

THE POLICY AND LEGAL POLITICS OF INDONESIAN GOVERNMENT
AGAINST TERRORISM IN INDONESIA

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ABSTRACT

Terrorism has been rampant for the last twenty years in Indonesia, marked by Bali Bombing I and II in Bali, taking hundred of lives, Sidoarjo Bombing incident in a church committed by a family and some others. In order to fight against and eradicate the criminal act, Indonesian needs an appropriate, strong and reliable law enforced to the perpetrators. Indonesian government has done several revisions to its law on the eradication and fighting of terrorism. The last revision is issuing Law Number 5/ 2018 concerning the Eradication of Terrorism. Amendments to the law reflect the dynamics of policy and legal politics against criminal acts of terrorism in Indonesia, so it is necessary to do research on the advantages as well as the disadvantages on the law. The study employs the qualitative approach and gathers data from library research. The results of the study reveals that the existing law still needs revisions in order to eliminate the loopholes that can be used by perpetrators as well as their lawyer to escape from justice.

Keywords: *policy, law politics, terrorism, Indonesia*

1. INTRODUCTION

1.1 Background

In the United States of America, studies on terrorism have existed since the 1960s. The Americans in general and the United States government believe that terrorism is a specific crime with uncommon or unusual consequences. William F. Shughart II states that: “Although the second terrorist wave has been characterized here as primarily left-

wing in origin, the three decades running from 1960 to the fall of the Berlin Wall in 1989 also were marked by the internationalization of terrorism.”¹ However, from the ancient times till the publishing of this article, there is no single definition that adequately describes the many expressions

¹William F. Shughart II., *An analytical history of terrorism, 1945–2000*, Springer, Public Choice, 126, DOI: 10.1007/s11127-006-9043-y, February 2006, p. 26.

of terrorism that have spread throughout history.² Then, from time to time several changes in the context of the perspective of the international world on terrorism have occurred. Such changes have, indeed impact the perspective of Indonesian government on the crime as well the way to fight them.

The Indonesian national legal regime did not recognize a criminal act called terrorism prior to the incident of Bali Bombing 1 that occurred on 12 October 2002 at Paddy's Pub and Sari Club which is located in Legian, Kuta, Bali and near the United States consulate office in Denpasar, Bali. The Bali Bombing 1 incident forced the Indonesian government to issue the Government Regulation in lieu of Law Number 1/2002 concerning the Eradication of Terrorism in Indonesia. Subsequently, there have been various changes to the legislations in the efforts of eradicating the acts of terrorism. Currently, Indonesia calls the law on the eradication of terrorism in Indonesia 'Law of the Republic of Indonesia Number 5/ 2018, concerning the Amendments of Law Number 15/ 2003, concerning the Enactment of the Government Regulation in Lieu of Law Number 1/ 2002 concerning the Eradication of Terrorism to Become Law (LNRI/ 2018 Number 92, TLN-RI 6216). The enactment of the law occurred on June 22 2018, and such name or designation conveys a history of policy dynamics and dynamics of legal

²Wagdy Loza., *The psychology of extremism and terrorism: A Middle-Eastern perspective*, Elsevier: *Aggression and Violent Behavior* 12, doi:10.1016/j.avb.2006.09.001, 2007, p. 142.

politics of the Republic Indonesian against terrorism. It also implies that talking about policy as well as politics is speaking at a philosophical level.

1.2 Problem Formulation

There is an important question regarding the context of the enactment of Law Number 5/ 2018. Why should Indonesia do the revision of the legislation of eradicating terrorism? At this initial stage, of course, we can say that there is a dynamic of policy as well as dynamics in Indonesian national legal politics. But there are still many questions in people's mind who are not satisfied with the answers. Therefore, in order to understand and find out the most comprehensive answers, a study is needed to explore the causes of policy dynamics and the dynamics of legal politics in Indonesia on fighting terrorism.

1.3 Research Purpose

The research aims at exploring and understanding the existence of various contexts that have changed the Indonesia's perspective on the eradication of terrorism, subsequently produce policies and their actualization into Indonesian national legal politics against the eradication of terrorism.

