

Legal Comparison of Counter-Terrorism Regulations in Indonesia and Malaysia

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Abstract

This study aims to explain the legal comparison of counterterrorism regulations in Indonesia and Malaysia. This is qualitative descriptive research which uses descriptive analysis. This research employs case approach and statute approach. The data was collected from primary legal materials as well as secondary legal materials. The findings reveal that anti-terrorism countermeasures have been governed in Indonesia by the anti-terrorism act, which focuses on countermeasures after a terrorist attack and prevention which gives Densus 88 the authority to investigate individuals suspected of being part of a terrorist group. Meanwhile, Malaysia has issued the ISA or Internal Security Act since 1960 as a form of defense against terrorist groups. The ISA is a regulation dealing specifically with terrorism cases, in which there are amendments in the form of authority granted to national security forces to arrest and detain individuals who are considered dangerous to national security without justice for 2 years. This policy ultimately created friction among the people because it was considered a weapon that could silence people's aspirations. With the many polemics and cons that side by side with the ISA, this is what ultimately made Malaysia revoke the ISA. As such, it can be concluded that terrorism cases are not cases that can be ignored because they involve life safety and national stability. The legal foundations for this issue must take into account a number of factors, including the principle of humanity or human rights. Regulations made specifically to handle this case will be one of the important points in the sovereignty and stability of a country, this is because terrorism cases involve many aspects in that country.

Keywords

anti-terrorism act; counter-terrorism regulations; isa; terrorism



I. Introduction

Since 2000, cases of terrorism were not considered taboo or unusual to the Indonesian people. The occurrence of several terrorist cases that have occurred in several regions has left its own fear and trauma which makes people feel uncomfortable with national security. The bombing that occurred in front of the Philippine Ambassador's house in Menteng on August 1, 2000 resulted in 2 deaths and 21 injuries. This action was initiated and carried out by members of the Jama'ah Islamiyah network group which is an extremist group (Irawan, 2018).

Four months later, on December 24, 2000 to be exact, there were bombings targeting 38 churches in several areas, namely Jakarta, Pekanbaru, Medan, Bandung, Batam, Mojokerto, Mataram, Sukabumi and several other areas. The incident, known as the Christmas Eve bombing, resulted in 19 deaths and 120 injuries (Irawan, 2018).

The incident that took place in Bali on October 12, 2002 ultimately became the most significant of the many acts of terrorism that happened in Indonesia. The attacks took place

at three different locations at the same time, namely at Paddy's Pub and Sari Club which were then followed by an attack near the United States Consulate General's Office. The case known as the Bali Bombing resulted in the death of 202 people, consisting of 164 foreigners who came from 24 countries and 38 domestic citizens, and resulted in 209 injuries (Irawan, 2018).

The terrible events that occurred certainly became a conversation that spread throughout the international world. Reporting that was informed by various media coverage presented topics that were divided into various groups of people. Indonesian people were likewise burdened with terror of events that may take place anywhere, at any moment, and to anybody. Survivors were also suffered from traumatic memories. In the investigation, this terrorism case was carried out by several people who were members of a radical group acting in the name of religious interests. For them, their actions were a way of jihad that could bring good to them and their group as they have eradicated things that were considered to be not good. Apart from being traumatized by the incident, this case also left people feeling suspicious about certain groups.

Based on this background, this study seeks to reveal the legal comparison of counter-terrorism regulations in Indonesia and Malaysia. Thus, these findings will highlight policies regarding counter-terrorism in Indonesia and Malaysia.

II. Research Method

This was qualitative descriptive research which uses descriptive analysis. The method used was the case approach, with this approach the author could analyze based on norms or principles in legal practice. In addition, this study also employed a statute approach. Meanwhile, the data was collected from primary legal materials as well as secondary legal materials.

III. Result and Discussion

3.1 Handling of Terrorism Cases in Indonesia

The security of the country was widely shaken by the incident which not only resulted in material losses but also endangered the safety of these lives. As a result, this case naturally creates a different perspective for the state security apparatus as a party obligated to safeguard national security in its entirety.

