Law Enforcement Cases of Human Rights Violations in Indonesia

Gilang Firman Nugraha

1Masters of Law University of Muhammadiyah Tangerang
*giepho@gmail.com

Abstract

This study discusses the protection of the rights of terrorism suspects in the Indonesian criminal justice system. The rights of suspects, including those considered terrorists, are guaranteed by law. It is the hope of all Indonesian people, the government, and especially law enforcement officers to deal with terrorism crime cases quickly, precisely and correctly. Considering that it is feared that suspects who are suspected of being perpetrators of terrorism will eventually become victims of human rights violations by law enforcement officers (investigators) perhaps because of the influence of foreign pressure, which has dropped the stigma that the suspect is automatically the perpetrator. For example, investigators take acts of terror against suspects in terrorism cases so that they are willing to provide information and admit their actions. This study uses a normative juridical method which aims to analyze the effectiveness of law enforcement in cases of human rights violations in Indonesia. This study uses primary data in the form of reports on investigations of human rights violations and secondary data in the form of primary legal materials and secondary legal materials. Data collection is done through library research. The results of the study indicate that the protection of the suspect's human rights in the Indonesian criminal justice system, especially in national law, is an important part of development in the field of law, especially law enforcement against criminal acts of terrorism. due process model and theory adapted to Pancasila as the basis of the state and the 1945 Constitution.

Key words: human rights, judiciary, rights, terrorism, violations

Introduction

Human Rights (HAM) as a basic right that humans have, their existence is inherent in human nature since birth. It is also a sign that he is a "human". The human being referred to in this case is, the "whole human being" who is the creation of God Almighty, equipped and endowed with a set of natural rights that are very basic in nature, therefore they should not be ignored and marginalized by anyone. Human rights are owned solely because of humans, not because they are given by the state, law or other human gifts. (Lestari, 2019: 15).

The definition of human rights itself has been regulated in Article 1 point 1 of Law Number 39 of 1999 concerning Human Rights which formulates as follows: "Human Rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are gifts. Him who must be respected, upheld and protected by the state, law and government, and everyone for the sake of honor and protection of human dignity and dignity."

Article 1 paragraph (3) of the 1945 Constitution affirms that the state of Indonesia is a state of law, implies that all life structures of the nation, society and state are based on law. Joeniarto formulated as follows, ""The principle of the
rule of law or the principle of the rule of law, which means that in the administration of the state, the actions of its control must be based on the law, not the power or will of the rulers alone with the aim of limiting the power of the ruler and aimed at protecting the interests of the people, namely protection of the human rights of members of the community from arbitrary actions”. (Gunakaya, 2017: 132).

The statement of the rule of law is then marked by the existence of a judicial institution tasked with enforcing the rule of law. As regulated in Article 24 paragraph (1) of the 1945 Constitution, namely the judicial power is an independent power to administer justice in order to uphold law and justice. Then in Article 24 paragraph (2) of the 1945 Constitution it is stated that judicial power is exercised by a Supreme Court and the courts under it in the general court environment, religious court environment, military court environment, state administrative court environment and by a court of law. Constitution. In Law Number 48 of 2009 concerning judicial power, it is also stated that judicial power is the power of an independent state to administer justice in order to uphold rights and justice based on Pancasila and the 1945 Constitution for the implementation of the constitutional state of the Republic of Indonesia.

The political transition in Indonesia that began in 1998 with the fall of the New Order regime and the start of the reform era, the issue of human rights became one of the central issues in those days. One of the pieces of the issue is the demand for settlement of cases of serious violations of human rights that occurred in the past. However, in reality, between the demands and the response from the government in responding to these demands, the results are less than encouraging. The resolution of cases of Human Rights Violations still seems slow, discriminatory, and unfinished while the practice of human rights violations continues and even abuses efforts to uphold human rights occur.

History of Terrorism in Indonesia, Indonesia is a country that has a problem of terrorism which is quite worrying. The series of terrorist attacks, starting with the Christmas Eve Bombings, the Philippine Embassy Bombings, the Bali Bombings I and II, and finally the JW Marriot and Ritz Calton bombings that occurred on July 17, 2009 is an indication that terrorism in Indonesia is a phenomenon. Borrowing the category of the United States Department of Defense regarding the condition of the development of terrorism, Indonesia is included in the category of a critical country, where terrorist groups have entered the country and they have the ability to carry out attack operations and are able to select attack targets selectively, further than that history and objectives the terrorist group's movements are known. This shows that the perpetrators of terrorism are not afraid of the criminal penalties that are threatened against them. Therefore, it can be said that the ideology or radical understanding of the perpetrators of terrorism overcomes their fear of the criminal law that is threatened by terrorists. (Farid, 2010: 108).

