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Legal Reconstruction in Indonesia Based on Human Rights

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Faculty of Law, Sultan Agung Islamic University

Jalan Raya Kaligawe, KM.4 Semarang, Indonesia

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“Legal Reconstruction in Indonesia Based on Human Right”

IMAM AS SYAFEI BUILDING

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

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Legal Political Strategy In Preventing The Understanding Of Radicalism In Indonesia

Beno

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Abstract

Various problems of the nation, state and society are increasingly complicated by the emergence of radicalism movements in society, such as the use of attributes and issues of the rise of the PKI (PKI has attempted to carry out a coup against the Republic of Indonesia in 1948 and 1965), the movement with the vision of establishing a caliphate (HTI), the emergence of the ISIS movement in Indonesia, insulting Pancasila, insulting religion, insulting the state flag, accusing some people of being "anti-Pancasila". Malay village terror, terrorism, and the issue of treason against the government. In the development of the prevention of radicalism, The physical operations carried out by Indonesia are considered to have achieved quite encouraging results and the international community has given high appreciation for this success so that Indonesia has become a model in the International Counter Terrorism strategy. However, this success has not been able to stop this transnational radicalism movement. Radical groups are still recruiting new militants as did the Santoso group, ISIS, and so on. There are two legal umbrellas that can be used to reduce the fluctuation of radicalism that leads to acts of terror, namely: Law Number 15 of 2003 concerning the stipulation of Perpu number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law and Law Number 9 of 2013 concerning Eradication and Prevention of Terrorism Financing Crimes.

Keywords: Political, Legal Strategy, Radicalism Prevention, Indonesia

A. INTRODUCTION

Indonesia is a country that is still experiencing an emergency over the phenomenon of radicalism and terrorism. Expulsion accompanied by attacks on minority groups, burning books and prohibiting activities are small examples of these forms of radicalism and terrorism. If this phenomenon is not handled seriously, in the future it can lead to acts of terrorism. Radicalism has a strong affinity for terrorism, both of which are threats to humanity.¹

Currently, Indonesia is experiencing a "Pancasila ideological crisis" and a "constitutional conscious cultural crisis". Pancasila and the 1945 Constitution of the Republic of Indonesia are currently being tested for their robustness, tested for the value

of unity and integrity, tested for the value of diversity. Various problems of the nation, state and society are increasingly complicated by the emergence of radicalism movements in society, such as the use of attributes and issues of the rise of the PKI (PKI has attempted to carry out a coup against the Republic of Indonesia in 1948 and 1965), the movement with the vision of establishing a caliphate (HTI), the emergence of the ISIS movement in Indonesia, insulting Pancasila, insulting religion, insulting the state flag, accusing some people of being "anti-Pancasila". Terror Malay villages, terrorism, and the issue of treason against the government.²

These problems lead to the ideology of radicalism which wants to change the

¹ Fauzi Imam Ghifari, *Radikalisme di Internet*, Religious: Jurnal Agama dan Lintas Budaya, Vol.1 No.2, 2017, hlm 125, <https://doi.org/10.15575/rjsalb.v1i2.1391>

² Iwan Satriawan, Muhammad Nur Islami, dan Tanto Lailam, *Pencegahan Gerakan Radikalisme melalui Penanaman Ideologi Pancasila dan Budaya Sadar Konstitusi Berbasis Komunitas*, UMY, Jurnal Surya Masyarakat, Vol. 1 No. 2, Mei 2019, p. 100

Indonesian national order which is clearly contrary to Pancasila. The radicalism movement as a ideology is not always marked by acts of violence, but can also be limited to an ideology that does not use violent means.³The radicalism that develops in society in the form of ideological and religious radicalism must be prevented. This is necessary to create a harmonious society. Making efforts to prevent radicalism is not easy and requires a structured, systematic and massive strategy.

It appears that religious movements that carry religious ideology strongly influence the empirical reality of the reform era politics. The cell system developed by this movement has entered spaces within various groups of society. As a result, there is polarization among religious communities. Religious militancy that is not based on a spirit of tolerating differences in religious beliefs and excessive truth claims often leads them to be trapped in a pool of self-righteousness.⁴

The problems of radicalism and terrorism cannot be separated from the social, political, economic and cultural environment in which the ideology of terrorism grows and develops. According to him, terrorism is the result of a radicalization process starting from the individual to group level. In terrorist groups acting in the name of religion, this process includes pre-radicalization (the interaction between individual and environmental predispositions), self-identification, commitment and indoctrination, and the ideology of jihad.

