

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

Optimizing The Role of The Indonesian National Army in Overcoming Terrorism Crimes (Review of the TNI Law and Terrorism Law)

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Abstract. *The TNI's role in countering terrorism is part of the strategy to eradicate terrorism. With the escalation of the threat of terrorism which not only threatens national security, but also state sovereignty, the involvement of the TNI becomes a necessity in order to defend the country from terrorist threats or attacks. This research describes the urgency of involving the TNI in efforts to overcome acts of terrorism that threaten state sovereignty, and the ideal role of the TNI in efforts to overcome criminal acts of terrorism. The method used in this research is normative legal research, by using a statutory approach (statue approach) and a conceptual approach (conceptual approach). The results of this research indicate that there is a need for regulations that clarify the main tasks and functions of the TNI in overcoming criminal acts of terrorism. The proposed efforts to involve the TNI in countering terrorism include aspects of action and prevention. In the enforcement aspect, the technical involvement of the TNI in counter-terrorism operations is at the back of the line, when Densus 88 Anti-Terror is in a condition beyond overcapacity and has a threat gradation that endangers the sovereignty of the State. In its preventive function, the TNI's role is more focused on the effective use of intelligence forces to support the prevention of criminal acts of terrorism. Technically, the role of the TNI that must be carried out is early warning, early prevention, as well as action and recovery in an area as a result of acts of terrorism.*

Keywords: *Countermeasures; Indonesia; Poptimization; Role; Terrorism; TNI.*

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1. Introduction

The main threats facing the Indonesian nation in the future are very complex. Based on a white paper prepared by the Ministry of Defense of the Republic of Indonesia, until 2030 the estimated threat and challenge for the future of the Indonesian nation is terrorism which has cross-border networks and arises within the country. Apart from that, acts of radicalism that have primordial ethnic, racial and religious backgrounds as well as ideologies outside of Pancasila, either stand alone or are linked to forces abroad.[1]

Efforts to overcome criminal acts of terrorism are not only a matter of law enforcement, which in fact is carried out by the POLRI, but are also the responsibility of the TNI, this is because the threat of terrorism not only disturbs security, but also threatens the sovereignty of the State. Therefore, it is not enough to just rely on the law enforcement process, but you must also enforce security.

Even though there are pros and cons among the public regarding efforts to involve the TNI in countering terrorism, in fact the proposal to involve the TNI in countering criminal acts of terrorism is accommodated by the government. This is as regulated in the provisions of Article 43 I of Law no. 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism, that the TNI's task in dealing with acts of terrorism is part of military operations other than war. During its development, there were serious legal problems contained in Law no. 5 of 2018 concerning Eradication of Criminal Acts of Terrorism. If you look closely, there are many legal loopholes in the substance of the law, this is caused by the DPR's inconsistency in formulating the Law on Eradicating Crimes of Terrorism.

Terrorism as a type of Activities of Transnational Criminal Organizations is a very feared crime. Considering that the threats and consequences posed are quite broad, including: threats to sovereignty; towards society; towards individuals; to national stability; to democratic values and public institutions; to the national economy; towards financial institutions; towards democratization; and towards development.[2] Bearing in mind that terrorism is a transnational crime that requires special handling because it can give rise to jurisdictional conflicts that can disrupt international relations between countries with an interest in handling cases of dangerous criminal acts that cross territorial borders.[3]

Terrorism has been seen as an extraordinary crime (extra ordinary crime) so that it also requires handling by utilizing extraordinary methods (extra ordinary measures. Every effort to overcome terrorism, even if it is said to be domestic because of its characteristics contains elements of

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"ethno socio or religious identity", In overcoming it, we inevitably have to take into account these extraordinary standards, keeping in mind the advances in modern communications, informatics and transportation technology. Thus, it is not surprising that transborder terrorism identity occurs.[5]

During its development, there was a shift in the motivation for acts of terrorism, which at first was only to create terror and fear by eliminating the lives of foreigners, as was done by Amrozi cs in the first Bali bombing terror act, based on Amrozi cs' confession in the trial at the Bali District Court, then shifted to become a threat to state sovereignty, one example is the terror act carried out by Santoso CS in Poso.

Legal politics in the formation of PERPU no. 1 of 2002 which was upgraded to Law no. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, motivated by the Bali I bombing terror carried out by Amrozi cs. In terms of the threat of the Bali I bomb terror, it is only on the scale of security and public order, so the approach taken is by law enforcement which is the domain of the POLRI. This is different from legal politics in the formation of Law no. 5 of 2018, which is motivated by the real threat of combatant terrorism aimed at opposing the legitimate government and endangering state sovereignty. Because the threat of terrorism is increasingly serious, the government is optimizing the role of the TNI in order to safeguard and defend state sovereignty.