2. LITERATURE REVIEW

2.1 Policy

Muhajir defines policy as an effort to solve social problems for the benefit of society based on the principles of justice and welfare. A good policy must meet, at least four important criteria: (1) increasing the

level of people's lives; (2) presenting justice or fairness, by the law, social justice, and opportunities for individual achievement and creation; (3) providing opportunity to the community to participate actively in discussions, plannings, decisions and implementations; and (4) ensuring a sustainable development.³ By having a different perspective, namely in the context of public policy, Gerston explains that policy is an effort made by government officials at every level of government to solve public problems.⁴ The two thoughts above are sufficient to represent the various thoughts of other experts on policy. If this is related to the policies carried out by the Indonesian State (Indonesian Government and Indoensian Parliament) on the eradication of terrorism, then there is a tetantive conclusion that the changes happening to legislations on eradicating terrorism are due to changes in problems and perspectives in viewing terrorism as a criminal act.

In the context of policies and countermeasures against terrorism in Indonesia, and as a follow-up to the Law of the Republic of Indonesia Number 5/ 2018 concerning the fight against terrorism, a joint decision was signed by various Indonesian government agencies regarding the handling of radicalism on November

³Noeng Muhadjir, Ilmu pendidikan dan Perubahan Sosial. Teori Pendidikan Pelaku Sosial Kreatif. Yogyakarta : Raka Sarasin, th.2000, h. 15

⁴Gerston, L,N, Public Policy Making in A Democratic society : A Guide to CIVIC Engaagement(New York : M.E Sharp, inc, 1992), p.5

2019. The main focus of the joint decision is to strengthen the state apparatus's nationalism insight.⁵ Another important consideration of making the joint decision is that radicalisastion is leading to violent extremism and terrorism.⁶ The Indonesian government does not want its apparatus to become radical which can lead to extremism and terrorism.

2.2 Indonesian Legal Politics

Indonesia adheres to a unique legal system and it can be said to be a hybrid system, because Indonesian constitution recognizes the existence of various judicial environments together. Such unique legal system creates a condition in which various heterogeneous laws apply in society, such as national law (criminal and civil), religion law, traditional or customary law, and even military law.

⁵Menteri Pendayagunaan Aparatur Negara dan Reformasi Birokrasi (Nomor 02 Tahun 2019); Menteri Dalam Negeri (Nomor 300-5499 Tahun 2019); Menteri Hukum dan HAM (Nomor M.HH-03.PW.01.01 Tahun 2019); Menteri Agama (Nomor 977 Tahun 2019); Menteri Pendidikan dan Kebudayaan (Nomor 432/P/2019); Menteri Komunikasi dan Informatika (Nomor 961/SKB/M.KOMINFO/HK.04.02/11/2019); Kepala Badan Nasional Penanggulangan Terorisme (Nomor Kep-250/XI/2019); Kepala Badan Kepegawaian Negara (Nomor 191 Tahun 2019); Kepala Badan Pembinaan Ideologi Pancasila (Nomor 36/K/KS/XI/2019); Ketua Komisi Aparatur Sipil Negara (Nomor 01/SKB/Ka.BPJB/11/2019).

⁶European Commission., "Communication From The Commission to The European Parliament", The Council, The European Economic and Social Committee and The Committee of The Regions-supporting the prevention of radicalisation leading to violent extremism, Brussels: European Commission, 2016, p.2.

In the context of Indonesian national law, there is a dualism of the Indonesian national legal system, reflected by the mixing of the European Continental legal system with the Anglo Saxon (Common Law) legal system. This can be seen from the enactment of the legal system theory⁷ that inspires laws regulating the drafting of laws in Indonesia.⁸

The dualism context of the Indonesian national legal system explained above has put Indonesia in a situation in which the country has a different legal perspective from Europe the United States of America in seeing and eradicating terrorism. In its policy of actualizing the eradication of terrorism through political and legal products, Indonesia separates terrorism from political elements although in the discourses the criminal acts are always associated with ideology and politics.

The United States of America, in its legal perspective, sees that terrorism is related to political globalization and ideological globalization. Such perspective enables the country to make decisions and to implement strategies, called pre-emptive

⁷Pemikiran HLA Hart yang dikembangkan oleh Lawrence Meir Friedman, dapat dilihat pada buku: *American Law An Introduction*, New york: W.W.Norton and Company. 1930

⁸ UU No. 12 Tahun 2011 tentang pembentukan Peraturan Perundang-undangan (LNRI Tahun 2011 No.82 dan TLNRI No.5234), sebagaimana telah diubah dengan UU No. 15 Tahun 2019 tentang Perubahan Undang-Undang No. 12 Tahun 2011 tentang pembentukan Peraturan Perundang-undangan (LNRI Tahun 2019 No.183 dan TLNRI No.6398).

military strikes doctrine⁹ in the Global War on Terror. The country, based on the explanation given by Ansyad Mbai, can even applies the Leader Elimination Strategy¹⁰ that is not possible to be adopted in the Indonesian legal politicities.

