The Civil and Military Role Models in Overcoming the Threat of Terrorism

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Abstract

The level of terrorism threat exceeds the capacity of law enforcement agencies. In principle, law enforcement is designed to use force gradually, in accordance with the scale of the threat faced, ranging from physical tools (batons, tasers, pepper spray) to the use of firearms. The purpose of this research is to analyze that the tasks of law enforcement are not designed to deal with threats involving heavy weapons and weapons of mass destruction (CBRN), whereas the military is designed to be capable of addressing threats on such a scale. This research is a qualitative study that uses a descriptive approach by systematically gathering data as described during the research. The results of this research show that in the domestic context, the role of the military in counterterrorism is determined by each country's constitution/laws, history, and the complexity of the terrorism threats faced. To date, there are no international laws that prohibit the active involvement/role of the military in domestic counterterrorism. The UN leaves the policy of military involvement in domestic counterterrorism to each individual country, as long as each country adheres to the principles of upholding human rights.

I. Introduction

The threat of terrorism in the various forms mentioned above shows the complexity and diversity of tactics used by terrorist groups in the high-tech era (Iswahyudi, 2017). One trend that needs to be watched out for is the use of nuclear, chemical, biological and radioactive substances, known as NUBIKARA or Chemical Biological Radiological Nuclear (CBRN). Terrorist groups have shown interest in

developing the capability to use these materials in their attacks. An example of a terrorist attack involving CBRN elements is the Aum Shinkiriyo incident in Tokyo. The attacks resulted in heavy losses, including deaths and serious injuries. In addition, Iran has also demonstrated the ability to enrich uranium, which increases the potential nuclear threat in the region.

In addition to such large-scale attacks, there is also the attack method "lone wolf terrorism," in which individuals or small groups plan and carry out attacks independently. This method can involve chemical elements studied via the internet or information obtained independently (Picart, 2015). A recent example is the bomb attack in Surabaya by a family who used chemicals in their attack. Apart from that, the threat of terrorism also involves information technology and cyber terrorism. Cyberattacks can damage critical infrastructure, take over communications systems, or steal sensitive data. This is an increasingly relevant threat in a world that continues to advance technologically. It is necessary to be aware of the potential use of disease outbreaks such as the Corona Virus (Covid-19) sebagai metode serangan terorisme. Although no such incidents have occurred, the impact of this pandemic has reminded us of its vulnerability to biological threats. In facing these various forms of terrorism threats, international cooperation, effective intelligence, development of strict regulations, and increased public awareness are important components in maintaining global and national security.

2. Research Method

This research is an in-depth evaluation effort that refers to law and empirical research. The analysis in this research is based on observations of models of civil and military roles in countering terrorism, which are influenced by several key factors, such as the constitution or laws of each country, history, and the complexity of the terrorist threat faced. The approaches used in this research are very diverse, including four main approaches. First, a statutory approach is used to analyze the legal framework that regulates the role of civilians and the military in countering terrorism in various countries. Second, the conceptual approach helps in understanding the concepts and principles underlying civil and military actions in dealing with terrorism. Third, a comparative approach is used to compare the role of civilians and the military in various country contexts. This allows research to identify differences and similarities in the approaches taken by different countries. Finally, the historical and philosophical approach helps in exploring the historical and philosophical roots behind the civil and military role models in overcoming terrorism. This helps in understanding the evolution of thoughts and actions that have shaped the current framework.

Data collection and processing in this research was carried out qualitatively, which allowed researchers to gain an in-depth understanding of this issue (Sonata, 2014). The collected written legal material is then organized according to the research problem being investigated. After that, the legal material is evaluated and analyzed by referring to the relevant theoretical framework. It is hoped that the results of this assessment will be able to reveal the meaning, position and legal implications of the role of civilians and the military in overcoming terrorism appropriately. This research is an important contribution in understanding how countries deal with the threat of acts of terrorism through legal frameworks and the role of civilians and the military in different contexts.