The Bali Bombing case became the starting point for the creation of a Government Regulation in Lieu of Law of the Republic of Indonesia Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism. Such Government Regulation was made as a consideration of how dangerous the terrorist incidents that have occurred with the various things that have resulted in the loss of life and others. As stated in Chapter 1 Article 2 regarding general provisions that: "The eradication of criminal acts of terrorism in this Government Regulation in lieu of Law is a policy and strategic steps to strengthen public order and public safety while upholding the law and human rights, not discriminatory, whether based on ethnicity, religion, race, as well as between groups".

This regulation covers perpetrators of acts of terrorism that have occurred in Indonesia with the authority given to the national security apparatus to arrest and prosecute perpetrators of terrorism cases. This was in line with what is stated in Chapter III Article 7 concerning Criminal Acts of Terrorism which reads "Anyone who deliberately uses violence or threats of violence with the intent to create a climate of terror or fear or inflict

mass casualties by denying others of their freedom or causing loss of life or property, or to inflict damage or destruction on strategically essential objects, or the environment, or public facilities, or international facilities, will be sentenced to imprisonment for not more than life."

This regulation, which forms the Legal Protection and authority for the state security apparatus for the perpetrators of terrorism, forms the basis for investigations into the perpetrators of the terrorist incident. The urgency of terrorism cases that occurred in Indonesia was also the reason for the passing of Law Number 15 of 2003 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2002 became Law (Yehosua, 2013). However, this does not necessarily solve the problem of terrorism in Indonesia. This was because the applicable law on acts of terrorism only limits authority to handling terrorism cases that have occurred. The law does not regulate the authority for preventive actions that can be taken before an incident of attack and terrorism occurs.

Even though there have been numerous laws passed that particularly control acts of terrorism, there have still been many instances of terrorism that have taken place. This is something that should be taken into mind. As happened on August 5, 2003, a bomb exploded from a car at the JW Marriott hotel in Kuningan area. This incident resulted in 9 people being killed and 53 people being injured. Furthermore, a series of suicide bombings continued to occur in Indonesia, such as the 2004 Australian Embassy bombing, the 2nd Bali bombing in 2005, the suicide bombing at the Cirebon Police in 2011, the Thamrin bombing and the 2016 Surakarta Police Headquarters bombing, the 2017 Kampung Melayu Busway stop bombing and others.

The series of events that shook national security also stole the government's high attention. Legislation that has been enacted in fact only has an impact on countermeasures after a terrorist incident. Solutions as prevention have also become a matter of discussion by several agencies related to national security. This also urged the National Police Headquarters to reorganize the Anti-terror Directorate IV by issuing Chief of Police Decree No. 30/VI/2003 regarding the formation of Densus 88 Anti-Terror which is specifically tasked with handling terrorism cases.

After the ratification of Law No. 15 of 2003 concerning acts of terrorism, the government also issued Law No. 6 of 2006 concerning Ratification of the International Convention for the Eradication of Terrorism Financing, 1999) and also Law No. 9 of 2013 concerning the Prevention and Eradication of Terrorism Financing Crimes. This condition was based on the fact that terrorism was an act carried out by a certain group which has a national and international network as a supporter of funds in every act of terror committed. With the law that regulates the prevention and eradication of criminal acts of terrorism funding, the government has the right to identify, detect and freeze funds that will be used to support acts of terrorism, which can then be taken by the state based on national law.

In addition to taking precautions in the aspect of financing terrorism, the government also later passed Law no. 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism to Become Law (Carolina, 2019). In this anti-terrorism act, the apparatus concerned, in this case, is the Densus 88 team (Special Detachment 88 (Anti-Terror)), which has the authority to take preventive action against a person or group that has a possible relationship with a terrorist network. There are several changes to the articles contained in the previous law. In addition to the changes made to several articles, there are also additional articles, one of which is Article 10A, one of which reads "Any person who deliberately trades potential materials as explosives or trades chemical weapons, biological weapons, radiology, microorganisms, nuclear materials,

radioactivity or its components to commit the crime of terrorism as referred to in Article 9 or Article 10 shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 7 (seven) years”. This article could explain that not only the perpetrators who are directly involved in acts of terrorism will be prosecuted, but also the perpetrators who assist the movement behind the scenes of acts of terrorism.