2.3 Terrorism

The incidents of terror and terrorism have existed since the invasion and conquest of the people and territory of Sumeria by the Akkadian in 5000BC. This is explained by Philippe Migaux, "*The first Mesopotamian Empire, that of Sargon of Akkad, was founded on terror*"¹¹ although the English word 'terror', first used in 14th century, is originally a Latin phrase '*terrere*' which means to frighten, to scare and to terrify."¹² Meanwhile, based on the data on various events of terror and terrorism actions, it is found out that the initial terrorism is carried out by the state (terror by a country), such as

⁹Sebagaimana di tulis Karl P. Mueller., Jasen J. Castillo., Forrest E. Morgan., Negeen Pegahi., Brian Rosen., "*Striking First-Preemptive and Preventive Attack in U.S. National Security Policy*", Santa Monica- Arlington- Pittsburgh: RAND Corporation-RAND Project Air Force, 2006.

¹⁰Ansyad Mbai, disampaikan dalam paparan dan slide pada seminar Urgensi Penguatan Undang-Undang Terorisme, bertempat di Sekolah Tinggi Hukum Militer, Jakarta Pusat, tanggal 8 Maret 2016

¹¹Gérard Chaliand, dan Arnaud Blin (ed)., *The history of terrorism : from antiquity to al Qaeda*, (Philippe Migaux Contributor for *The Roots of Islamic Radicalism*) London-England: University of California Press, Ltd., 2007, hlm. vii.

¹²Zakir Minhas, dan Altaf Qadir., *The Us War on Terror and The Drone Attacks in Fata, Pakistan*, *Pakistan Annual Research Journal*, Vol. 50, 2014 hlm. 16.

monarchies (Maximilien Robespierre), which committed ‘mass execution of 17, 000 prisoners in order to establish a deterrent effect on their political opponents.’¹³

Based on the context of policy and legal politics, it can be seen that Indonesia has been nervous as well as confused in dealing with terrorism. This can be drawn from Tito Karnavian's statement, “It was about ten years before the Bali terrorism attack I occurred in 2001, Indonesia had received information from Malaysia regarding a terrorism network called Al-Jamaah Al-Islamiyah.”¹⁴ Due to the fact that the name carries the name of Islam, which is a sensitive matter in the context of ideology and politics in Indonesia, so that the Indonesia government tries not to really respond to this information and the organization.

In that context above, Karnavian would like to say that a gap has been formed, wherein international conventions do not view terrorism as part of crimes that carry political motives. If politics is a form of philosophical thought then terrorism will disappear when its substance is raised into a

philosophical thinking. In philosophical thinking, terrorism is no longer called terrorism but it has another name and form: hegemony that cannot be bargained with; authority that cannot be bargained with; natural resources control cannot be bargained with; market struggle cannot be bargained with; and some others that cannot be bargained with; and finally the new name and form of terrorism will be based on the ideas “the ideology of the ‘new terrorism’ conjures up the terrorist threat as a force that cannot be bargained with.”¹⁵

2.4 Indonesia

Indonesia is the largest archipelago country in world and occupies the 14th position based on the width of its land. The country has hundreds of local cultures and languages and has a population of 270,203,917 people¹⁶ with Muslims as much as 86.70%.¹⁷ The most crucial thing in the context of terrorism is that geostrategic points its finger at Islam; meaning that Indonesia has been one of several countries in the world that have been the focus of the world in the context of Global War on Terror. This is

¹³Ganewati Wuryandari., Politik Luar Negeri Indonesia Dalam Menghadapi Isu Terorisme Internasional (*Indonesian Foreign Policy in Dealing With International Terrorism Issue*, Lembaga Ilmu Pengetahuan Indonesia (LIPI): Jurnal Penelitian Politik, Volume 11 No. 2 Desember 2014, hlm. 75.

¹⁴Tito Karnavian., “Ancaman Radikalisme dan terorisme di Indonesia” (kuliah umum), Jakarta: Perguruan Tinggi Ilmu Kepolisian, 19 September 2017.

