

Political Motive in Terrorism Criminal Act

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Abstract

Motives that form the background of terrorism criminal act can be anything, and one of them is political factor. Hence, there must be a concrete and clear explanation upon terrorism criminal act in order to define whether a crime is classified as terrorism or usual crime. Petrus Golose elaborates some reasons that may cause terrorism movement, namely Nation-Separatism, an act which has objective to get independence; Ethnocentrism, an act which is driven by specialty upon social degree and race; Revolution, an act which has motivation to coup d'état; Religious motive, an act which is based on fundamental belief; Ideology, an act which means a belief upon special political mainstream; and Mental disorder, an act which is conducted due agent's mental disorder¹. Again, terrorism is not merely a matter of law disobedience or law enforcement; terrorism criminal acts that happen, as a matter of fact, can be assured their ideological backgrounds and there must be hidden interests of power. In short, the factors that cause terrorism are manifold. In order to portrait the phenomena of violence and to formulate regulation upon terrorism criminal crime, as consequence, cannot rely on one approach. Analysis upon terrorism criminal act anticipation, therefore, must be based on some views and also on the motives that form the background.

Keywords: Terrorism, Criminal Act, Motive

1. Introduction

Nowadays, terrorism has wide dimension and connects to so many aspects of human life that cannot anymore classified as low intensity conflict. Terrorism criminal act has specific characteristics that are not owned by other conventional crimes, namely due to the fact that they are conducted systematically, well organized, and have wide impact to society. These characteristics make terrorism criminal acts classified as serious threat to society, nation, and country. Terrorism criminal acts are even classified as "trans-national crime" and extraordinary crime.²

At glance, violence which is categorized as terrorism acts, in Indonesia and in other countries, seems to be a usual incident. The agents (whatever their motives) are basically sentenced to be wrong of conducting conventional crime, such as murder or threat of murder, violence or threat of violence, oppression, bank robbery or thievery, or damage. The question that rises is what makes a conventional crime classified as terrorism criminal act?³

Tito Karnavian states that terrorism criminal acts conducted by big terrorist Santoso and his loyal followers have strong connection with central issues of religion coloring political map and governance in Poso Municipal in early riot in 2000s. Power sharing on central positions is demand that must be complied. In case a head of municipal is Muslim, for example, the vice of the municipal head must be Christian. The same also happens in the other way around. This happens to almost all strategic positions in Poso Municipal, such as the chairman of the district of house of representative, the head of local police office, the commander of local military office, the head of the court, the head of district attorney. Upon these positions, Muslim-Christian balances must be used as basis.⁴ Tito, in addition, elaborates that on May 1999 there were strong contestation between Abdul Muin Pusadan and Eddy Bungkumdapu for the head of municipal in Poso. The result of the election which was won by Abdul Muin Pusadan pursuets demands concerning Muslim-Christians balances, namely the secretary of the district must be a Christian. Chaelani Umar, a member of Persatuan Pembangunan

¹ Golose, Petrus Reinhard. 2009. *Deradikalisasi Terorisme: Humanis, Soul Approach dan menyentuh Akar Rumput*, YPKIK, Jakarta.

² Soeharto, *Implementasi Perlindungan Hak Tersangka, Terdakwa dan Korban dalam Undang-Undang Nomor 15 Tahun 2003 tentang Pemberantasan Tindak Pidana Terorisme*. Unpublished Dissertation Post Graduate Program Universitas Padjadjaran, Bandung. 2009, page 47 which states that in Indonesia terrorism criminal act is stipulated in Law of Combating Terrorism Criminal Act number 15 year 2003 about Combating Terrorism Criminal Act. The philosophy of this law is that terrorism is human enemy, crime upon civilization, and belongs to International and Transnational Organized Crime. The aims of establishing this law are base on trinity paradigm of protecting Indonesian territory, human right, and protecting the rights of suspected agents.