In the Big Indonesian Dictionary, radicalism is defined as: 1). radical ideology or flow in politics; 2). ideology or sect that wants social and political change or reform by means of violence or drastically; 3). extremes

in politics.⁵So radicalism is a notion created by a group of people who want drastic social and political change or reform using violent means. In the religious context, radicalism can be interpreted as a religious understanding which refers to a very basic religious foundation with very high religious fanaticism, so that it is not uncommon for followers of these ideologies or streams to use violence against people of different beliefs or streams to actualize their religious understanding. to be accepted by force. In this regard, it is necessary to write to find out about legal political policies against radical groups in Indonesia.

B. PROBLEM FORMULATION

Based on the background of the problem above, it produces a problem formulation in the form of:

- 1) How is the development of radicalism in Indonesia?
- 2) What is the legal political policy strategy in preventing radicalism in Indonesia?

C. DISCUSSION

1. The Development of Radicalism in Indonesia

Radicalism is a political or social or religious view of an extreme nature that is inconsistent with or contrary to the political, social and religious views recognized in the Republic of Indonesia which can lead to social, political and inter-religious conflicts or within the same religion, resulting in restlessness, peace and or disturbing order in community life. The ideology and mindset of radicalism, especially those in the name of religion, have caused terrible humanitarian disasters such as those currently demonstrated in Iraq and Syria and have wreaked havoc in various countries, and Indonesia itself has

³ M Khamdan, *Pengembangan Nasionalisme Keagamaan Sebagai Strategi Penanganan Potensi Radikalisme Islam Transnasional*, Addin, Jurnal, Vol.10 No.1, 2016, p. 208

⁴ Angel Rabasa (et al.), *Deradicalizing Islamist Extremists*, National Security Research Division, Pittsburgh, 2010, p. 27.

⁵ Anton Tabah, *Menangani Kasus-kasus Bom Di Indonesia*, Jakarta, Cyntia Press, 2005, p. 6

suffered from acts of terrorism from 1999 to the present.⁶

The physical operations carried out by Indonesia are considered to have achieved quite encouraging results and the international community has given high appreciation for this success so that Indonesia has become a model in the International Counter Terrorism strategy.⁷ However, this success has not been able to stop this transnational radicalism movement. Radical groups are still recruiting new militants as did the Santoso group, ISIS, and so on. Until now, there is no one comprehensive international convention on the definition of terrorism.⁸

According to Dr. Shaykh. Najih Ibrahim and Shaykh Ali Hasan Al-Halaby, there are two main factors why the notion of religious radicalism is more prominent, namely: (1) Understanding takfiri (disbelief). This understanding infuses other people, including fellow Muslims. According to the two scholars, the labeling of a person as an infidel can only be done with the agreement of the majority of the scholars (jumhur ulama) and cannot be done by a group of people alone. (2) Extreme understanding of jihad. Jihad is defined as just war and can carry out terror (irhab), so it is permissible to kill including children and women which is strictly prohibited in Islam. (3) Misunderstanding of religious doctrine as well as error / failure to understand global realities such as modernization, globalization, democratization, and the global political realities that occur in Muslim countries.⁹

Indonesia as a country that is prone to acts of radicalism has regulated this matter in the 1945 Constitution of the Republic of

Indonesia, Law Number 39 of 1999 concerning Human Rights, KUHAP, and has been accommodated in Law Number 15 of 2003 concerning Eradication of Criminal Acts of Terrorism with 3 (three) paradigms (triangle paradigm) which is used, namely the balance of the interests of the state, the interests of the perpetrators and the interests of the victims. In general, the strategic objectives of radicalism are: changing government policy; create horizontal or vertical conflicts; show weakness or embarrass the government and legitimize the government; provoke a brutal reaction from the government and attract public sympathy; and using the media as a means of propaganda or free campaigns.¹⁰

2. Legal Political Strategy in Preventing Radicalism in Indonesia

Strategies to prevent radicalism that lead to acts of terror always refer on the development of these activities in global scope both in Asia, Africa, and Europe as well as in the United States. Change which is developing quickly it should be not only seen from the legal aspect but also from the political and security aspects.

War on terror does not only rely on the "conventional criminal law" approach which is based on the principles of "mens rea" and "actus reus"; An evil act must be proven in addition to its intention as well as its actions and consequences, so that when dealing with acts of terror, there must be a paradigm shift in the approach to law enforcement, which was reactive in nature (reactive law enforcement), meaning that law enforcement can be carried out after an act that affects victims and society. This of course will make it difficult for the State to protect its citizens from acts of terrorism.