3. Results and Discussion

Military Role in Countering Terrorism: What and How?

The phenomenon of terrorism can be seen as a form of ordinary crime or crimes against the state. Michael Head classifies crimes against the state as including: Acts of Subversion, Rebellion, Treason, mass/group insubordination (mutiny), acts of spying/espionage, provocation/propaganda against the state, mass riots and terrorism (Rahendra, 2021). The concept of crimes against the state is determined by several factors, namely (Amunuddin, 2006):

1. The substance of the crime has the potential to oppose/change the state constitution.
2. Replace/overthrow the legitimate government.
3. The threat significantly affects the life of the nation and state.
4. The government (executive) and the judiciary face threats from (some) of the public in implementing a rule/prohibition.
5. The emergence of demands for the state to use its rights to mobilize its armed/military forces to face a problem.

In the context of responding to terrorism, the government of a country faces two main principle choices, namely that terrorism is a pure criminal act (criminal act) or terrorism is an act that declares war against the country (act of war). For example, the US as a state entity uses both options at once. With the enactment of the US PATRIOT ACT after the 9/11 attacks, the US stated firmly the concept of terrorism as an "act of crime" (at the domestic level) as well as a "Crime against the US" (at the international/Lugri level). This causes the choice of response to be carried out in two parallel ways, namely domestically the US applies the principle of terrorism as a criminal act by prioritizing

law enforcement actions and internationally applies the principle of acts of terrorism as "an Act of War" by deploying military force. The US can use all forms of force (including military) to deal with terrorism, because constitutionally, the US recognizes that terrorism is a crime against the state, which can threaten the safety and interests of the US as a nation in the global order (Wiratama, 2012). The things that the US and other western countries are considering in implementing these principles in parallel are: (International Commission on the Futures of Education & Indonesian National Commission for UNESCO, 2022):

1. The LN's global political policies and the existence of expansive military alliances.
2. The phenomenon of terrorism involves groups that are transnational in nature and are too dangerous to be confronted by domestic law enforcement.
3. Differences in domestic legal norms from each country which can be exploited by terrorists in other countries in order to seek a "safe heaven".

It can be concluded that terrorism is a global crime, it must be faced with global actions and responses, every country must be able to use all the resources it has as one unit to deal with terrorism. The Role of the Military in Countering Terrorism. In general, the military's role in countering terrorism can be divided into two levels, namely at the historical level and the international/foreign level. At the international level, the military's role tends to be that of a "leading actor", especially for countries that have global foreign policies and have expansive coalitions/alliances (NATO and other multinational coalitions). The role of the military in this context is a response to "terrorism as an act of war" (Rahendra, 2021). Aksi militer ini dilakukan pasca serangan 9/11 berdasarkan (O'Meara, 2022):

1. The principle of "self defense" from the UN Charter Article 51.
2. UN Resolution number 1368 dated September 12 2001, which states that each member country can take all necessary steps to deal with terrorism. In a historical context, the military's role in countering terrorism is determined by the history of the constitution/laws of each country, the history and complexity of the terrorist threat it faces. To date, there are no international legal regulations that prohibit the military's active involvement/role in dealing with historical terrorism. The UN has handed over the policy of military involvement in dealing with historical terrorism to each country, as long as each country still upholds the principles of upholding human rights. In general, there are 3 forms of military role in overcoming terrorism. The principle of "self defense" from the UN Charter Article 5, namely (Triskaputri, 2019):
   a. The military as the "leading actor", law enforcement agencies as assistants. This

concept is implemented by Egypt, Jordan, Lebanon, Pakistan, Colombia, Mali and Nigeria

b. The military is the same as the police in countering terrorism. In this context, the military and police have the same role or share roles at the same level in countering domestic terrorism. This concept is implemented in several African countries such as Uganda and Congo.

c. The military provides support in countering terrorism. The nature of support can be automatic as mandated by law (without a request from the police) or based on a request mechanism from law enforcement. The level of role given can vary, namely (Yunanto et al., 2015):

 1) The role of being fully involved in a certain counter-terrorism operation (within a certain time period and area) with the Police.