Optimizing the role of the TNI in countering terrorism is part of the strategy to eradicate terrorism. With the escalation of the threat of terrorism which not only threatens national security, but also state sovereignty, the involvement of the TNI becomes a necessity in order to defend the country from the threat of terrorism.

Basically, there is a point of contact between the National Police and the TNI related to countering terrorism. Terrorism can be qualified in two ways, namely as a criminal act and an action. When terrorism is qualified as a criminal act, it becomes the domain of the National Police. This qualification shows that the threat of terrorism is still on the scale of security and public order, so the approach pursued is law enforcement. For example, the Bali bomb terror I and II, the bomb terror in Thamrin Jakarta, Kuningan, Tangerang etc. Meanwhile, terrorism, which is qualified as an action, is the domain of the TNI. Meanwhile, in the context of acts of terrorism, the context of a serious threat to state sovereignty, therefore becomes TNI territory, because it is related to the function of state defense. The approach taken by the TNI is a military operation other than war. Examples of acts of terror that threaten state sovereignty, for

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example acts of terror that attack state symbols, in this case the President or terrorist attacks on the State Palace.

This research focuses on optimizing the role of the TNI in overcoming terrorism. Previous research focused more on the role of the TNI in overcoming the Covid-19 pandemic.¹, the role of the TNI in national security², the role and function of the TNI in territorial development and assistance to regional governments³, regional assistance, the role of the TNI in national security⁴, the role of the TNI in facing military and non-military threats⁵, the role of the TNI in securing the outer islands of the Republic of Indonesia⁶. Apart from that, there is previous research that examines the role of the TNI in eradicating terrorism from a national defense perspective⁷, what differentiates this research is that this research study focuses on analyzing optimizing the role of the TNI in countering terrorism as reviewed through the TNI Law and the Terrorism Law.

Based on the description above, researchers are interested in conducting research with the title "Optimizing the Role of the TNI in Combating Criminal Terrorism in Indonesia". The focus of the problems in this research include, among others, the urgency of optimizing the function and role of the TNI in overcoming criminal acts of terrorism and what is the ideal role of the TNI in overcoming criminal acts of terrorism.

¹ Diandra Megaputri Mengko, The Role of the Military in Handling the Covid Pandemic and the Dynamics of Oversight, Journal of Political Research, Vol. 17, No. 22020 <https://ejournal.politik.lipi.go.id/index.php/jpp/article/view/898/565>

² Susilo Endro Basuko, The Role of the TNI Army in Supporting National Resilience (Study of Territorial Development Activities in the Territorial Command of the TNI Army, <https://library.ui.ac.id/detail?id=120589&location=lokal>

³ Ari Ganjar et al, Role and function of TNI AD Territorial Development in Regional Government Assistance: Study in Lebak Regency, Journal of Government Science, Vol. 3, no. 1, 2017 <https://core.ac.uk/download/pdf/291660881.pdf>

⁴ Munsharif Abdul Halim, The Role and Position of the TNI in the National Security Bill Reviewed from a Political and Legal Perspective in Indonesia, Journal of Legal Reform, Vol. 2, no. 1, 2015, <http://jurnal.unissula.ac.id/index.php/PH/article/view/1419/1092>

⁵ Andri Chandrapatriana, "THE ROLE OF THE INDONESIAN NATIONAL ARMY (TNI AD) IN FACING THREATS OF A MILITARY AND NON-MILITARY NATURE IN THE TERRITORY OF THE UNITED STATES OF THE REPUBLIC OF INDONESIA", Online Journal of Legal Studies Students, Vo. 1, No. 1, 2016, <https://jom.unpak.ac.id/index.php/ilmuHukum/article/view/8/8>

⁶ Bernard Kent Sondakh, THE ROLE OF THE TNI NAVY IN SECURING AND EMPOWERING THE OUTER ISLANDS OF THE RI, JOURNAL OF LAW AND DEVELOPMENT, VOLUME 3, NO. 1, 2003, <http://jhp.ui.ac.id/index.php/home/article/view/1368>

⁷ <https://jurnal.uns.ac.id/hpe/article/view/17724>

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2. Research Methods

This writing is a scientific paper in the field of law, so the method used is the legal research method. In this research, we use a statutory approach and a conceptual approach. In this research, the author conducted interviews with I Wayan Midio (former Chancellor of Defense University) and Imam Subandi (as member of Densus 88 Anti-Terror and member of the team drafting Law No. 5 of 2018), this was intended to reveal existing conditions in overcoming terrorism, so that we can find solutions in addressing problems related to overcoming criminal acts of terrorism.