¹⁵Jonny Burnett., Dave Whyte., *Embedded Expertise and the New Terrorism (stated: Laquer's text The New Terrorism, published in 1999, sought to establish the parameters for studying a new form of political violence.)*, *Journal for Crime, Conflict and the Media* 1 (4), 2005, hlm. 14.

¹⁶Hasil sensus penduduk tahun 2020, yang di ekspos pada tanggal 21 Januari 2021 https://www.bps.go.id/website/materi_ind/materiBrsI nd-20210121151046.pdf

¹⁷Berdasarkan data Kementerian Agama Republik Indonesia, <https://web.archive.org/web/20200903221250/https://data.kemenag.go.id/agamadashboard/statistik/umat>

also in line with what Angel Rabasa et. al., state, “Indonesia’s status as the world’s largest Muslim majority country and its geostrategic importance.”¹⁸

3. METHOD

3.1 Approaches and Method

The approach employed in the study is a policy approach and legal politics. Meanwhile, the method used is qualitative because policy and politics cannot be actualized in statistical figures. This is in line with Thomas S. Eberle states, “Any investigation which does not make use of statistical procedures is called ‘qualitative’ nowadays, as if this were a quality label in itself.”¹⁹ Therefore, in this article there is no context of population and sample as well as operational of variables and other things that characterize quantitative methods.

3.2 Data Collection Technique

Policies and their product on legal politics in the form of Law of the Republic of Indonesia Number 5/ 2018 concerning the Eradication of Terrorism has been passed on June 22 2018. This means that the actual

¹⁸Angel Rabasa., Steven Boraz., Peter Chalk., Kim Cragin., Theodore W. Karasik., Jennifer D. P. Moroney., Kevin A. O’Brien., John E. Peters., “*Ungoverned Territories-Understanding and Reducing Terrorism Risks*”, Santa Monica-Arlington-Pittsburgh: RAND Corporation, 2007, p. 142.

¹⁹Thomas S. Eberle., “Promoting Qualitative Research in Switzerland” [19 paragraphs]. *Forum Qualitative Sozialforschung / Forum: Qualitative Social Research* ((ISSN 1438-5627), *Forum Qualitative Social Research* [On-line Journal] Vol.6(2), 2005, Art. 31, pp. 1-10 (5), <http://nbn-resolving.de/urn:nbn:de:0114-fqs0502311>, <http://www.qualitative-research.net/fqs-texte/2-05/05-2-31-e.htm>

events or policy axiology and legal politics is over. Thus, the data collection technique that can be used to collect information on past events is library research.

3.3 Data Analisis Technique

Data analysis processes are carried out by classifying the data into valid data that will be used and invalid data that will be discarded. Then, there will be comparative data and supporting data. The next step is the author completes the data with relevant theories with the subject of the discussion on policy and legal politics against terrorism in Indonesia. Finally, the author writes the results of the discussions.

4. DISCUSSION (Analysis and Synthetic)

It is impossible to immediately make a justification for the problem “Why should Indonesia do the revisions on Law Number 15/2018 concerning the Eradication of Terrorism?” The revision processes occurred in three different periods of government (2002–2018) and it will continue²⁰ because of the impact of its geostrategic; the impact of conflicts occurring in Syria; the impact of conflicts occurring in Afghanistan; the impact of global terrorism movements, such Al-Qaeda and ISIS; the impact of Islamphobia; the impact of the returns of

²⁰Berkelanjutan dengan adanya keputusan bersama lembaga pemerintahan setingkat menteri pada tahun 2019, kemudian terdapat delapan konteks klausul pasal UU No. 5 tahun 2018 yang harus diterbitkan keputusan presiden sehingga dapat operasional)

Indonesian citizens who do 'jihad' abroad; the impact of white supremacy; the impact of labeling homegrown terrorism; the impact of refugees staying in Indonesia; the impact of the threats of embargo dan economic assassination; the impact of Global War on Terror; and many others.

There are so many aspects that influence the policy and Indonesian legal politics on eradicating terrorism. Such situation and condition has pushed Indonesian to do various revisions to its legislations on eradicating terrorism in Indonesia. We can trace back the dynamics of these policies and legal politics through the process of revising and amending Law Number 15/2018 concerning the Eradication of Terrorism in Indonesia as follows:

a. The issuing of a Indonesian Government Regulation in Lieu of Law Number 1/ 2002 concerning the Eradication of Terrorism (Perpu No. 1/ 2002).