 2) Limited/specific role in counter-terrorism operations such as intelligence, support, deployment of Nubika units, deployment of sea and air defense equipment in counter-terrorism, etc..

d. The military has a law enforcement role in certain fields in countering terrorism. The clearest example is the use of the US Coast Guard (USCG) in law enforcement and countering terrorism in US maritime areas. The USCG is a unique US military organization, because it is under the Department of Homeland Security (DHS), not under the Department of Defense (DoD), but has the authority to enforce historical law in US maritime areas. When can a country use the military to face the threat of terrorism? The use of the military to face the threat of terrorism in a country is carried out with several principle considerations (Tim Pokja Modul Pembinaan Kesadaran Bela Negara, 2019):

 1) 1) The level of terrorism threat exceeds the historical capacity of law enforcement. In principle, law enforcers are designed to use violence in stages (level of using force) according to the scale of the threat they face, starting from physical tools (batons, tasers, paper spray) to the use of firearms. Law enforcement is not designed to deal with threats involving heavy weapons and weapons of mass destruction (CBRN). Meanwhile, the military is designed to be able to face threats on this scale. Several cases show the intention and tendency of terrorist groups to use heavy weapons and CBRN such as in Syria, the "liquid bomb plot" case in England, the recruitment of Pakistani nuclear experts by AlQaeda in 2010, etc.

 2) The principle of the threat of transnational terrorism. Law enforcement is specific, meaning that it is limited by the sovereign territory of a country or limited by the nationalist status of the perpetrator, so that a country cannot

enforce the law in the territory of another country, because it can be considered as something against the sovereignty of another country but military deployment is in the context of a "war on the country." ” can be carried out in other countries as long as it is covered by UN resolutions and uses the principle of "self defense".

3) The spectrum of terrorism threats is multi-dimensional, not only carried out on land, but also waters/sea and air. In principle, law enforcers are not designed to operate multi-dimensional, because they are designed to serve within the historical community (within community/society) in order to create security and social order, although currently there is a tendency for police units to be militarized in several countries..

4) Mandated by the laws in force in the country or based on the country's political decision mechanism. This is determined by several things, such as how the terrorist threat is perceived by a country, the level of potential terrorist threat that a country faces and must anticipate and so on. Objects that the military must protect from the threat of terrorism.

In the context of countering domestic terrorism, the objects that the military must protect from the threat of terrorism are as follows (Ansori et al., 2019):

1. State-owned warships and military aircraft. Warships and military aircraft have the right to sovereign immunity based on UNCLOS 1982, so that the military itself has the right to protect these objects from the threat of terrorist attacks.

2. Military bases and other military objects of a tactical and strategic nature.

3. The security of the Head of State and VVIP/VIP is handed over to the military based on law. There are some countries that hand over the security of their Head of State to special agencies other than the military.

4. Representatives/embassies of countries abroad (in the context of the threat of terrorism abroad).

5. Border security in the face of the threat of terrorism can be handed over to the military, depending on (Yunanto et al., 2017):

   a. Karakteristik ancaman di wilayah perbatasan (Luas/panjang perbatasan, bentuk medan, kon disi/situasi di negara lain yang berbatasan, dan lain-lain).

   b. Ada tidaknya lembaga yang khusus menangani masalah pengamanan perbatasan.

The Concept and Model of Civil-Military Cooperation (Cimic) in Facing the Threat of Terrorism

Until now there is no ideal Civil-Military Cooperation/Cimic concept and

model that is universal (can be applied in every country) in dealing with the threat of terrorism. Each country has a different Cimic model depending on the situation and context of countering terrorism in each country, including the following:

1. The US applies a "Whole of Government Approach" system in handling terrorism abroad. In the domestic context, Cimic in the US is regulated by the National Incidents Management Systems (NIMS) and National Response Framework (NRF) mechanisms with automatic military involvement (US National Guard) including dealing with terror attacks. Cimic facing terrorism in the UK is regulated by the Military Aids to Civil Authority (MACA) mechanism (Mardiansyah, 2020).