There were also additions in the form of Article 12A and Article 12B which contain the involvement of parties who recruit terrorist members and also members who take part in recruitment or training in terrorist networks. Furthermore, there was an addition to Article 28A which reads "The public prosecutor examines the case dossier for the Criminal Act of Terrorism within a maximum period of 21 (twenty one) days from the date the dossier from the investigator is received". Likewise, Article 31 has its context changed, which discusses the authority of investigators to investigate and also to intercept communication access used by suspected terrorists for the purpose of preventing acts of terrorism. This wiretapping was allowed to find out the planning and even locations related to planning acts of terrorism.

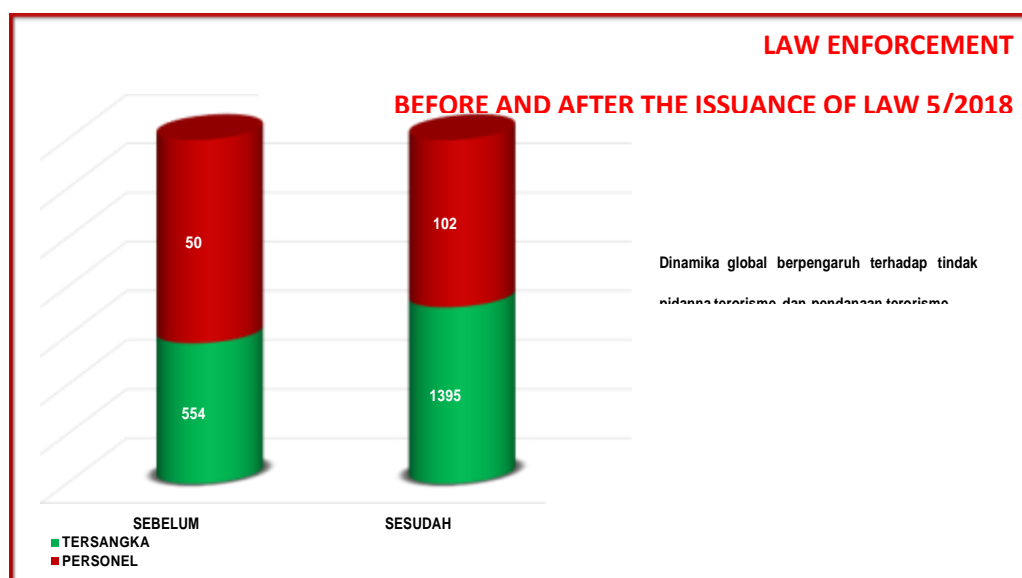


Figure 1. Law Enforcement before and after the issuance of Law 5/2018

The various things that have been done by the government as described above, starting from the formation and ratification of regulations specifically dealing with terrorism cases, then also the formation of a special team authorized to handle and prevent acts of terrorism, have the main goal of eradicating everything that can provide opportunities for acts of terror. It even passed a law dealing with the financing of terrorism as a form of prevention. The following is a chart picture regarding the legislative process related to terrorism cases:

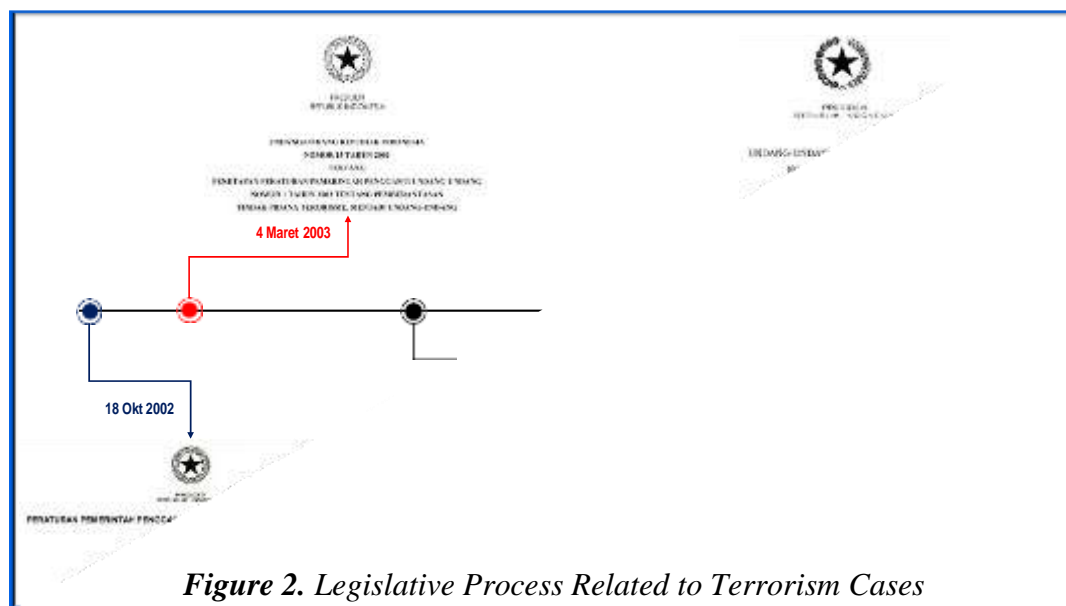


Figure 2. Legislative Process Related to Terrorism Cases

Regarding terrorism cases, Indonesia was not the only country that seriously discusses handling such cases. Allied countries, Malaysia and Singapore were also participating in trying to do things that can be done as a prevention of terror cases. What's more, the superpower, namely America, also enforces a rule that specifically deals with terrorism. If Indonesia has an anti-terrorism act as a form of preventing terrorism, then Malaysia also has an ISA (Internal Security Act) (Amnesty International, 2003).

3.1 Handling of Malaysia-Indonesia Terrorism Cases

Terrorism was not a crime that only threatens the sovereignty of Indonesia, but also other countries, one of which is Malaysia. Unlike Indonesia, which is ranked 35th as a country with a ranking of terrorism cases in 2019 through research conducted by the Institute for Economics and Peace regarding the global terrorist index (Christy, 2020). Throughout the year, cases of terrorism always occur in a country with many fatalities. The following is statistical data on the number of victims caused by terrorism cases (data source: ourworldindata.org): (Ridwan, 2022)

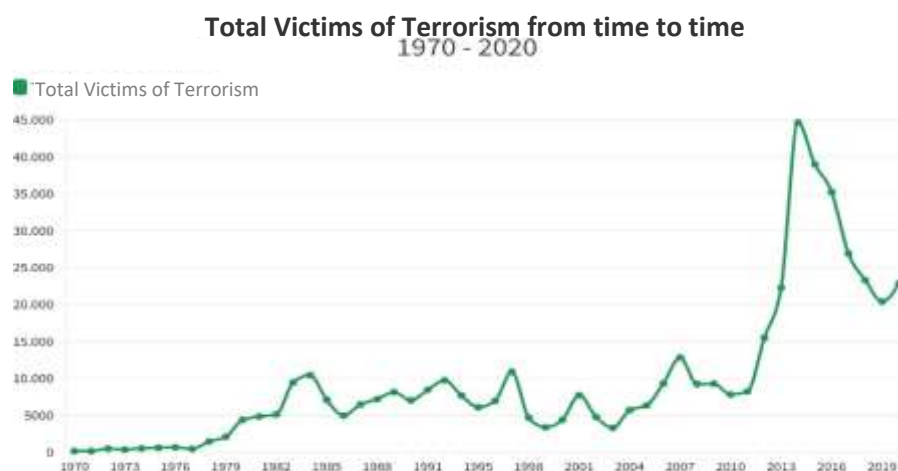
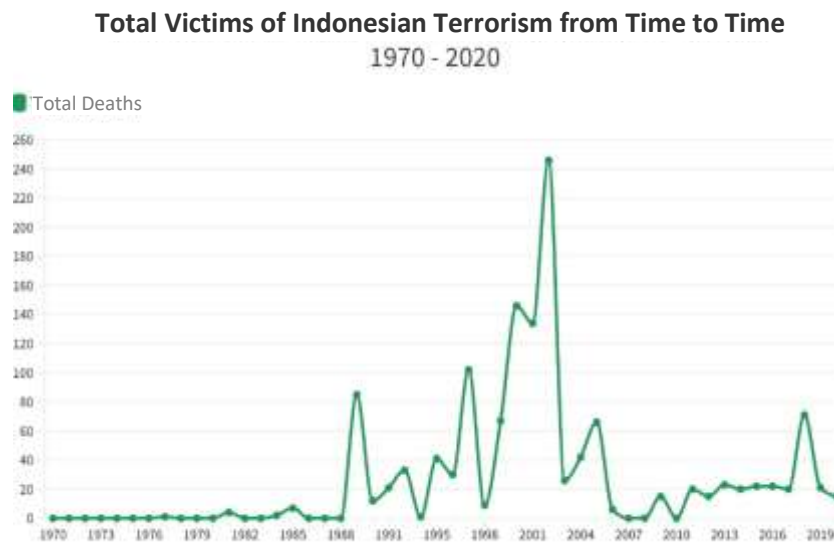


