISIS members in Indonesia. The phenomenon of Indonesian citizens leaving for Syria to join terrorist groups is a new challenge in combating terrorism in Indonesia. In the Terrorism Law No. 15 of

2003 (which was later revised) has not accommodated the phenomenon where Indonesian citizens left the Unitary State of the Republic of Indonesia (NKRI) and then took their pledge to join the Islamic state (ISIS) in Syria. This means that the Indonesian citizens who join ISIS are preparing their actions in the Syrian state, not in Indonesia.

The case that the writer encountered was one of the phenomena of one family in Indonesia, where as many as 23 family members left for Syria.[4] In his statement, this family got information related to the Islamic state founded by ISIS through online media. They studied a number of articles, writings and videos that illustrate the ideal state of an Islamic state where ISIS portrays Daulah Islamiyah as a comfortable place to be inhabited with education, health services, residential facilities guaranteed by the state. Indonesian citizen of one family left with a motive to find a decent life compared to Indonesia.

The reality there is indeed different and not in accordance with the expectations of one family, finally for approximately 2 years they are looking for a way out to return to Indonesia. From this case the author tries to analyze if those who leave to join Syria do not all start from the ideology basis to fight official government. However, there are also those who only become followers ('follower') because of male authorities such as husbands who invite families to go there immediately. And the last is the victim of propaganda with individual motivation for a more prosperous life under the auspices of the Islamic state.

Therefore, the paper tries to discuss the phenomenon discovered by the author where not all Indonesian citizens who went to Syria went through a legal process. However, 3 men as household heads were subject to sentence, while family members of women and children only went through the process of de-radicalization and then were unconditionally free. Terrorism Law No. 5 of 2018 clearly explains the principle of prudence and human rights in its implementation, meaning that the law does not apply selective logging in handling terrorism cases.

2. DEFINITION OF TERRORISM

One of the challenges in delaying the ratification of the revision of the Terrorism Law in Indonesia is the difficulty of the debate on the definition of terrorism. The use of the term "terrorist" in Indonesia has indeed been used after the Bali bombings in 2002. However, the absence of a uniform definition under international law regarding terrorism does not necessarily negate the definition of the law of terrorism. Each country defines according to its national law to regulate, prevent and combat terrorism.[5]

Whereas the definition of terrorism is based on Law No. 5 of 2018, 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 strategic vital objects, the environment, public facilities, or international facilities with ideological, political or security interference (Article 1).

As for the addition of terrorism even though they have not or do not use violence, including Anyone who has a relationship with the Terrorism organization and intentionally spreads words, attitudes or behavior, writing, or appearance with the aim to incite people or groups of people to commit Violence or Threats of Violence which may result in a Criminal Act of Terrorism being sentenced to a maximum imprisonment of 5 (five) years (Article 13A).

From the above definition of terrorism, there are several elements in acts which are categorized as acts of terror based on the law, including:

- a. The element of intentional use of Violence or Threats of Violence which creates an atmosphere of terror or widespread fear of people, causes mass casualties by depriving others of their lives and property (Article 2)
- b. The existence of ideological motives, politics and security disturbances.
- c. Have links with terrorist organizations, whether they are writing articles, joining associations, or provoking violence.

In the context of Indonesian citizens who joined Syria both with the motive of joining terror groups for ideological reasons, as well as social economic motivations, the authors see that the definitions in the Indonesian government's rules do not accommodate and represent phenomena that occur. The definition of terrorism over time must continue to be discussed and developed in accordance with the phenomena that occur. Without considering various definitions developed by academics, activists and experts, law enforcement in Indonesia must naturally compromise with the definition agreed upon by the government to impose a criminal sentence on terrorism defendants.

Different from the definition of terrorism in Law No. 15 of 2003 concerning the stipulation of a substitute government regulation Law number 1 of 2002 concerning eradicating criminal acts of terrorism into law has a more specific definition and prioritizes the process of terrorism crime incidents that occur first compared to the aspect of prevention, so that the legal process can be carried out after an event.

The author himself believes that the definition of terrorism as adopted in the legislation still has many gaps to study, given the violence caused by terror groups is different from violence in general. The author himself is more comfortable using the term "violence extremism"[6] compared to using the terms "radicalism" or "terrorism". Some studies provide quite clear results

in defining extremism in the form of violence or not, where this extreme group uses ideological, religious, racial, ethnic motives maupu groups to extrude other groups outside the group. In addition, violence is used as the culmination of an effort as well as an opportunity to get rid of other groups whose understanding is different from theirs.