2. In the UK, in certain situations, British special forces (SAS and SBS) can be involved in domestic anti-terror operations at the request of the Police and carried out behind closed doors.

3. In Singapore, Cimic in countering terrorism is carried out within the framework of cooperation between the Ministry of Home Affairs (MHA) and the Ministry of Defense (MINDEF) which gives authority to the Singapore Armed Forces (SAF) to carry out reconnaissance and intercept suspicious aircraft in the airspace , surveillance and interception of suspicious vessels in territorial waters as well as securing vital objects on the mainland of Singapore (Rizal, 2009).

4. In Australia, Cimic is carried out within the framework of cooperation between the Australian Defense Force (ADF) and the Australian Government Counter Terrorism Committee (CTC). Within the framework of this collaboration, the ADF formed special units prepared to counter domestic terrorism, such as Special Operation Command D (SOCOMD), Reserve Response Force (RRF), Joint Offshore Protection Command (JOPC) which is a joint maritime security task force between the military and the Customs Agency. Australia and the formation of a Special Forces Task Group (SFTG) tasked with dealing with the threat of terrorism during the implementation of certain important activities such as the 2006 Commonwealth Games(Hardiana et al., 2014).

5. In the Philippines, Cimic's efforts to overcome terrorism are implemented through the "Bayanihan Plan" concept. This concept emphasizes two principles, namely, the Whole of Nation Approach (using all elements possessed by the Philippines) and the People Centered Approach (prioritizing the welfare of the Filipino people). Through this concept, the Philippines is trying to change the paradigm that in order to eradicate terrorist groups (ASG, JI network, Maute Group, Ansharu Khilafah Philippines/AKP, NPA, etc.) a military approach must be accompanied by a development and community welfare approach involving all stakeholders. related holders (Arya, 2008).

6. In Indonesia, the police play a major role in counter-terrorism efforts. Perpu Number 1 and 2 of 2002, which later became Law Number 15 of 2003, gave the Police authority to handle terrorism issues. The police formed a special unit known as the anti-terror Special Detachment (Densus) 88, which is responsible for carrying out arrests, searching and confiscating evidence related to acts of terrorism. Apart from that, the Indonesian government also established the National Counter-Terrorism Agency (BNPT) through Presidential Regulation (Perpres) Number 46 of 2010. The BNPT's task is to coordinate government agencies involved in efforts to tackle terrorism. In accordance with the description above, the conclusion is that the approach applied in counter-terrorism in Indonesia is a criminal justice system that emphasizes law enforcement. However, the government also supports the TNI in dealing with terrorism, in accordance with Article 2 of the TNI Law Number 34/2004, which allows the TNI to carry out Military Operations Other Than War (OMSP) including in the context of handling acts of terrorism (Rosadi, 2018). Thus, the TNI also plays a role in providing assistance to the Police to maintain public order and security, in accordance with the provisions of applicable law. In general, the ideal CIMIC model and concept in dealing with terrorism is that the more resources and potential a country has (including the military), it will produce better and more comprehensive solutions, as long as the implementation is coordinated and controlled. (Sriyanto, 2022).

International law does not strictly regulate the role of the military in dealing with the threat of terrorism (Eliza et al., 2015). Various international legal instruments produced by the UN emphasize countries that ratify them to guide 4 (four) strategic pillars in using all the resources they have in overcoming terrorism, namely (Zulfikar, 2017):

1. Make efforts to prevent conditions that support the spread of terrorism in their respective countries.
2. Carry out efforts to prevent and overcome terrorism by mobilizing all resources within the framework of national and international law.
3. Make efforts to increase the country's capacity in countering terrorism.
4. Make efforts to ensure that the state respects human rights and prioritizes the law in overcoming terrorism.