The increasingly massive terror against the frame of national unity makes security an issue that is back in the spotlight. The terror in it has threats and is accompanied by extraordinary impacts, besides that terror which is accompanied by growing and widespread threats, especially for actors implementing threats, is not only carried out by one person but also carried out by groups who are exposed and have radical ideas that are extraordinary: normal. The form of handling must still be based on Pancasila and the 1945 Constitution of the Republic of Indonesia, to find out how terror can be categorized as terrorism, it is necessary to identify the act of terrorism itself. The importance of improving the legal rules for the eradication of criminal acts of terrorism by prioritizing the basis of laws and regulations, so that the law enforcement of criminal acts of terrorism prioritizes the principles of justice and certainty. (Sari, 2020: 935–936).

The theoretic crime is a clear violation of human rights, especially for victims, especially the right to live and be free from fear and threats. However, the perpetrator as a human being, despite committing an inhumane act, still has human rights. So that even though terrorism is designated as an Extra Ordinary crime, (Wahid, 2003: 59), which require special handling or extra enforcement cannot be used as an excuse to be used as a tool/shield for human rights violations against perpetrators, although a dilemma will arise in the process.

**Literature Review**


**Method**

The nature of this research is normative juridical. Normative legal research is carried out by examining various legal literature materials. Data collection was carried out through library research to find secondary data using primary, secondary, and tertiary legal materials. Approaches in normative (dogmatic) legal research include: approach,
legislation (statute approach). (Rijadi dan Priyati, 2017: 37). The data analysis technique used by the author in this study is a qualitative data analysis technique, (Sugiyono, 2005: 83). namely the data/legal material is analyzed by means of interpreting the quality of the opinion or response, then explaining it completely and comprehensively regarding various aspects related to the subject matter. (Soemitro, 1982: 93). Furthermore, conclusions will be drawn using the deductive method.qualitative descriptive way.

Results & Discussion

Results
The enforcement of human rights is certainly a reflection or embodiment of the second principle of Pancasila, namely a just and civilized humanity. The enforcement of human rights is not only carried out by state officials but also must be carried out and implemented by all Indonesian people. Historically, the efforts taken to solve human problems have been carried out for a long time in the world. All the thoughts that have developed strengthen the stance on the importance of a human's self-image, namely his independence and freedom. (Lestari, 2019: 15).

When a suspect is detained, he often sees discriminatory treatment by the authorities. As the media has shown of the suspected terrorists they are brought blindfolded with their hands and feet in iron chain cuffs. This action seems to be deliberately shown that terrorism suspects are a very frightening specter, therefore they must be treated differently from other prisoners, with the aim of providing psychological protection and a deterrent effect to terrorist actors. (Latukau, 2020: 11).

Law Number 48 of 2009 concerning Judicial Power which is one of the sources of criminal procedural law, there is a fundamental principle related to the rights of suspects, namely the principle of presumption of innocence. Every person who is suspected, arrested, prosecuted, and/or brought before the Court shall be deemed innocent before a decision is made which declares his guilt and has obtained permanent legal force. Based on the above principle, it is clear that a person suspected of or accused of committing a criminal act must be placed properly in accordance with his dignity as a human being. (Vilano, 2017: 183). Protection of the rights of suspects based on Law Number 15 of 2003 concerning Eradication of Criminal Acts of Terrorism chapter V Article 25 paragraph (1) states that investigations, prosecutions and examinations in courts in cases of criminal acts of terrorism are carried out based on the applicable procedural law, namely the Criminal Procedure Code.

Law Number 15 of 2003 in addition to using general procedural law, namely the Criminal Procedure Code, also uses special procedural law which contains the theory of "crime control model" against suspects with human rights restrictions, namely the things mentioned in Article 28, Article 25 paragraph (2) Article 31 paragraph (1) concerning arrests by investigators can make arrests for a maximum of 7×24 (seven times twenty-four) hours. Detention of suspects for the purposes of investigation and prosecution investigators are authorized to detain suspects for a maximum of 6 (six) months regarding wiretapping conversations by telephone or other means of communication. The rights of victims are regulated in Article 36 which mentions the issue of compensation, restitution and rehabilitation (due process model) there should be a balance between the crime control model and the due process model between the rights of the suspect and the victim. (Soeharto, 2007: 130–131).

The Crime Control Model is based on the assumption that the administration of criminal justice is solely to suppress criminal behavior (criminal conduct), and this is the main objective of the judicial process, because public order and efficiency are prioritized. (Sabuan, 1990: 6). The criminal process is basically a struggle or even a kind of war between two irreconcilable interests, namely the interests of the state and the interests of the individual (the defendant). Here applies what is called the "presumption of guilt" and "quick means" in eradicating crime for efficiency. In practice, this model contains a weakness, namely the frequent occurrence of human rights violations for the sake of efficiency. Therefore, a second model emerged, called the Due Process Model.

The authority possessed by the public prosecutor is to delegate criminal cases to the district court which is required by law to be examined and decided by a judge at a court hearing (Article 1 point 7 of the Criminal Procedure Code), so if investigators are given the authority to detain a suspect for prosecution purposes, Thus the interpretation arises that for the purposes of prosecution, the detention of a suspect for 2 months is the responsibility and authority of the investigator and not the authority of the public prosecutor. This will later make it clear for the suspect/his heirs in exercising their right to know who is responsible for the detention, if at one time he will file a claim for the mistakes made by the officers during the detention period. (Sabuan, 1990: 134–135).