³ Wulandari, Widati "Public Emergency" sebagai alasan mengenyampingkan kewajiban Negara di bawah ICCPR: *Reaksi terhadap Terorisme* (Makassar: Jurnal Hukum Internasional Vol. I No. 1 Juli 2013), page 22.

⁴ Karnavian, Tito, *Indonesia Top Secret-Membongkar Konflik Poso*, (Jakarta: Gramedia Pustaka Utama, page 57.

Fraction in the district of house of representative of Central Sulawesi on April 15, 2000 states that riots which is moved by religion sentiment come into a real threat if the designation of Damsyik Ladjalani (a Christian) as the secretary of the district is neglected by local government.

2. Result and Discussion

2.1 *The Effects of Political Motive on Terrorism Criminal Acts*

In connection with the above question, discussion on the motive of crime is needed. Terrorism criminal act basically refers to conventional crime done in a specific context and therefore must be responded in specific manner. This indication can be seen in international instruments of criminalizing some forms of terrorisms that have happened since 1970s,¹ such as airplane hijacking, kidnapping, hostage, etc. These acts are conducted to pursue specific (political) goal.

The existence of specific motive in those acts defines the acts belong to terrorism. The specific motive, moreover, also differentiate the acts from conventional crime due to the fact that terrorism is defined as “violence or threat upon civil residence, to pursue specific political goal” or “actions that threat or intimidate civil residence to pursue specific policy from government”, or “actions that create or exploit terrors of civil residence through violence or threat of violence to pursue political change.”² In short, it is clear that “political motive” is the most important element that becomes the context or background of terrorism. The motive can be defined as coup d’etat or to force the government to change its political policy.

This understanding is relevant to stipulation in Article 2 of draft of convention of international terrorism prepared by counter terrorism committee³. In the draft, terrorism is defined as deliberate actions conducted unlawfully by person who commits an offense and also stated as “inter alia” cause death or serious injury upon body.... When the purpose of the conduct, by its nature or context, is to intimidate a population, or compel a government or an international organization to do or abstain from doing any act.’

The similar approach can also be found in U.S Code. Terrorism in U.S Code is defined as “premeditated, politically motivated violence perpetrated against non combatant targets by sub national groups or clandestine agents, usually intended to influence an audience”⁴. Implicitly stated in this definition that the victim of terrorism (with political background) is civil residence (non combatants) and terrorism is aimed, not automatically, to influence community (not merely a country/government). It is not specifically mentioned that separatism often uses terror as mean to suppress government.

In Indonesia, the definition of terrorism is quite different. Government regulation to replace law number 1 year 2002 concerning combating terrorism criminal act and later decreed as law number 15 year 2003, terrorism is defined as act “.....conducting deliberate violence or threat that causes terrors or fears upon wide population or causes massive victims, by seizing one’s independence or soul or property, or causes damage or destruction upon vital and strategic facilities or international facilities”. Stipulations upon terrorism in this regulation are expanded into acts concerning planning and other activities in connection with planning and other activities preceding terrorism act.

Once again, important thing to be paid attention in this stipulation is the exclusion of goal or political motive and intention to influence government policy as element of terrorism crime. In the above mentioned Article 5 of Government Regulation as Law replace, it is also stipulated that “terrorism criminal act stipulated in Government Regulation as replace of law is excluding criminal political act, criminal act connecting to criminal political act, criminal act with political motive, and criminal act with political goal, that impede extradition process. In other words, by excluding political motive which form the background of terrorism from the formulation of terrorism offence, it is clear that the law maker has firmly separated crime with political nuance (subversion, rebellion, or separatism) from terrorism criminal act⁵.

