

Legal Rules Concerning Shoot to Death for Criminal Acts of Terrorism in the Perspective of the Principle of the Prejudiction of Innovality

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ABSTRACT

The state in carrying out the life of the nation and state faces threats that come from within the country and abroad. This study aims to find out the legal rules regarding shooting to death for perpetrators of criminal acts of terrorism in the perspective of the principle of the presumption of innocence, where this case has always been a hot issue in Indonesia, especially when we associate shooting to death or being shot on the spot for perpetrators of criminal acts of terrorism with the principle of presumption of innocence. This research is normative in nature with reference to existing books, journals, and laws and regulations. There are several legal rules that form the basis for doing so/shooting death against terrorism crimes are: Article 48 of the Criminal Code, In Article 49 paragraph (1) of the Criminal Code, In Article 51 of the Criminal Code paragraph (1), National Police Chief Regulation Number 8 of 2009 concerning Implementation of Human Rights Principles and Standards. The principle of presumption of innocence also places him in the Burden of Proof or the burden of proof and it is the duty of the public prosecutor to prove the defendant's guilt, unless the proof of Insanity is imposed on the defendant or the law provides strict provisions for reverse proof. The application of the principle of presumption of innocence must also always uphold human rights that must be respected by everyone.

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1. INTRODUCTION

Terrorism is one form of crime that is in the spotlight in the world, because these actions use violence or threaten with violence against society or national security

regardless of the motive, thereby creating feelings of threat and fear.¹ Hamid Awaluddin argued that acts of terror had become very serious things to deal with. Terrorism, in whatever form and motives behind it, is seen as a movement that destroys human life and dignity because terrorism kills people en masse without..give victims a chance to save themselves. Terrorism is a curse because its actions have killed humans regardless of age, gender, health condition and so on. Above all, acts of terror know no humanity, territory or time limit.²

The crime of terrorism is an Extra Ordinary Crime. Therefore, the Government. Indonesia issued a policy by stipulating Government Regulation in Lieu of Law (Perpu) Number 2 of 2002 concerning the enactment of Perpu Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism, which was followed by the ratification of Law Number 5 of 2003. Article 1 number (2) of the Law – Law Number 15 of 2013.explains that criminal acts of terrorism are all acts that meet the elements of a criminal act with the provisions contained in the law_which regulates the Crime of Terrorism. In Article 1 Paragraph (2) of Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism, what is meant by Terrorism is an act that uses violence or threats of violence that creates an atmosphere of terror or widespread fear, which can cause mass casualties, and/or cause damage or destruction to strategic vital objects, the environment, public facilities, or international facilities with ideological, political, or security disturbance motives³. Therefore, the state has the authority to punish anyone who commits acts or acts of terror as regulated in the Act.

The development of radicalism that led to terrorism is not only symptomatic in Indonesia, various countries of the world have also experienced bomb terror and the magnitude of the influence of global radicalism that has attracted global vigilance to actively engage in increasing internal security and international cooperation to take concrete steps, both at national and international levels by taking all kinds of defense and security lines. This condition is truly astonishing, especially now that Indonesia actually has a National Human Rights Commission and a Human Rights Court that has long worked.⁴

Terrorism is still a crime that is so feared by countries because it is a crime, which is very dangerous and vile against the survival of human life and civilization and is one of the serious threats to the safety of citizens, the sovereignty of the state, as well as a very threatening crime, international in nature, causing a lot of loss of life, danger to security, world peace and harming people's welfare. as in the case that occurred in Indonesia in the last few months, namely the case of an attack by a suspected terrorist at the South Jakarta Police Headquarters. A woman with the initials ZA came to the National Police Headquarters and attacked the guard at the main post using a gun.⁵

Shortly after this case, the suicide bombing case that occurred in Makassar city resurfaced. Makassar Cathedral, South Sulawesi, last March. Lots of terror cases have

¹ Andra Fahreza, 2020, Pencegahan Terorisme Berbasis Masyarakat Dengan Pembentukan Forum Koordinasi Pencegahan Terorisme Di Tiga Provinsi, Jurnal Sosiologi Nusantara, Vol.6 No.1, pp. 14.