3. Results and Discussion

3.1. The Urgency of Optimizing the Role of the TNI in Overcoming Criminal Acts of Terrorism in Indonesia

In its development, criminal acts of terrorism that have occurred in Indonesia have seriously endangered the country's sovereignty, this is because domestic terrorist groups are affiliated with the international terrorism group (ISIS). Several bomb tragedies in Indonesia were driven by ISIS, ISIS even admitted to being the party responsible for the bomb explosion in Tahmin and several other cases of bomb explosions.

The National Counterterrorism Agency (BNPT) stated that from the start it had detected the entry of Islamic State of Iraq and Syria (ISIS) into Indonesia. ISIS understanding has entered Indonesia more through the internet. Indonesian people can easily access information such as news, articles and videos about ISIS ideology in the Middle East.[6]

According to data obtained by BNPT, The spread of ISIS in Indonesia is quite massive because several influential radical figures have declared themselves to join this movement, such as Oman Abdurrahman and Santoso. Apart from that, several old radical groups have also declared themselves to support the ISIS movement, such as the East Indonesian Mujahidin, Jamaah Ansharut Tauhid, Jama'ah Islamiyah, Islamic Sharia Activist Forum, Awhid wal Jihad, Daulah Supporters Forum, Asybal Tauhid Indonesia, Mimbar Tauhid wal Jihad, KUIB (Bekasi) and many others with changing names. From this movement, many foreign fighters were found who had joined ISIS. Even for fighters from Indonesia in October 2014, the Malay ISIS "Katibah Liddaulah" was formed in Syria by Bachrumsyah & Abu Jandal which accommodated Indonesian and Malaysian citizens estimated at 100 people.[7]

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The ISIS threat is not only focused on Indonesia, but several Southeast Asian countries have also become targets of ISIS attacks, for example the case of ISIS attacks on the Philippine government by exploiting civil society through a proxy war. Facts about ISIS's influence spreading in several Southeast Asian countries as well as ISIS's involvement in several bomb tragedies in Indonesia are becoming clear serious attention from the DPR and the government, in efforts to draft Law no. 5 of 2018 concerning Eradication of Criminal Acts of Terrorism.

The increasing status of danger posed by criminal acts of terrorism, which initially constituted a threat to security and public order, later developed into a serious threat to state sovereignty. This is the background for the idea or concept of optimizing the function and role of the TNI in overcoming criminal acts of terrorism.

Role optimization ideas The TNI in overcoming criminal acts of terrorism is very relevant, because in practice POLRI has limitations in terms of enforcement operations in the field. In reality, the enforcement operation carried out by the POLRI was not alone, but was a joint team, consisting of the Special Anti-Terror Detachment 88, the Gegana Team, Brimob etc. However, in practice in Poso, the joint team was unable to paralyze the Santoso CS terrorist group, because basically the joint team was not a special unit formed and intended for combat operations, so it would find it difficult if faced with an organized and armed terrorist group.

In an effort to deal with terrorists who are equipped with military training and equipped with complete weapons, institutions are needed that are strategically mature and strong in terms of fighting in the field. So that institutions such as the TNI are considered appropriate as additional and supporting components to assist the police in efforts to overcome criminal acts of terrorism.

Optimizing the role of the TNI in overcoming criminal acts of terrorism is part of the strategy to eradicate terrorism. The TNI's role is more focused on strengthening the POLRI in relation to the implementation of terrorism suppression operations. With the increasing escalation of criminal acts of terrorism, it not only creates a danger to national security, but also poses a threat to state sovereignty. Therefore, efforts to involve the TNI become a necessity in order to protect and defend the country from terrorist threats and attacks.

The considerations for involving the TNI include: the TNI has a territorial structure down to the village youth non-commissioned officer (Babinsa) level and in the past this territorial apparatus was the spearhead of ABRI in intelligence operations; The TNI has the ability to quell acts of terrorism through special units such as Detachment 81 Kopassus (TNI AD), Detachment Jala Mangkara (TNI AL), Detachment Bravo (TNI AU); Efforts to fight terror cannot be left solely to

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the National Police (Detachment 88 or its detective units), because the National Police's capabilities in this field are inadequate.[8]

The enforcement operations that have been carried out by the TNI are based on two things, first, considering the gradation of the threat of terrorism, which is considered to have threatened the country's sovereignty. In this context, the TNI's role is only limited during emergency situations, such as the operation to suppress terrorists in Poso. Second, there is a request for assistance from the National Police. In this context, it is the authority of the National Police to determine when and in what cases the TNI can be involved in terrorist suppression operations. The basic argument for why the involvement of the TNI must refer to requests for assistance from the National Police is because the approach taken by the TNI is a military operation other than war (OMSP) and specifically to neutralize armed terrorists who threaten the sovereignty of the country, so the involvement of the TNI must be carried out carefully so as not to violate human rights.