This requires efforts and strategies prevention oriented with a proactive approach (proactive law enforcement). With

⁶ Solahudin and Dave McRae, The roots of terrorism in Indonesia: from Darul Islam to Jema'ah Islamiyah, Sidney, The Lowy Institute for International Policy, 2013, pp. 49-59

⁷ Ansyad Mbai, *Urgensi Penguatan Undang-Undang Terorisme*, Makalah, Sekolah Tinggi Hukum Militer "AHMPH", Jakarta, 2016, p. 5

⁸ Ahmad Jazuli, *Strategi Pencegahan Radikalisme Dalam Rangka Pemberantasan Tindak Pidana Terorisme*, Kemenkumham, Jurnal Ilmiah Kebijakan Hukum, Vol.10 No.2, Juli 2016, p. 201

⁹ Ansyad Mbai, Op.Cit, p. 7

¹⁰ Hasman Arfiin, Syamsul, dan Bachtiar, *Deradikalisasi Ideologi Gerakan Islam Transnasional Radikal*, QIJIS, Jurnal Multicultural dan Multireligius, Vol.12 No.3 September 2013

this approach, efforts can be made to prevent acts of radicalism that lead to terrorism without having to (wait for) an act and its consequences. Thus minimizing the consequences of innocent victims and enabling legal action to intervene in matters relating to radicalism-terrorism. To make efforts to prevent radicalism-terrorism, the legal means used are both material criminal law and formal criminal law. Material criminal law means refer to the provisions of Chapter III and Chapter IV of Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism,

Initially there were two legal umbrellas that could be used to reduce the fluctuation of radicalism that led to acts of terror, namely: Law Number 15 of 2003 concerning the stipulation of Perpu number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism into Law and Law Number 9 years 2013 concerning the Eradication and Prevention of Terrorism Financing Crimes.¹¹ One of the most fundamental reasons as stated in the preamble to the 1945 Constitution of the Republic of Indonesia is that one of Indonesia's goals is:

"... to protect the entire Indonesian nation and all the blood of Indonesia and to advance public welfare, to educate the nation's life, and to participate in implementing world order based on independence, eternal peace and social justice ..."

Based on the Law on Combating Terrorists, it is stated that terrorism is a transnational, organized crime, and has a wide network that threatens national and international peace and security. Dealing with terrorism as a form of extraordinary crimes (extraordinary crimes) requires extraordinary efforts. Every related institution, both government and private, must be able to focus on their respective roles in dealing with terrorism as well as to increase more intense

cooperation from all components of the nation.¹²

However, in its implementation, this law has not been able to reduce the notion of radicalism that has led to acts of terrorism so far because the approach used by law enforcement officials is still limited to how to pursue the perpetrator (follow the suspect) so that they can be punished in accordance with statutory regulations. With the follow the suspect approach, it does not stop these acts or terror activities, because the network is so wide (global) and hidden makes their existence awake and is also ineffective in preventing and taking action against the perpetrators who are involved in terrorist activities. They not only provide the perpetrators who are ready to voluntarily blow themselves up, but also donors who provide funds to finance the purchase of explosives, weapons.

D. CONCLUSION

1. The physical operations carried out by Indonesia are considered to have achieved quite encouraging results and the international community has given high appreciation for this success so that Indonesia has become a model in the International Counter Terrorism strategy. However, this success has not been able to stop this transnational radicalism movement. Radical groups are still recruiting new militants as did the Santoso group, ISIS, and so on;
2. There are two legal umbrellas that can be used to reduce the fluctuation of radicalism that leads to acts of terror, namely: Law Number 15 of 2003 concerning the stipulation of Perpu number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law and Law Number 9 of 2013

¹¹ Yasir Ahmadi, *Kebijakan Penegakan Hukum Terhadap Tindak Pidana Terorisme yang dilakukan Oleh Kelompok Radikal*, De Lega Lata, Vol.1. No.1, Januari-Juni 2016, p. 248

¹² Tim Pengkajian, *Disain Pengkajian Tentang Pembinaan Narapidana Teroris dalam Upaya Deradikalisasi di Lapas*, Jakarta, Pusat Pengkajian dan Pengembangan Kebijakan, Badan Penelitian dan Pengembangan Hukum dan HAM, Kementerian Hukum dan HAM RI, 2016, p. 6

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