



Analysis of Special Provisions for Arresting Terrorism Suspects

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Abstract. *The crime of terrorism is a very dangerous crime and can destroy a country. Apart from that, the crime of terrorism is also a crime that is neatly organized so it is difficult to uncover. In this regard, arresting perpetrators of criminal acts of terrorism is also very difficult and requires special provisions. The aim of writing this article is to discuss the specifics of arrest provisions as regulated in positive law. The method used in writing this article is of a normative type with a statutory approach. The results of this research state that giving a longer period of time, namely 7x24 hours and which can be extended to 14x24 hours, is aimed at giving law enforcement officers enough time to arrest terrorism suspects who are certainly not easy to find.*

Keywords: *arrest, terrorism, suspect*

Abstrak. Tindak pidana terorisme merupakan kejahatan yang sangat berbahaya dan dapat memporakporandakan suatu negara. Selain itu kejahatan terorisme juga merupakan kejahatan yang terorganisir dengan rapi sehingga sulit untuk diungkap. Berkaitan dengan hal tersebut maka penangkapan pelaku tindak pidana terorisme juga sangatlah susah sehingga memerlukan sebuah ketentuan khusus. Penulisan artikel ini bertujuan untuk membahas terkait dengan kekhususan ketentuan penangkapan sebagaimana diatur dalam hukum positif. Metode yang digunakan dalam penulisan artikel ini berjenis normatif dengan pendekatan perundang-undangan. Hasil penelitian ini menyebutkan bahwa pemberian jangka waktu yang lebih lama yakni 7x24 jam dan dapat diperpanjang menjadi 14x24 jam adalah bertujuan untuk memberikan waktu yang cukup kepada aparat penegak hukum untuk melakukan penangkapan terduga terorisme yang tentu tidak mudah untuk ditemukan.

Kata kunci: penangkapan, terorisme, tersangka

BACKGROUND

Criminal procedural law is legal regulations intended to enable the implementation of material criminal law, where criminal procedural law regulates, among other things, the duties and authorities of investigators, investigators, public prosecutors and judges, as well as other parties involved in a criminal case. such as suspects, defendants, witnesses, and so on (Hiariej, 2020). Most of the criminal procedural provisions that apply to general criminal offenses have been compiled in Law Number 8 of 1981 concerning Criminal Procedure Law, which is also called the Criminal Procedure Code, which is usually abbreviated as KUHAP.

One part of the duties and authorities of legal officers regulated in the Criminal Procedure Code is what in Dutch is called *dwangmiddelen*, which is translated as coercive measures or coercive means. In the Criminal Procedure Code, these coercive measures are collected in Chapter V: Arrest, Detention, Search, House Entry, Confiscation and Inspection of Letters. One form of coercive effort, as can be seen from the title of Chapter V of the Criminal Procedure Code, is coercive effort in the form of arrest. Arrest, according to the definition given in Article 1 point 20 of the Criminal Procedure Code, is "an investigator's action in the form of temporarily restraining

the freedom of a suspect or defendant if there are sufficient evidence for the purposes of investigation or prosecution and/or justice in matters and according to the methods regulated in this law" (Pangaribuan, Mufti, & Zikry, 2017). Apart from that, arrests are regulated in Articles 16 to 19 which are located in Chapter V of the Criminal Procedure Code.

The provisions of criminal procedural law stated previously, including forced arrests, are intended to enable the implementation of criminal law, some of which have been compiled in the Criminal Procedure Code (Purba, 2018).

However, in addition to the Criminal Code, Indonesian legislation also has a number of laws that regulate specific criminal offenses and have special provisions on criminal procedures. One of them, namely Law Number 15 of 2003 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law, which has then been amended by Law Number 5 of 2018. With As a background to the view regarding the dangers of criminal acts of terrorism, the Law on the Eradication of Criminal Acts of Terrorism provides special provisions for criminal procedures, one of which is regarding arrests as regulated in Article 28.

RESEARCH METHOD

This article was written using normative legal research methods with a statutory approach (Fajar ND & Achmad, 2007). The technique for collecting legal materials uses library research. The legal materials used are primary legal materials and secondary legal materials. The analysis technique used is deductive analysis (Sulaiman, 2018).