² Siti Wulandari, 2020, Penahanan Tersangka Tindak Pidana Terorisme Dalam Perspektif Hak Asasi Manusia, Malang, pp. 2.

³ Undang-Undang Nomor 5 Tahun 2018 Tentang Perubahan Atas Undang-Undang Nomor 15 Tahun 2003 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2002 Tentang Pemberantasan Tindak Pidana Terorisme.

⁴ Imanuel Marthen Dumais, Muhadar Muhadar, Marwati Riza. (2018). The Right of Suspects to Obtain Legal Aid in Criminal Investigation. *Musamus Law Review*, 1(1), 53-62. pp. 54

⁵ <https://www.google.co.id/amp/s/m.bisnis.com/amp/read/20210331/15/1375291/begini-kronologi-penyerangan-mabes-polri-oleh-teroris-wanita> diakses 16 Agustus , 2021 pukul 12:30.

occurred, ranging from threats to bombings that have occurred very much, troubling society. In Indonesia, there have been several previous terrorism cases, such as the Bali Bombing I in 2002, the JW Mariot Bombing in 2003, the Bali Bombing II in 2005, the Ritz Carlton Bombing in 2009, the Az-Dzikra Mosque in 2011, the Bombing in. Sarinah and Mapolresta Solo-in 2016, Kampung Melayu in 2017, and the Surabaya and Sidoarjo bombings in 2018. In addition to the bombing terror, in recent years there have been incidents of attacks carried out by terrorism recedivists.⁶

In addition, there was a massacre case by the terrorist group Mujahidin Indonesia Timur (MIT) led by Ali Kalora which killed four residents of Sigi Regency, Central Sulawesi. So that it is necessary to carry out a planned and sustainable eradication to stop the crime of terrorism, a law is needed which can really deter the perpetrators.

The process for punishing a person or persons who committed the crime of terrorism must be through several stages until finally given a sentence, in criminal procedural law in general there are several stages such as: investigation, investigation, prosecution, trial, and criminal execution.

Eradication--terrorism in fact, the process of law enforcement of criminal acts of terrorism by the state or law enforcement officers often occurs in violations. In the-In handling terrorism crimes, there are still problems that often occur, such as when law enforcement officials carry out various repressive efforts in eradicating criminal acts of terrorism, often ignoring basic humanitarian principles. For example, law enforcement officers.do not hesitate to shoot dead on the spot against someone suspected of being a terrorist, another example relates to someone who suspected of being a terrorist, namely in the event of an error against the arrested person or can also be referred to as (error in persona) who in practice is also not infrequently shot dead or has previously been subjected to acts of violence.

This, of course, is against the due process of law. Moreover, considering that every. Human beings have their own rights, but if they are required to be shot dead as a punishment, they must go through the existing process such as a court decision that has permanent legal force (Inkracht Van geweisde). The existence of an act of shooting to death or execution without a judicial process (an extrajudicial execution) carried out by law enforcement officials constitutes murder against the law and intentionally, carried out with. orders from government or with tacit involvement or consent.

Shooting on the spot can also be an extrajudicial killing which is defined as actions, whatever their form, that causes someone to die without going through the legal process and court decisions carried out by state officials.⁷ However, the perpetrator. As a human being, even though they do inhumane acts, they still have human rights. So even though terrorism is designated as an Extra Ordinary crime that requires special handling. Also. extra enforcement cannot be used as an excuse to be used as a tool or shield for violations of Human Rights (HAM) against perpetrators, although there will be a dilemma in the process.⁸

In a crime-In theory, it is clear that there are violations of human rights, especially for victims, especially the right to live and be free from fear and threats. This not only violates the rights of the victim as a human being but also violates the

⁶ <https://www.cnnindonesia.com/nasional/20210329121848-12-623336/terror-bom-makassar-2-dekade-api-dendam-tak-pernah-padam> diakses 15 Agustus 2021 pukul 00:26.