A scientific investigation proces has been applied to Bali Bombing I in 2001 based on the Government Regulation in Lieu of Law Number 1/ 2002 concerning the Eradication of Terrorism. The ratification of the Law was done as a result of Bali Bombing I incident whih occured on 12 October 2002. Basically, the investigative activities of Bali Bombing I could be carried out using the existing laws and regulations in Indonesia. But, if a special law or regulations on eradicating terrorism are not

issued or ratified at that time, it is likely not to satisfy the international community.

Such dissatisfaction of the international community happens because before the Bali Bombing I incident occured, several terrorism attacks had been committed to several targets in the United States of America, such as the World Trade Center (WTC) in New York City and Pentagon Building in Washington D.C. in 2001.

Such analysis above is based on the statement delivered by the President of the United States of Amaerica, Goerge Bush in West Point, "Our war on terror begins with Al-Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated. **Either you are with us or you are with the terrorists,**"²¹ as well as the ratification of the resolution of the United Nations stating that, "Security Council condemns bomb attacks in Bali, Indonesia and regards that such atcs as threat to the international peace." The Resolution Number 1438 (2002) adopted unanimously stating that the United Nations (1) Condemns in the strongest terms the bomb attack in Bali, Indonesia on 12 October 2002 in which so many lives were claimed and people injured, as well as other recent terrorist acts in various countries, and regards such acts, like any act of international terrorism, as the threat to international peace and security, and (2) Expresses its deepest sympathy and

²¹Rekaman ucapan president George Bush ini dapat di lihat secara online dengan kata kunci (keyword): speeches of President George W. Bush at West Point's.

condolences to the Government and people of Indonesia and to the victims of the bomb attacks and their families.”²²

By looking at the the discussion above, it is clear that the policies and legal politics that produced the legal products in the form of Government Regulations in Lieu of Law Number 1/ 2002 concerning the Eradication of Terrorism are caused by international pressure or in different contexts are called geostrategic influences (geopolitics and geoeconomics). Such situation and condition have made the political legal product can not be categorized into a law which has to go through the procedures of a national legislation program. The law has been made as a government regulation in lieu of a law due to the hectic and limited time the Indonesian government has to pass it.

Based on a decree of the Indonesian Constitutional Court²³, there are three three compelling circumstances that make the President issue a government regulation in lieu of a law. They are (1) an urgent need, which requires a law to resolve legal problems based on the existing law; (2) the law needed to solve the problem does not yet exist because it has not been drafted so that there is a legal vacuum or the law required already exists but it is considered unable to solve the problem; (3) issuing a new law that can used to resolve such legal problems takes a long time because of the procedures it has to go through, so it is necessary to issue a government regulation

²²UN Security Council Resolution 1438 (2002)

²³Putusan Mahkamah Konstitusi Nomor 138/PUU-VII/2009 **tanggal** 8 Februari 2010

to replace a law in order to speed up the process.

b. The issuing of Law Number 15/ 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1/ 2002 concerning the Eradication of Terrorism into a Law.

The product of legal politics in the form of government regulations in lieu of laws is a temporary legal product. It is issued due to a quite critical, compelling and emergency situation. It must be replaced with a legal political product in the form of a law when the situation changes.

For the purposes of issuing legal political products in the form of laws, the Indonesian government has submitted four draft of laws against terrorism²⁴, namely: (1) draft of law on the Establishment of the Government Regulation in Lieu of Law Number 1/ 2002 into a Law; (2) draft of law on the Stipulation of the Government Regulation in Lieu of Law Number 2/ 2002 concerning the Enactment of the Government Regulation in Lieu of Law Number 1/ 2002 on Bali Bombing 1 incident to become a Law; (3) draft of law on the Eradication of Terrorism; and (4) draft of law on the Enactment of the Law on the Eradication of Terrorism on Bali Bombing1 incident.

Indonesian legal and political policy policies as mentioned in Law Number 12/ 2011 are later amended by Law Number 15/

²⁴Surat Presiden Republik Indonesia, Megawati Soekarno Putri, No. R. 13/PU/XI/2002 kepada Pimpinan DPR RI.