It is also perceivable that the exclusion of political motive from the formulation of terrorism offence is

¹ Tokyo Convention on Offences and Certain Others Acts Committed on Board Aircraft (1963), Hague Convention for the Suppression of Unlawful Seizure of Aircraft (1970), Convention for the Suppression of Unlawful Act of Violence at Airports Serving Internationally Protect Persons (1973), International Convention Against the Taking of Hostages (1979), Convention on the Physical Protection on Nuclear Material (1980), Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988), Protocol for the Suppression of Unlawful Act Against the Safety of Fixed Platforms Located on the Continental Shelf (1988), Convention on the Suppression of Terrorism (1977), Council Framework Decision of 13 June 2002 on Combating Terrorism, Intern American Convention Against Terrorism (2002), The Arab Convention for the Suppression of Terrorism (1998), Convention of the Organization of the Islamic Conference on Combating International Terrorism (1999).

² Goodwin, J, *A Theory of Categorica L Terrorism*, Social Forces, Vol. 84. No. 4 (Jun, 2006). Page 2027-2046.

³ Counter Terrorism Committee established through UN SC Resolution 1373 (2001).

⁴ U.S Code, title 22, sec 265 f (d).

⁵ Wulandari, Widati “*Public Emergency*” sebagai alasan menyempitkan kewajiban Negara di bawah ICCPR: *Reaksi terhadap Terorisme* (Makassar: Jurnal Hukum Internasional Vol. I No. 1 Juli 2013), page 24.

caused by pragmatic background, namely in order to give chances to terrorism agents (suspects, defendants, prisoners) to pursue extradition to other countries without any hindrances of general barriers in extradition law, especially avoiding extraditing defendant escapee of political crime¹. Another consequence of the exclusion is that the attorney who prosecutes the acts does not need to prove the existence of element of intention to achieve political or other ideological goal. Again, by excluding the political motive, it becomes not necessary anymore to be revealed in court sessions.

The writer has also examined the draft of change of Law number 15 year 2003 concerning Combating Terrorism Criminal Act. In the draft, the writer does not see the inclusion of political motive as element that must be evidenced by public prosecutor in charging terrorism agent. Even though the aim of classifying terrorism and political crime is understandable, but in writer's opinion, the classification seems to be inappropriate. Terrorism acts in Indonesia, as a matter of fact, usually have political objectives or political backgrounds, or, at least, are conducted against government policy or to force government to take special policy. Djelantik implicitly differentiate terrorism based on the existence or the absence of political motive by stating that political terrorism is a symptom of political opposition that comes into existence as product of long illegitimate process upon social structure of regime².

The absent of statement of political background as element also brings other consequence, namely complexity to differentiate conventional crime and terrorism crime. Moreover, political motive in terrorism must also be differentiated from that in political crime. This approach is relevant to the definition of terrorism in international law (instruments). Duffy³ states that it is widely recognized that terrorism tends to involve two or more subjective layers. The acts are rarely an end in themselves but a vehicle to achieving particular gains, which are ideological rather than private. Beyond the normal requirement of intent in respect of the conduct (...), the person responsible will usually intend his or her acts to produce broader effects, namely spreading a state of terror and/or compelling a government or organization to take certain steps towards an ultimate goal". Duffy further states: "in criminal law terms, the existence of this double subjective layer (...) appears to indicate that if there is a crime of terrorism, like certain other international offences, it is a *dolus specialis* crime, i.e. a crime that requires, in addition to the criminal intent corresponding to the underlying criminal act the existence of an ultimate goal or design at which the conduct is aimed".

Based on the above explanation, according to Duffy, to be categorized as terrorism act, court must prove the existence of act, and objective, or motive that forms the background which urge agent to conduct terrorism act. In this context, the court is free to determine whether the act is categorized as political crime or as terrorism criminal act (with specific political motive). It means that it is the court that will make final analysis to judge whether an act is qualified as conventional criminal act or terrorism act. Once again, the court is hoped to be able to develop criteria through sentences that can be used as jurisprudence.

In other words, it can be concluded that there are elements that differentiate between terrorism criminal act and conventional criminal act. The most important elements are (1) the existence of effect or intention of making fear in the society (in general); (2) the violence or violence threat are materialized in the form of criminal act; and (3) it is conducted to achieve specific political motive (to influence government policy).