Figure 3. Total Victims of Terrorism over Time
Source: Our World in Data

While the following is the total scale of victims of terrorism in Indonesia (data source: ourworldindata.org):



Source: Our World in Data

Figure 4. Total Victims of Terrorism over Time

Looking at these data, it can be seen that cases of terrorism have decreased and also increased markedly, so that serious efforts are needed to deal with this case. Indonesia is a sovereign country that has an ideology based on Pancasila. Ideology is a reflection of the identity of a country, so that the values that become the ideology also have an important role in the rules that must be carried out in various state activities. The values contained in Pancasila uphold the principles of humanity and harmony among fellow Indonesians. For the purpose of becoming a country that provides security and comfort in life, preventing activities that are referred to as cases of terrorism is one thing that must be considered.

The existence of an anti-terrorism act in Indonesia, which gives the national security apparatus the authority to take preventative action, has a significant effect on the number of cases of terrorism that occur in the country. The authority to carry out investigations of individuals or groups suspected of being able to become an opportunity to dismantle plans before the action is carried out.

It has been proven that in August 2021, the Special Anti-terror Special Detachment 88 of the National Police had succeeded in arresting 53 terrorist suspects spread across several provinces. Apart from arresting terrorist networks, Special Detachment 88 also succeeded in uncovering the organization that was the mastermind behind the funding of terrorist acts originating from the Syam Organizer Foundation as the mastermind behind the Jemaah Islamiyah terrorist organization (Rahmawaty & Sabarudin, 2021). Furthermore, in October 2022, Densus again arrested a terrorist network in the Sumenep area (Fawaidi, 2022).

One month later, Densus 88 again arrested a number of suspected perpetrators who were affiliated with the terrorist network in Riau in September 2022 (Ramadhan, 2022). And finally informed that the team also arrested a number of suspected terrorists in the Sukoharjo area (CNN Indonesia, 2022). This shows that Indonesia is still overshadowed by a number of radical groups that can threaten the sovereignty and security of the state anytime and anywhere. And as a special team that handles terrorism cases, Detachment 88 also succeeded in finding terrorist networks before the heinous act was carried out.