⁷ Tiya Erniyati, "Extrajudicial Killing Terhadap Terduga Pelaku Tindak Pidana Terorisme Dalam Perspektif Asas Praduga Tak Bersalah", *Jurnal Badamai Law Journal*, Vol. 3, No. 1, 2018, pp. 102

⁸ Fikry Latukau, 2020, *Perlindungan Hukum Hak Asasi Pelaku Terorisme Sebagai Bentuk Penerapan Hukum Yang Berkepastian Dan Berkeadilan*, *Journal of Judicial Review* Vol 22 No.1, pp. 3

principle of the presumption of innocence. This principle is a hope-for the victim because of the principle of presumption of innocence for a person from the time he is suspected of committing a certain crime until a decision that has permanent legal force from a court judge, he still has individual rights as legal citizens. The principle of presumption of innocence. can be said to be a principle that is used as a guide for legal officials in treating suspects or defendants of criminal acts. The logical consequence of the principle of presumption of innocence is the guarantee of protection of the human rights of the suspect/accused of the crime.⁹ The application of these principles in the criminal justice process is very important as a form of respect for human rights. If this principle is not applied, it will have an impact on reducing public trust in the implementation of the criminal justice process.

After looking at the facts and cases that occurred, the author sees the potential for the principle of presumption of innocence against victims of terrorism crimes but is not applied in cases of terrorism terrorism, especially in Indonesia, during the judicial process of criminal acts of terrorism so that victims do not receive their rights as human beings. Therefore, the author wants to examine how the Rules of Shooting Death Law for Criminal Acts of Terrorism in the Perspective of the Presumption of Innocentness.

2. METHOD

The method used in this case study is the normative method, The approach taken is based on the library approach, namely by studying books, journals, laws and regulations, theories, concepts, principles and other documents related to this research by reviewing. This research is research that uses qualitative research methods.¹⁰

3. RESULTS AND DISCUSSION

3.1. The Rules of Shooting Death Law for Terrorism Criminal Acts

The exercise of the authority to shoot dead or be shot on the spot for suspected criminal acts of terrorism committed by members of the Indonesian police in carrying out their duties must of course be in accordance with the legal basis for the implementation of the authority to shoot on the spot or in other. words shot dead without a court decision first, and of course in accordance with the situation and conditions when the order to fire on the spot can be enforced, and also in the execution of the order to fire on the spot must be in accordance with the principles of purpose, balance, the principle of necessity, and the principles of mutual interest and safety.

Basically shooting action..death on the spot becomes a priority if the officer's position is pressed and the perpetrator threatens the safety of members of the Indonesian National Police. In the exercise of the authority to shoot on the spot, one must respect the right to life and the right to be free from torture because both rights are guaranteed by law. The need for an understanding of the code.of ethics and principles/the basis for the use of firearms by members of the National Police in the exercise of the authority to shoot on the spot so that later in the exercise of the

⁹ Candra Vira Faradillah, 2020, *Tinjauan Hukum Pidana Islam Terhadap Asas Praduga Tak Bersalah Dan Pemenuhan Hak-Hak Bagi Terduga Terorisme Yang Ditembak Mati Di Tempat*, Semarang, pp. 8

¹⁰ Lisa Mery, (2019). *The Urgency of Radicalism Regulation in Legal Norms in Indonesia*. *Musamus Law Review*, 2(1), pp. 1-11

authority to shoot at that place it does not violate the law.¹¹ The most important thing in the execution of the firing order in the location must be in accordance with the mechanism for the implementation of shooting on the spot and the permanent procedure for the use of firearms by the Police. In every shooting action at a place, the police are always guided by an authority, namely the authority to act according to, According to his own assessment, this is often misused by unscrupulous members of the police.