Then the suspect's right to give information freely and the suspect's right to receive legal assistance according to his choice as well as the suspect's right to contact or talk to his legal adviser at any time, although the Criminal Procedure Code is needed to protect and guarantee the rights of the suspect, this provision is often violated. due to unclear terms. The provisions of Article 54 of the Criminal Procedure Code states that for the purpose of defense, a suspect or defendant is entitled to legal assistance from one or more legal advisers during the time and at each stage of examination, according to the procedure specified in this law. Furthermore, Article 55 of the Criminal Procedure Code stipulates that in order to obtain legal counsel as referred to in Article 54, the suspect has the right to choose his own legal advisor and the legal adviser is allowed to visit and talk to the suspect.
Based on the provisions above, it seems that the legislators want to guarantee that suspects during examination will be protected from physical and psychological threats, but the provisions of the articles contained in the Criminal Procedure Code do not provide an explanation as to when this suspect will be examined, because it is impossible during these 24 hours the suspect’s legal advisor will accompany him, what if the physical and psychological threats are carried out at night when his legal advisor is not accompanying him, even though this can be reported to his legal advisor but it still has psychological problems because if the report is submitted by letter, there is a possibility that investigators can open the letter (Article 62 paragraph (2) of the Criminal Procedure Code). (Sabuan, 1990: 136).

Then the process of applying for rehabilitation is carried out by the victim to the Minister of Justice and Human Rights. This provision is confusing because it is not stated in Article 37 paragraph (2) of Law Number 15 of 2003 that rehabilitation is given and included in the court’s decision, why should the victim apply for rehabilitation to the Minister of Justice and Human Rights. If this is intended to claim rights related to physical or psychological healing and recovery or property, it seems that this is also inappropriate, because these other rights are related to financing or finance, it is more appropriate to be handled by the Minister of Finance as is the case with other rights. victims (Article 38 paragraph (1) of Law Number 15 of 2003. (Sabuan, 1990: 138).

**Discussion**

The protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the State, especially the government, to uphold and protect human rights in accordance with the principles of a democratic rule of law. In this case, terrorists can become victims of human rights violations by law enforcement officers (investigators) perhaps because the influence of foreign pressure has dropped the stigma that the suspect is automatically the perpetrator. For example, investigators take actions in the form of "terror" against suspects in terrorism cases so that they are willing to provide information and admit their actions. If that happens, then what investigators are doing is tantamount to disobedience and harassment of their duties as protectors and enforcers of human rights. Human rights in Indonesia are legally regulated and guaranteed. These rules and guarantees can be seen in various positive legal rules of the Indonesian state. These rules are relevant to human rights regulations in international mechanisms. (Hidayat, 2018: 53).

Through human rights pre–positive moral demands can be realized in positive law. On the one hand, human rights express the basic demands of human dignity. But on the other hand, because the demands are formulated as concrete and operational rights or obligations, they can be included in positive law as basic norms in the sense that all other legal norms must not conflict with them. (Suseno, 1988: 121).

The National Human Rights Commission (Komnas HAM), concluded that the cause of death of Siyono, a suspected terrorist arrested by Densus 88, was based on the results of an autopsy conducted by the Indonesian Association of Forensic Doctors and the Muhammadiyah Forensic Doctor Team. The autopsy revealed that the body had 5 (five) left rib fractures, one right rib, broken sternum due to blunt objects, head injuries, and bruises on the back of the body. The results of the autopsy differ from the results of the post–mortem conducted by the police. The head of the National Police Medical and Health Center, Brigadier General Arthur Tampi, stated that the cause of Siyono’s death was fatigue and weakness after fighting with members of Densus 88. The public did not have the capacity to verify the autopsy and post–mortem results, but the public could conclude that there was violence in this case. The police also admitted that there was a procedural error in escorting the suspect. (Wulandari, 2020: 58).

Every torture and cruel, inhuman and/or degrading act or punishment is a violation of human dignity and an essential violation of human rights. No country shall permit or tolerate torture and other cruel, inhuman or degrading acts or punishments. Special circumstances, including domestic political instability or public emergencies, cannot be used as a justification for such actions. (Kunarto, 1996: 85).

**Conclusion**

Based on the description above, it can be concluded that: The protection of the human rights of suspects in the Indonesian criminal justice system, especially in national law, is an important part of development in the legal field, especially law enforcement against criminal acts of terrorism. adheres to the principle of balance between the Crime control model theory and the due process model theory which is adapted to Pancasila as the state basis and the 1945 Constitution of the Republic of Indonesia. The implementation of human rights in the Indonesian criminal justice system has regulated the rights of suspects and defendants, however has not clearly and completely guaranteed compensation, restitution, and rehabilitation for the protection of the rights of suspects.

**References**