Turning to neighboring countries, namely Malaysia, which once passed the Internal Security Act (ISA) as a special rule in handling terrorism cases that had been enforced since 1960. ISA, which was a rule abandoned by the British colonial government, was once used by the Malaysian government in dealing with the terrorism crisis after the case of 9/11 that attacked America. Under this regulation, Malaysian security forces are given the authority to arrest and detain suspected terrorists without trial. This authority is based on the ISA rules contained in Article 8 (1) where there is authority given to the Minister of Home Affairs of Malaysia to detain a person if it is deemed that the person is considered dangerous to the security of the state with a period of detention without justice for 2 years (CRS, 2009). This has become a polemic in the implementation of ISA among Malaysian society until there was a massive demonstration in Kuala Lumpur in August 2009. In this demonstration, around 500 demonstrators were arrested and detained for 2 years without trial because they were considered to have participated in an illegal organization. With so many disagreements over the implementation of the ISA, in the end the Malaysian government revoked the ISA in April 2012 due to the abuse of this rule which is often used for political purposes in silencing the opposition.

After the ISA was repealed as a special regulation on terrorism cases in Malaysia, the Security Violation and Special Measures Act (SOSMA) was issued shortly after the emergence of the ISIS terrorist group in 2014. This SOSMA covers judicial rules for cases of violations aimed at creating fear. This rule also regulates actions that support terrorist acts, be it funding or carrying out acts of terror.

Furthermore, in 2015 Malaysia again issued special anti-terrorism regulations, namely the Anti-Terrorism Act (POTA) and the Law on Special Measures Against Terrorism in Foreign Countries (SMATA). The law authorizes the security forces to arrest and detain individuals suspected of cooperating with terrorist groups. As a form of implementation of the deradicalization movement, the Malaysian government provides detention houses for perpetrators of acts of terrorism to be given instructions. This proved to have a positive impact where when a total of 229 terrorists were caught and released, only 7 defendants were caught again as suspected terrorists.

This deradicalization program is filled with a counseling program that provides direction and there is also a post-release program which involves the perpetrator's family to reduce the possibility that he will return to take part in radical group activities.

If we look at the efforts made by the governments of Indonesia and Malaysia as a form of preventing and deradicalizing terrorism, these two countries play a vital role, each in their own unique way, and each with their own features. There were rules that became the legal basis of authority for the national security apparatus in carrying out arrests and investigations of suspected terrorists in each of the rules passed by the two countries, thus helping to prevent acts of terror from occurring.

IV. Conclusion

Terrorism is an act carried out individually or in groups with the aim of hurting or destroying or even killing the lives of predetermined targets in order to achieve personal goals or gains. Cases of terrorism that occur have a very bad impact both materially and on the safety of one's soul. In Indonesia, cases of terrorism have increased since the beginning of 2000, until it reached its climax in the Bali Bombing case in 2002 which made the government pay more serious attention in handling the case. Until the issuance of Government regulation No. 1 of 2002 which specifically deals with terrorism which was then passed in 2003 as Law no. 15 of 2003 (Charlan, 2019). The government's special

attention in responding to terrorism cases is also listed in Law No. 6 of 2006 and Law No. 9 of 2013 which discusses funding as a supporter of acts of terror in Indonesia. All regulatory processes governing this act of terrorism ultimately lead to Law no. 5 of 2018 which is the result of a revision of the previous law.

This law, known as the anti-terrorism act, does not only focus on countermeasures after an act of terror has occurred, but also seeks to prevent the Special Detachment 88 from having the authority to investigate individuals who are suspected of being part of a terrorist group.

Not only in Indonesia, the same thing also happened in Malaysia. The country that is allied with Indonesia has also implemented the ISA or Internal Security Act since 1960 as a form of defense against terrorist groups. The ISA is a regulation dealing specifically with terrorism cases, in which there are amendments in the form of authority granted to national security forces to arrest and detain individuals who are considered dangerous to national security without trial for 2 years. This policy ultimately created friction among the people because it was considered a weapon that could silence people's aspirations. With the many polemics and cons that go hand in hand with the ISA, this is what ultimately made Malaysia revoke the ISA.

From these things, it can be concluded that terrorism cases are not cases that can be ignored because they involve life safety and national stability. Various things that form the legal basis for this case must pay attention to several things, one of which is the principle of humanity or human rights. Regulations made specifically to handle this case will be one of the important points in the sovereignty and stability of a country, this is because terrorism cases involve many aspects in that country.

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