3. COMBATING *RETURNEE*

Since it was founded in 2010, the National Counterterrorism Agency (BNPT) has the main tasks including prevention (national preparedness, counter radicalization, deradicalization), law enforcement, enforcement and cooperation. In 2014, BNPT through the Deputy for Prevention, Protection and Deradicalization, the National Counterterrorism Agency (BNPT) launched the Blueprint for Prevention and Deradicalization Guidelines. Unfortunately this blueprint can not be accessed openly by the public, so that the public has difficulty seeing how the process of preparation, strategy, and programs that will be carried out during the de-radicalization of terrorist inmates.

The de-radicalization program is intended for napiterists who undergo a period of detention is required to follow this program with the intention to straighten out a moderate ideology, and be loyal to the Republic of Indonesia. Nevertheless, of course this program has not been able to be significantly measured because the number of former napiteroris who have participated in this program does not necessarily abandon the ideology that is believed. Some of them even carried out acts of terror back after leaving prison.

C Save once conducted a BNPT deradicalization program policy review, in his report the de-radicalization policy and practice need to be re-examined, improved, strengthened and enhanced. Deradicalization is generally targeting two (2) parties:

1. The perpetrators of terrorism, namely the suspects, defendants and especially the convicts who served their sentences in various correctional institutions in Indonesia.
2. Deportants and returnees or detained (people who were repatriated from Iraq / Syria), and members of the terrorism corporation who have not been involved in criminal acts of terrorism. Required policies, strategies and appropriate deradicalization programs for the two targets / targets in order to return to living in a society, prevent the recidivism of terrorism and transform them into ambassadors of peace in Indonesia.[7]

In the case of returnee families who were returned from Syria in 2017, in intensive talks with the author. His wife and children - the perpetrators of terrorism said that he only underwent a 2 week de-radicalization program. In contrast to his father and uncle, who had to undergo a 6-month deradicalization program at Sentul BNPT

prison, West Java subsequently underwent a trial and was sentenced to 3 years and 6 months based on the decision of the West Jakarta District Court Number 391 / Pid.Sus / 2018 / PN.Jkt. Brt as charged in article 15 JO article 7 Perpu No. 1 of 2002 Eradication of Terrorism Criminal Acts as stipulated in Law No. 15 of 2013 concerning the Prevention and Eradication of Terrorism Funding Criminal Acts.

The government combating returnees in Indonesian policy is included in the category of deradicalization program (article 43D) where every suspected terrorist after being dealt with by Detachment 88, this group must follow a planned, integrated, sustainable program that eliminates or reverses understanding. . a systematic process, and carried out to reduce and radical Terrorism. Deradicalization is intended for suspects, defendants, convicts, convicts, ex-convicts of Terrorism; or people or groups of people who have been exposed to radical Terrorism.

Deradicalization for returnees has several stages including:

- a. identification and assessment;
- b. rehabilitation;
- c. reeducation; and
- d. social reintegration.

These stages must be passed by the perpetrators, individuals and groups involved in acts of terrorism in Indonesia. Unfortunately, there is no objective and measurable WBP radicalism assessment system or measure of the level of WBP, which can be used periodically, since entering prison, in the initial training period until the end or before pure release (both while in prison and in guiding the correctional center). Even though this tool is very important for various things, especially determining the right interconnection program and evaluating the existing coaching program both BNPT, Ditjenpas and NGOs / NGOs and other parties.

4. PRINCIPLES OF GENDER EQUALITY IN THE LEGAL PROCESS

Equality before the law is a principle in which everyone is subject to the same judicial law (legal process).[8] Law also raises important and complex issues regarding equality, fairness, and justice. Belief in equality before the law is called legal egalitarianism. Article 7 of the Universal Declaration of Human Rights states that "All people are equal before the law and are entitled to the same legal protection without any discrimination." [9]

As such, everyone must be treated equally under the law regardless of race, gender, nationality, color, ethnicity, religion, disability, or other characteristics, without privileges, discrimination, or bias. In the Indonesian constitution expressly guarantees equality. This is explained in Article 27 paragraph (1) [10] "All citizens are at the same position in law and government and

must uphold the law and government without exception."