This conclusion also happens when we examine the history of terrorism act development. From this point of view, it can be classified the facets, kinds, and the motives of terrorism movement in the world. Rapport states that there are four facets of terror with different motives, namely anarchism, national liberation, social revolution, and religious transcendence⁴. From this point of view, it is clear that terrorism acts are intended to the government, with or without intention of coup d'état. Political motive, as consequence, in spite of its clear statement in Indonesian regulation that it is not categorized as element of terrorism criminal act, is unavoidable in terrorism criminal act. The format might be very cruel, not human, and clearly against the law, but usually with specific goal. In this case terror is a mean to achieve political or ideological goal which, from different point of view, is believed to be true by agents.

A question that comes forward is how to differentiate between political motive which form the background of terrorism and that with political crime? Government often sees that political crime and terrorism are same. Hard treatment, including violence upon human rights, therefore, is legitimized to rebels. Separatism becomes a concrete example of pure political motive. An example of separatism that still happens is Armed

¹ See Article 3 Model Treaty on Extradition (adopted by General Assembly resolution) 45/116, subsequently amended by General Assembly Resolution 52/88). See also Article 5 point (1) Law Number 1 year 1979 about Extradition.

² Djelantik, S, "Terorisme: Tinjauan Psiko-Politis, Peran Media, Kemiskinan, dan Keamanan Nasional, (Jakarta: Yayasan Pustaka Obor Indonesia, 2011), page4-6. See also Djelantik, S, *Terrorism in Indonesia: the Emergence of West Javanese Terrorist*, East-West Center Paper No. 22, 2006 . Available at www.eastwestcenter.org/fileadmin/stored/pdfs/IGSGwp022.pdf.

³ Duffy, Helen, *The War on Terror' and the Framework of International Law* (Cambridge University Press, 2003), page 32-33

⁴ Rapport, D, in Weinberg, L and Eubangk, W, *An End to the Fourth Wave of Terroris?*, Studies in Conflict and Terrorism, Vol 33, Issue 7, 2010, page 594-602

Separatist Movement (Gerakan Separatis Bersenjata/GSB) in Papua. The reality shows that GSB does exist and influence the society and make a series of armed contact to separate Papua from Indonesian Republic as union country. Rebellions are conducted in two forms namely political front and armed front. The rebels have lived in the society and always tried to be linked-up with population. They have also built regeneration, moreover. The existence of armed separatist movement which has become real threat for Indonesian government sovereign, the unity of Indonesian territory, and the safety of population must be given accurate and quick responses¹. The respond can be compared to that of GAM in Aceh. GAM which was lead by agents from exile was interpreted by Indonesian government as peace disorder. The disobedient movement as also sentenced to be wrong for using terror to the population, both for declaring their disobedience and for spreading fear among the population in order to stop supporting Indonesian army².

These two examples can prove that political motive is so urgent to be punctually defined in Law of Terrorism Combat that there will be no more bias in interpretation between political crime such as separatism that can be in the form of terrorism, or other forms of terrorism crime, and conventional criminal act.

Compared to Russia and China, these two countries have similarities on how they treat separatists in Chechnya and that in minority of Uygur. They broaden the definition of terrorism so wide that cover groups who want to separate from their mother countries. In this case, an adage of “one person’s definition of terrorists is freedom fighter in other person’s mind” is relevant which means that it is difficult to find solution in terms of law upon all kinds of terrorism.³

2.2. *Mere Political Crime and Terrorism Crime with Political Motives*

As mentioned above, the outstanding problem is how to contrast a mere political crime such as separatism movement with terror as mean to achieve goals and terrorism crime with political motive. Punctual definition between these two terms is needed to avoid injustice that might be caused by unclear definition upon them. It is stressed that⁴: “the right to respect for fundamental principles of criminal law, including non-bis-in-idem principle, the nullum crimen sine lege and nulla poena sine lege principles, the presumption of innocence, and the right not be convicted of an offence except on the basis of individual penal responsibility (...) demand that any laws that purport to prescribe conduct relating to terrorism be classified and described in precise and unambiguous language that narrowly defines the punishable offence, and accordingly require a clear definition of criminalized conduct establishing its elements and the factor that distinguish it from behaviors that are not punishable or involve distinct forms of punishment”. The importance of offense formulation (including distinguishable element) from terrorism acts due to the connection, not merely with criminal responsibility and penal law, but also the status and the rights of the suspected/accused of terrorism.