2019 has closed the possibility of applying a retroactive law enforcement (backward applicable). Therefore, it can be automatically concluded that the first two draft of laws above are contrary to the policy and legal politics of Indonesia, so that the Indonesian Parleiment follows up by the last two drafts: (1) draft of law on the Establishment of Government Regulation in Lieu of Law Number 1/ 2002 to become a Law; and (2) draft of law on the Eradication of Terrorism.

The proposed government initiative in the form of a draft of law concerning the eradication of terrorism is followed up by the Indonesian Parliament by forming a special committee²⁵ to discuss the draft of law on eradicating terrorism. The special committee of the Indonesian Parliament agreed to eliminate political offenses from the draft of law on eradicating terrorism, to uphold human rights and democracy, and to comply with the Geneva conventions which state that terrorism is an 'extra ordinary crime,' in the scope of overcoming crimes as well as cknowledging the weaknesses of the existing and prevailing laws so that a new law is necessarily needed. They are all important policies in Indonesian legal politics and in the world political constellation related to the eradication terrorism.

It is later found out that there is a political element in the draft of law on the eradication of terrorism. This leaves one

alternative policy and Indonesian legal politics: the enactment of the Stipulation of Government Regulation in Lieu of Law Number 1/ 2002 to become a law. Then, the new law is born. It is called Law Number 15/ 2003 concerning the Stipulation of Government Regulation in Lieu of Law Number 1/ 2002 concerning the Eradication of Terrorism to become a Law.

c. The Ratification of Law Number 5/ 2018 on Eradicating Terrorism

The process of how Indonesian government and Indonesian Parleiment agree to pass the Law Number 15/ 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1/ 2002 concerning the Eradication of Terrorism to become a law has gained achievements and appreciation from the international community. Indonesia has even become an example to other countries in the world in eradicating terrorism due to the fact that there are many terrorists can be brought to the courtroom. This implies that that Indonesia has enforced the law properly and does not implement a war strategy.

However, law enforcement officers especially the Indonesian National Police, experience quite a number of obstacles. Some of them are the inaccessibilities of pre-terrorism activities, such as war training and other contexts such as gathering activities to prepare for terror attacks. These obstacles are also felt by many parties who are paying attention on the eradication of terrorism in Indonesia as stated in the Academic Paper of the Draft of Law on the

²⁵Keputusan DPR RI Nomor: 23/DPR RI/III/2002-2003 yang ditandatangani Ir.Akbar Tandjung, Ketua DPR RI periode 1999-2004.

amendments to Law Number 15/ 2003 concerning the Eradication of Terrorism written by the National Law Development Agency in 2011.²⁶

Various obstacles to the eradication of terrorism occur when law enforcement officers employ Law Number 15/ 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1/ 2002 concerning the Eradication of Terrorism to become Law. Such obstacles have become inputs for the next national legislation program and a new law exists: Law Number 5/ 2018 on Eradicating Terrorism and Amending Law Number 15/ 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1/ 2002 concerning the Eradication of Terrorism to Become Law (LNRI 2018 Number 92, TLN-RI 6216). The new law is passed and enacted on June 22, 2018.

d. The signing of a joint decision with various Indonesian government agencies regarding the handling of radicalism in order to strengthen the national insight of the Indonesian civil servant in November 2019

It has been stated in literature review that in November 2019, a joint decree on handling radicalism in the context of strengthening the national insight or nationalism of the civil servant or state civil apparatus is signed by the leadership of the relevant agencies or institutions. It is indeed

²⁶https://www.bphn.go.id/data/documents/naskah_akademik_ruu_tentang_pemberantasan_tindak_pidana_terorisme.pdf.

a phenomenon because the context of radicalism which becomes the focus of material is still in the scope of eradicating terrorism, while the focus of the object is the civil servant or state civil apparatus.

There is no relationship with the article clause in the body of Law Number 5/ 2018 concerning the Eradication of Terrorism. But, it is found out a relationship in the general part of the explanation of Law of the Republic of Indonesia Number 5/ 2018 concerning the Eradication of Terrorism as follows: "Terrorism can be accompanied by ideological or political motives, or certain goals and other goals that are personal, economic, and radicalism that endanger the state ideology and the state security. Therefore, terrorism is always punishable by serious punishments using the criminal law within the jurisdiction of the state."²⁷ This sentence explicitly states that there is a terrorism which comes from radicalism, but not all radicalisms will lead to terrorism. There are so many radicalisms that endanger state ideology and state security because they refer to all ideologies (ism) that are rooted and contrary to the state ideology and state security, such as communism, Marxism, Leninism, liberalism, socialism, secularism, hedonism, chauvinism, capitalism, and many others. Thus, the joint decision is a policy phenomenon and legal politics in the framework of eradicating terrorism in Indonesia.