There are several legal rules that form the basis for doing so/shooting death against terrorism crimes are:

a) Article 48 of the Criminal Code

Which reads whoever commits an act because of the Overmacht's coercion will not be punished. In terms of,, shooting death for perpetrators of criminal acts of terrorism in the process of arrest by the Indonesian National Police there is an emergency force because the police shoot and die on the spot to prevent casualties from both the police and the wider community .

b) In Article 49 paragraph (1) of the Criminal Code

Noodweer's Forced Defense Regulations. The shooting death in the process of arresting terrorism by the Indonesian National Police is-a forced situation because there is no other way and in terms of defending rights that are preceded by attacks. In the explanation, it is stated that the forced defense can only be carried out on the basis of principle balance, if those who are attacked or threatened can still avoid or escape, the police should not force themselves to shoot under the pretext of forced defense.

c) In Article 51 of the Criminal Code paragraph (1)

Which states that whoever commits an act to carry out the order of the position given by the authority entitled to it, may not be punished. Other actions referred to in number 10 Article 7 of the Criminal Procedure Code (KUHAP) include shooting dead on the spot on people suspected or suspected of being involved in a criminal act, including the crime of terrorism.

d) National Police Chief Regulation Number 8 of 2009 concerning Implementation of Human Rights Principles and Standards

In carrying out the duties of the Indonesian National Police, shooting and death can be carried out at any time to protect the life of a person or other civilians. As is the case according to Article 47 of the Regulation of the National Police Chief Number 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in the Implementation of the Duties of the Indonesian National Police. Which reads The use of firearms should only be used if it is really intended to protect human life. Therefore, it is not uncommon for cases of criminal acts of terrorism to be shot dead by the police so as not to cause wider victims and to avoid more fatal damage.

3.2. Terrorism in the Perspective of the Presumption of Innocentness

We know that the principle of presumption of innocence is basically a manifestation of the function of modern criminal justice which carries out violent takeovers or retaliation. in an institution appointed by the State. Thus, all rights violations committed by a person must be resolved in accordance with applicable legal procedures. This principle states that any person who is suspected, arrested, detained,

¹¹ Agus Salem, "Penggunaan Tindakan Tembak Di Tempat Terhadap Pelaku Terorisme Oleh Densus 88 Dikaitkan Dengan Asas Praduga Tidak Bersalah," *UNES Law Review* 1, no. 2 (2018).

prosecuted and/or brought before the Court, must be presumed innocent until a Court Decision with permanent legal force decides it.¹²

The principle of presumption of innocence also places him in the Burden of Proof or the burden of proof and it is the duty of the public prosecutor to prove the defendant's guilt, unless the proof of Insanity is imposed on the defendant or the law provides strict provisions for reverse proof. The application of the principle of presumption of innocence must also always uphold human rights that must be respected by everyone.

Likewise, perpetrators of terrorism crimes must also be respected, upheld by their nature to live as human nature. The consequence of this situation is that the suspect or defendant of a criminal act of terrorism who is considered guilty must be equal in position before a decision from the relevant court decides the sentence for a criminal act of terrorism. So it can be concluded that the rights of the suspect..cases of criminal acts of terrorism must be respected, and upheld by nature to stay alive. That is the principle of the presumption of innocence in viewing cases of criminal acts of terrorism, especially cases of criminal acts of terrorism in Indonesia.

As the author discussed in the discussion above, the principle of the presumption of innocence must always be fundamental and attached to the interests of human rights and the right to live on this earth. The principle of presumption of innocence or every suspect, arrested, detained and processed or prosecuted must be presumed innocent until a court decision that declares him guilty has permanent legal force.