The suspected/accused of terrorism agents are different from that of merely criminal political agents. The suspected/accused of terrorism agents are not allowed to be assumed of having right to ask status as refugee or to ask for political asylum from other country. These matters should be so clear in offense formulation in the law of combating terrorism criminal act that the differences from that of political crime are also clear.

Moreover, it should also be clear enough that when we are discussing terrorism and political crime, we are really discussing different two things. The differences between the two concepts cannot be judged only by excluding the elements of political motive from the formulation of terrorism criminal act. It is necessarily considered that political motives that form the background of the two are different. It should also be examined that the crime of political criminal acts must be judged differently from that of terrorism acts. It is important to differentiate the deliberateness of conducts done by terrorists from that by political criminal agents.⁵

As highlighted above, agents or suspected agents of political crime cannot be extradited which means they have right of political asylum. The reason is that “their rebellion upon legal government” comes from political rights guaranteed in ICCPR (International Covenant on Civil and Political Right-1966). When rebels use violence (as part of separatists movement), the violence must be considered as actions to express their right to determine their own fate. “Internal conflict” between separatists and the government will be examined in the point of view of humanitarian law. In this perspective, therefore, we are talking about the existence or absence of war crime contravention or crime against humanity.

¹ Zebua, Christian, *Strategi Penanganan Gangguan Keamanan Gerakan Separatis Papua*, (Jayapura: Rumah Buku 2014), page 3.

² Solved in political compromy (Helsinki Accord) and the giving of special autonomy upon Nanggroe Aceh Darussalam (NAD) substituting the name of Daerah Istimewa Aceh.

³ Wulandari, Widati “Public Emergency” sebagai alasan mengenyampingkan kewajiban Negara di bawah ICCPR: Reaksi terhadap Terorisme (Makassar: Jurnal Hukum Internasional Vol. I No. 1 Juli 2013), page 26.

⁴ As highlighted by “the inter American Commission on Human Rights” that examines the manifold formulation upon unclear and blurt terrorism offenses. Can be read further in Stainer H. Alston

⁵ Wulandari, Widati “Public Emergency” sebagai alasan mengenyampingkan kewajiban Negara di bawah ICCPR: Reaksi terhadap Terorisme (Makassar: Jurnal Hukum Internasional Vol. I No. 1 Juli 2013), page 27.

Petrus Golose clearly elaborates the reasons that cause terrorism, among others, namely Nationalist-Separatists (movement which has goal of pursuing independence), Ethnocentrism (movement which is formed by belief of race class degree), Revolution (movement that is motivated to conduct coup d'état), Religion (movement that is based on tough school of ideology in religion), Ideology (movement that is based on specific political mainstream), and Mental Disorder which may motivate some body to conduct terrorism¹.

It is necessarily considered that according to Indonesian National Terrorist Prevention Agency (BNPT), at least there are five typologies of radical groups in Indonesia,² namely:

1. Radical in terms of idea of thought

This group belongs to those who are radical in terms of idea or thought, but they do not explore any violence. Hizbut Tahrir Indonesia (HTI) and Majelis Mujahidin Indonesia (MMI) are two examples of this category.

2. Non-Terrorist Radical Group

This group moves in the form of repeated offenses, gangster, or vandalism. An example of this group is Islamic Defender Front or Front Pembela Islam (FPI).

3. Radical Militia

This group belongs to militia who get involve in communal conflicts such as Ambon and Poso conflicts. Examples of this group are Laskar Jihad, Laskar Jundullah, and Laskar Mujahidin Indonesia.