²⁷Undang-Undang Nomor: 5 Tahun 2018 tentang Pemberantasan Tindak Pidana Terorisme, Penjelasan bagian umum.

e. There are eight clauses of articles in Law Number 5/ 2018 concerning the Eradication of Terrorism which need a government regulation for their implementations and must be completed before 22 June 2019

It has been stated in the literature review on sub-terrorism that Indonesia has been confused or felt uncertainty in dealing with terrorism. This can be seen by the existence of eight clauses in Law Number 5/ 2018 concerning the Eradication of Terrorism which require government regulations for their implementation. The eight clauses are as follows:

- 1) Article 33 talks about the protection of parties who are involved in the activities of eradicating and handling terrorism, which is continued by Article 34 paragraph (1), stating that investigators, public prosecutors, judges and correctional officers and their families have the rights to such protections in the form of:
 - (a) protection of personal security from physical and mental threats;
 - (b) confidentiality of identity; and
 - (c) other forms of protections that are specifically proposed by investigators, public prosecutors, judges and correctional officers which will be further regulated by a government regulation.
- 2) Article 43B talks about compensation from the government and restitution from the perpetrators. Moreover, the article states that the determination of the amount of loss, payment of

compensation and restitution is regulated by a government regulation.

- 3) Article 34C talks about further provisions regarding the procedure and implementation of national preparedness that shall be regulated by a government regulation.
- 4) Article 34C also talks about further provisions regarding the procedures for the implementation of counter-radicalization activities that shall be regulated by a government regulation.
- 5) Article 34D talks about further provisions regarding the implementation of deradicalization activities that shall be regulated in a government regulation.
- 6) Articles 43E, 43F and 43G talk about further provisions regarding the organizational structure of a national counterterrorism agency are regulated by a presidential regulation.
- 7) Article 43I talks about the involvement of the Indonesian Armed Forces (TNI) in countering terrorism. Further provisions regarding the implementation of the involvement of the TNI in dealing with acts of terrorism as referred to Article 43i are regulated by a presidential regulation after consulting with the Indonesian Parliament.
- 8) Article 43L talks about direct victims of terrorism incidents occurring before this Law comes into effect and have not been able to get the rights as mentioned above are entitled to compensation, medical assistance, or psychosocial and psychological rehabilitation, which is regulated by a government regulation.

The eight context clauses of several articles in Law Number 5/ 2018 concerning the Eradication of Terrorism are policies and legal politics which then become the stumbling blocks in eradicating terrorism because Article 46B states that the regulations of the implementation of the Law must be stipulated not later than one year from the enactment of this Law. This means that government regulations and implementing regulations for Law Number 5/ 2018 concerning the Eradication of Terrorism must be completed before June 22, 2019. However, based on the electronic data and administrative data it cannot be denied that government regulations and implementing regulations of the Law is completed on June 22, 2019.

5. CONCLUSIONS

Based on the perspectives of policies and legal politics, it can be concluded that:

a. Indonesia has been on the right track in implementing its policies and legal politics in order to eradicate terrorism by eliminating political offenses from the draft of law on eradicating terrorism, upholding human rights and democracy, and complying with the Geneva convention stating that terrorism is an “extra ordinary crime.” This means that it is within the scope of overcoming crimes not in the context of war. Because of these policies and legal politics, at the same time the policies and legal politics are able to maintain the integrity of the unitary of the Republic of Indonesia.

b. There are uncertainties in the policies and legal politics of eradicating terrorism in Indonesia due to international pressures. Such situation must be dealt with in the context of prioritizing legal legality and the sovereignty of the Republic of Indonesia.

6. IMPLICATIONS

Indonesian government policies and legal politics in the form of a legal product, called Law Number 5/ 2018 concerning the Eradication of Terrorism have created eight legal holes which are quite dangerous in eradicating terrorism, especially if the perpetrators understand the law and or hire lawyers who understand well the Law. Therefore, it is recommended that the executive, legislative and judiciary of Indonesia immediately close the legal loopholes, so that a bigger impact can be anticipated earlier.

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