Specifically, Mr Sestito from the UN Counter Terrorism Committee (CTC) guarantees that the authority to use a country's resources, including the military, is handed over to each country. The UN encourages every country to be able to use the resources each country has maximally (including the military) in efforts to overcome terrorism. The

more people involved, according to the principle of "Unity of Efforts", the better. The task of the UN, in this case the UN CTC, is to ensure that the efforts made by each country continue to prioritize the principles of human rights, humanitarian law and positive law that apply universally.

When viewed from the characteristics, countering terrorism by the military is an asymmetrical task, which begins with an informed declaration by the government against a group of perpetrators. There are several advantages and disadvantages to this approach. The war model approach allows active military involvement in counter-terrorism efforts. Supported by war capabilities and military intelligence, countries can maximize their resilience in carrying out counter-terrorism tasks. However, there are also weaknesses in the war model approach in overcoming terrorist crimes, which can be explained as follows (Stritzke, 2009):

1. First, the securitization process positions terrorist groups as a threat to the state and tends to highlight the role of these non-state actors.
2. Second, without realizing it, the use of the war model approach generally creates generalizations about opponents, can trap certain groups, whether based on ethnicity, religion or race.
3. Third, the war model approach can give rise to the principle of achieving it at all costs, even if it means sacrificing people's lives and public facilities.

So a war model or war approach in overcoming terrorism could potentially threaten the privacy of local residents or communities and override the human rights of suspects. Meanwhile, the criminal justice system approach prioritizes efforts to counter terrorism through the legal process. In this framework, the arrest of terrorists and their trial is the responsibility of civil or law enforcement officials, with the aim of bringing terrorist perpetrators to justice and ensuring their legal accountability. This aims to protect the human rights of individuals who are suspects in terrorism cases. Therefore, it is important to differentiate terrorism from ordinary crime or combatant groups (Renwick & Treverton, 2008). In this approach, efforts to avoid stereotyping and selecting targets based on group profiles are more possible, because criminals tend to be diverse and do not represent one particular group. (Stritzke, 2009). Through this legal approach, priority is given to individual rights, the principle of presumption of innocence, protection of the rights of the accused, and civil liberties under the law. Although states continue to consider terrorism a serious crime, this model emphasizes the importance of ensuring that the rights of individuals accused of terrorism are respected and that they receive fair treatment within the legal jurisdiction of the state concerned. The criminal justice system approach emphasizes how the state provides appropriate punishment fairly and based on the law to criminals, rather than just

focusing on efforts to prevent and disable perpetrators. (Steinberg & Estrin, 2014).

4. Conclusion

The criminal justice system approach in resolving acts of terrorism also has obstacles, including that terrorist groups have more complex global networks than criminal groups. Furthermore, in carrying out their actions, terrorist groups are also driven by political factors, such as resistance to globalization which results in acts of anarchy, rebellion and armed violence. Then, unlike ordinary criminal groups, there are even terrorist groups whose aim is to control part of a country's territory in order to make it their base of operations. In counter-terrorism practice, it is rare for a country to fully embrace one of the two approaches, namely the war model or the criminal justice system. Both theoretical approaches are not yet fully capable of creating an adequate framework for dealing with the current challenges of terrorism. However, countries usually tend to use one of these two approaches in their efforts to eradicate terrorism, focusing on law enforcement or a military approach. To overcome obstacles in resolving acts of terrorism, a holistic approach is needed that combines legal and military aspects. Countries need to increase international cooperation in sharing intelligence and resources, as well as strengthen regional cooperation in fighting terrorism. Additionally, it is important to understand the root causes of terrorism, including the political and social factors that drive it, and work together to address this problem. An approach that combines prevention, effective law enforcement, rehabilitation, and diplomatic efforts can help reduce the threat of terrorism in an effective and sustainable manner

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