4. Separatist Radical Group

This group has goal of separating island or province from Indonesian Republic as Union Country. GAM in Aceh, GSB in Papua, and Indonesian Islamic Country (NII) are the examples.

5. Terrorism Radical Group

This group has goal of establishing Islamic law by conducting terrorism acts. An example of this group is Jamaah Islamiyah (JI)³.

It is clear that not all terrorism criminal acts are merely caused by political motive against government. In general, terrorism criminal acts are initiated by radical doctrines that construct different reaction. James Adams elaborates that terrorism with political motive is "terrorism with physical violence or physical violence threat by individual or group form political goal, both in the interest or against the existing power, when the acts are intended to shock, to intimidate, or to paralyze greater groups other than victims themselves. Terrorism involves groups who urge to fall down specific regime, to correct national or group, or to disturb international political structure"⁴.

3. Closures

Contrasting between conventional crime and terrorism is not easy. Finding the root of or finding the causes of terrorism criminal act is also not easier. It is important, therefore, to understand the causes that may initiate terrorism. In the perspective of criminology, it can be explained that the reaction of the state upon law contravention must depend on the causes of the contravention (criminal etiology). This approach may give us understanding upon the roots of the problem and, hence, the state may give true reaction to handle the problems. Formulation of terrorism criminal act as stated in Article 6 Law number 15 Year 2003 must be elaborated in lower regulation in order to give more and better explanation on motive and criminal offense; and, later, give law assurance especially on contrasting motives and kinds of criminal act and the condemnation.

Due to the manifold motives that may rise and cause terrorism criminal acts where one of the motives is political one, terrorism, of course, is different from conventional criminal act. As extraordinary crime, thence, terrorism criminal act must be responded extraordinarily (extraordinary crimes require extraordinary measures).

¹ Golose, Petrus Reinhard. 2009. *Deradikalisasi Terorisme: Humanis, Soul Approach dan menyentuh Akar Rumput*, YPKIK, Jakarta

² Addressed by Muslih, the section head of Re-socialization and Rehabilitation Agency of Indonesian National Terrorist Prevention Agency (BNPT) in public dialogue entitled "Radikalisasi, Terorisme, dan Deradikalisasi Paham Radikal" by Indonesian Ulama Assembly (MUI) of Central Java in Hotel Pandanaran Semarang, December 3, 2011.

³ Al Jamaah Al-Islamiyah is organization separated form Jamaah Darus Islam or known as NII. This organization has territory covering South East Asia consisting of Indonesia, Malaysia, Singapore, Thailand, Philipines, Brunei Darussalam, and Kamboja. Established around January 1993 after the separation (imthishal) in internal Darul Islam between Abdullah Sungkar and Anjengan Masduki. One of the reasons is strong criticism uttered by Abdullah Sungkar upon *thoriqot* led by Anjengan Masduki that has been considered to be in lost from salafi jihadi. Abdullah Sungkar went out and established Jamaah Islamiyah. See Solahuddin, *NII sampai Ji, Salafi Jihadi di Indonesia*, Jakarta Komunitas Bambu, 2011, page 277.

⁴ Simela Victor Muhammad, 2002. "Upaya Perserikatan Bangsa-Bangsa Mengatasi Masalah Terorisme", in Poltak Partogi Nainggolah (ed); *Terorisme dan Tata Dunia Baru*. Pusat Pengkajian dan Pelayanan Informasi Sekretariat Jenderal DPR RI, Jakarta, page 16. Quoted from James Adams, *the Financing of Terror: How the Groups that are Terrorizing the World get the Money to Do it*, Simon and Schuster, New York, 1986, page 6.

In writer's opinion, to explore motives and justice upon the law, it is necessary to declare war against terrorism which is materialized in tough policy for the agents with special court system. However, prevention effort (contra-radicalization) and de-radicalization must also continue so that terrorism handling can be comprehensively managed.

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