In reality, the TNI's involvement in the Terrorism Law can only be carried out with a request from the Police. The TNI cannot take direct action against acts of terrorism that it encounters without requesting assistance from the Police. In the provisions of Law no. 5 of 2018 does not regulate the TNI's authority to take direct action, because the substance of the improvements or revisions to the previous Terrorism Law only emphasized the institutional functions and role of the TNI in overcoming criminal acts of terrorism, without explaining in detail the authority and domain of the TNI's role.

The phrase involving the TNI as mentioned above shows that the TNI's position is passive and limited, because they have to wait for a request for assistance from the Police. If interpreted using the argumentum acontrario interpretation, then when there is no request for assistance from the National Police, the TNI cannot carry out its defense function in the context of suppressing terrorism. From another perspective, with the scale of the threat of terrorism which endangers state sovereignty, there should be a certain amount of space for the TNI to be able to maximize its role without being bound by the rules for requesting assistance from the Police. The spatial context in this case is still guided by the gradations of terrorism threats that endanger state sovereignty.

In the context of an emergency and the scale of the threat that has the potential to threaten state sovereignty, there must be space for the TNI to carry out defense functions when facing direct terror threats. For example, when TNI members guarding the border discover suspicious movements, it turns out when they are traced that they are members of ISIS, Al-Qaeda or the

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like who are forming an evil conspiracy with a local terrorist group to attack the Indonesian government, or in another incident, when a local terrorist group with careful planning to carry out attacks on state symbols.

With the scale of the threat of terrorism which endangers state sovereignty, there should be an expansion of jurisdiction for the TNI to be able to maximize its role without being bound by the rules for requesting POLRI assistance. The context of this expansion of jurisdiction is still guided by the gradations of terrorism threats that endanger state sovereignty.

3.2. The Ideal Role of the TNI in Overcoming Criminal Acts of Terrorism in Indonesia

Efforts to counter terrorism are not only a matter of law enforcement, which in fact is the domain of the POLRI, but can also be the task of the TNI, when the nature of the threat changes from a criminal act to a terrorist act that threatens state sovereignty. Therefore, it is not enough to just rely on the law enforcement process, but it must also be balanced with security enforcement efforts.

The enforcement operations carried out by the TNI were based on considering the gradation of the threat of terrorism, which was considered to have threatened the country's defense and sovereignty. The TNI's enforcement operations are only limited to emergency situations, for example the terrorist act in Poso, the Santoso cs terrorist group which used complete weapons and was very dangerous, at that time the POLRI was unable to paralyze it, so the POLRI asked for help from the TNI to carry out the function of suppressing criminal acts of terrorism. This is an example of cooperation between the TNI and POLRI in overcoming acts of terrorism.

The presence of the TNI in carrying out national defense functions is very important, considering that the handling carried out by the Densus 88 police is very limited. The security enforcement carried out by the TNI in an effort to maintain the country's defense and security does not only emphasize the enforcement aspect, but also strives for a preventive role.

The function and role of the TNI is not only limited to the use of military force, but also includes aspects of preventing criminal acts of terrorism. The TNI's intelligence efforts to monitor every movement that contains threats, especially those related to terrorism, are a form of preventing potential acts of terrorism from happening early on.

In its preventive function, the TNI's role is more focused on the effective use of intelligence forces to support the prevention of criminal acts of terrorism. Technically, the role of the TNI

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that must be carried out is early warning, early prevention, as well as action and recovery in an area as a result of acts of terrorism.

The preventive approach taken by the TNI in efforts to deal with criminal acts of terrorism is one part of the strategy in handling criminal acts of terrorism, namely by maximizing the role of intelligence to seek information about the movements of terrorists in order to stop them as quickly as possible so that they do not grow and endanger defense and security. country. This preventive step cannot only be carried out by the POLRI and TNI, but also involves other related institutions, including the BNPT and civil society.

In the prevention aspect, the TNI's intelligence function can be maximized as best as possible, in order to detect and ward off acts of terrorism early on. Therefore, success in prevention efforts can be realized if there is good collaboration between POLRI and TNI, BNPT and civil society in efforts to overcome criminal acts of terrorism.

4. Conclusion

With the scale of the threat of terrorism endangering state sovereignty, it is important to strengthen the function and role of the TNI. In an effort to optimize the function and role of the TNI, especially efforts to suppress terrorism, expansion of jurisdiction is needed, however, it is still guided by the gradations of terrorism threats that endanger state sovereignty. The function and role of the TNI is not only limited to the use of military force, but also includes aspects of preventing criminal acts of terrorism. In the prevention aspect, the TNI's role is more focused on utilizing intelligence powers. The TNI's intelligence function can be maximized as best as possible, in order to detect and ward off acts of terrorism early on.

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