Principle/this has been explained in Article 8 paragraph 1 of Law no. 48 of 2009 concerning Judicial Power and is also regulated in the explanation_general item 3 letter C of the Criminal Procedure Code. This explains the importance of applying the principle of the presumption of innocence in every case being examined. Because this principle basically must be equipped for the benefit of the suspect. Included in the handling of cases of criminal acts of terrorism are absolute absolutes and their rights must be fulfilled, especially the right to life.

And we can see directly, especially in handling cases of criminal acts of terrorism in Indonesia, really deviate from the principle of presumption of innocence itself, and really deviate from the enforcement of Human Rights (HAM) which should be upheld in Indonesia, especially in terrorism cases. We see that in the handling, many of our law enforcement officers are more likely to execute suspected. terrorism crimes by being shot dead or shot on the spot. Even though it is very wrong if we are guided by the principle of presumption of innocence which is the principle adopted in the judicial legal system in Indonesia.

It also greatly affects the bad image that this country says highly upholds human rights (HAM). However, the facts on the ground are not like that, eliminating someone's life is not the right step to end a legal problem, especially the problem of terrorism in Indonesia. Even with the pretext that there are legal sources that allow shooting and death for suspected terrorist acts. The law enforcement steps themselves must be preceded. Like applying the principle of presumption of innocence first.

¹² Heri Tahir, *Proses Hukum yang Adil dalam Sistem Peradilan Pidana di Indonesia*, Yogyakarta: LaksBang Pressindo, 2010, pp. 17

Even though in Indonesia itself has regulated the regulations regarding the eradication of criminal acts of terrorism in Law no. 15 of 2003. The existing philosophy regarding the eradication of terrorism that terrorists are indeed enemies of mankind, is a crime against civilization, is an International crime and Transnational Organized Crimes. But we also don't forget the purpose and formation of the Law on the Eradication of Criminal Acts of Terrorism is none other than to protect the community, while the paradigm that we must instill in the formation of Law on the Eradication of Criminal Acts of Terrorism, namely protecting the territory of the Unitary State of the Republic of Indonesia, Human Rights and Protection of the Rights of Suspects. And the protection of the suspect's human rights is what we often visit in terms of handling cases of criminal acts of terrorism in Indonesia itself.¹³

In essence, shooting dead or shooting on the spot for perpetrators of criminal acts of terrorism is wrong and deviates greatly from the principle of presumption of innocence and also deviates greatly from human rights that have been upheld in this country. Even though there is a legal axis that regulates it.

4. CONCLUSION

Based on the discussion on the rule of law regarding shooting death for perpetrators of criminal acts of terrorism in the perspective of the presumption of innocence, it can be concluded: There are several legal rules that form the basis for doing so/shooting death against terrorism crimes are: Article 48 of the Criminal Code, In Article 49 paragraph (1) of the Criminal Code, In Article 51 of the Criminal Code paragraph (1), National Police Chief Regulation Number 8 of 2009 concerning Implementation of Human Rights Principles and Standards . The principle of presumption of innocence also places him in the Burden of Proof or the burden of proof and it is the duty of the public prosecutor to prove the defendant's guilt, unless the proof of Insanity is imposed on the defendant or the law provides strict provisions for reverse proof.-The application of the principle of presumption of innocence must also always uphold human rights that..must be respected by everyone. Likewise, perpetrators of terrorism crimes must also be respected, upheld by their nature to live as human nature. The consequence of this situation is that the suspect or defendant of a criminal act of terrorism who is considered guilty must be equal in position before a decision from the relevant court decides the sentence for a criminal act of terrorism. So it can be concluded that the rights of the suspect.cases of criminal acts of terrorism must be respected,and upheld by nature to stay alive. That is the principle of the presumption of innocence in viewing cases of criminal acts of terrorism, especially cases of criminal acts of terrorism in Indonesia.

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¹³ Dr. H. Suharto, SH, MH Perlindungan Tersangka, Terdakwa, dan Korban Tindak Pidana Terorisme dalam Sistem Peradilan Indonesia, Jakarta: PT Refika Aditama, 2007, hlm. 88-89

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