The term gender in Indonesia is indeed more impressed attached to the female sex, in the definition of Gender is a set of roles which, like costumes and masks in the theater, convey to others that we are feminine or masculine. This special set of behaviors - including appearance, clothing, attitudes, personality, work inside and outside the household, sexuality, family responsibilities and so on - together polish our "gender role".¹[11]

Gender justice in law is proven by taking action against terrorists who do not recognize gender status (both men and women) and position in the house, whether husband, wife or children. In Indonesian law, children who are involved in specific crimes can be categorized as children who are dealing with the law.

Returnee's family who left for Syria started with the influence of his second son, his father decided to go along and invited the whole family over the motive to accompany and not let his children go alone.[12]

5. GENDER BIAS IN COMBATING THE FAMILY OF RETURNEES

The author's experience conducting a search about the handling of returnee families raises a number of critical notes in the legal process imposed by families deemed to join terrorist groups. Field observations showed that 23 family members were involved, and 21 family members who managed to return to Indonesia. Those who are subsequently prosecuted are men to undergo trial and detention. At present the status of 3 household heads is a prisoner with an average sentence of 3-4 years in prison.

Meanwhile, women and children perpetrators only undergoing de-radicalization including rehabilitation and social reintegration for 2 weeks in BNPT prison. The reason for this is why only men who are prosecuted are because as head of the household he must be responsible for developing and guiding his family.

In addition, the reason for financing terrorism is also included in the charges against the convicted person, the reason this father sold all assets owned because of the pressure from the family, especially children and wives to migrate to Syria in search of a better life compared to life in Indonesia.

There are several findings of the author in handling returnee family cases, including:

- a. Gender bias in determining the perpetrators of terrorism against 3 men as husband because they are considered to be in full legal responsibility. Article in the law is known equality before the law

does not recognize gender and social status of the family.

- b. The use of article 15A where the motives convicted of terrorism, in the case of the returnee family can not be categorized as the definition of article 15A about the criteria and indicators of a person, individual or group is considered a terrorist group.
- c. His wife and children only went through the process of de-radicalization at BNPT for approximately 2 weeks, then were released without going through the legal process as their father. This action becomes ambiguous if the gender reasons so that someone does not follow the legal process as other.
- d. In handling terrorism cases involving women and children, the government does not yet have strategic policies and procedures especially returnees, even though recent developments indicate the involvement of women and children in terror groups also have a significant role.

The reasons for criminal negation (Straf Uitsluitings Gronden) are reasons that allow a person who commits an act that fulfills criminal procedure, but cannot be convicted.² First, in terms of its source, the basis for criminal negation is divided into two groups, namely those listed in the law and the other that is outside the law introduced by jurisprudence and doctrine. Listed in the law can be subdivided into general ones (contained in the general provisions of Book I of the Criminal Code) and applies to all offense formulations. Specifically, it is stated in certain Articles that apply to such offense formulations.³[13]

6. CONCLUSION

In Law No. 5 of 2018 concerning Criminal Acts of Terrorism The government does not have a specific definition of returnees, including the government does not yet have procedures in handling Indonesian citizens of vulnerable groups (women / children) who are sympathizers and victims of ISIS propaganda.

The principle of equality before the law regardless of gender background and status in the family (the Terrorism Act) should be applied in the handling of returnee family cases, although the results of whether wives and children cannot be considered terrorist categories certainly need to be proven in court.

Standards and indicators used in examining and leveling the involvement and actions of terrorists have also not been taken into consideration, the case of the returnee's family shows if not merely ideological reasons and conspiracy. However, there is another motive where

someone sets out to migrate to another country that is socioeconomic. In the future, in handling the principle of proportionality in law, each actor must have legal consequences and be the same and equal legal process in overcoming terrorism. Not limited whether concerned as head of family or children and wife.

7. RECOMMENDATION

- a. The government should still process the offender's wife and children, even though the verdict is free, only following the rehabilitation program, this effort is to ensure that the law is able to be applied fairly.
- b. The government does not yet have a policy related to handling ISIS propaganda victims, meaning that sympathizers who join are not based on ideology but because of personal interests to find a decent life without any elements of evil consensus.
- c. The case of returnee families needs to get another category besides terrorists, because basically they are victims of ignorance, limited information, personal motives for individual welfare.

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