RESULT AND DISCUSSION

The Law on the Eradication of Criminal Acts of Terrorism has special provisions regarding arrests. In this regard, it is necessary to pay attention to the provisions of Article 25 paragraph (1) of Law Number 5 of 2018 which stipulates that, "Investigations, prosecutions and examinations at court hearings in cases of criminal acts of terrorism are carried out based on criminal procedural law, unless otherwise provided in this Law." (Mahyani, 2019). This provision is an implementation of the principle of "lex specialis derogat legi generali, namely special provisions override general provisions".

Article 25 paragraph (1) indicates that the conditions for arrest in the Criminal Procedure Code, as previously described, must still be implemented unless otherwise stipulated in the Law on the Eradication of Criminal Acts of Terrorism. So, conditions such as the arresting officer showing a letter of assignment and giving the suspect an arrest warrant, must still be implemented.

Special provisions regarding arrests for suspected criminal acts of terrorism are first contained in Article 28 of the Law on the Eradication of Criminal Acts of Terrorism. Article 28 in Law Number 15 of 2003 in conjunction with Perppu Number 1 of 2002 determines that, "Investigators can arrest every person who is strongly suspected of committing a criminal act of terrorism based on sufficient preliminary evidence as intended in Article 26 paragraph (2) for a maximum of 7 x 24 (seven times twenty four) hours".

Article 28 was then amended based on Law Number 5 of 2018 so that Article 28 reads as follows: (1) Investigators can arrest any person suspected of committing a crime of terrorism based on sufficient initial evidence for a maximum period of 14 (four twelve) days. (2) If the arrest period as intended in paragraph (1) is insufficient, the investigator may submit a request for an extension of the arrest for a maximum period of 7 (seven) days to the chairman of the district court whose jurisdiction covers the investigator's domicile. (3) The arrest of people suspected of

committing criminal acts of terrorism as intended in paragraph (1) and paragraph (2) must be carried out by upholding the principles of human rights. (4) Any investigator who violates the provisions as intended in paragraph (3) shall be punished in accordance with the provisions of the statutory regulations.

Provisions regarding time periods will be discussed in the following sub-chapter later, while what is of concern in this section is regarding the phrase (part of the sentence) "sufficient preliminary evidence" for arrest according to Article 28 paragraph (1). Special provisions regarding "sufficient preliminary evidence" in the Law on the Eradication of Criminal Acts of Terrorism were also put forward by Andi Hamzah who stated that as one of the things that deviated from the Criminal Procedure Code in the process of proceedings against criminal acts of terrorism, namely "sufficient preliminary evidence, can be obtained from every intelligence report must be examined by the chairman and deputy chairman of the district court." (Wibowo, Zulyadi, & Ramadhan, 2023).

The arrest period in the Law on the Eradication of Criminal Acts of Terrorism has undergone changes as follows: 1. A maximum of 7 x 24 hours (seven times twenty-four hours) according to Article 28 of Law Number 15 of 2003 in conjunction with Perppu Number 1 of 2002. Article 28 Law Number 15 of 2003 in conjunction with Perppu Number 1 of 2002 determines that investigators can arrest any person who is strongly suspected of committing a criminal act of terrorism based on sufficient preliminary evidence as intended in Article 26 paragraph (2) for a maximum of 7 x 24 (seven times twenty four) hours. 2. A maximum of 14 (fourteen) days with a maximum extension of 7 (seven) days according to Article 28 of Law Number 5 of 2018. Article 28 of Law Number 5 of 2018 determines that, Investigators can arrest any person suspected of committing a crime of terrorism based on sufficient preliminary evidence for a maximum period of 14 (fourteen) days (paragraph 1); If the arrest period as intended in paragraph (1) is not sufficient, the investigator can submit a request for an extension of the arrest for a maximum period of 7 (seven) days to the chairman of the district court whose jurisdiction covers the investigator's domicile (paragraph 2).

Law Number 5 of 2018 in the general explanation section provides a general explanation that some of the content material regulated in this law includes "specificities regarding criminal procedural law such as additional time for arrest, detention, and extension of arrest and detention for the benefit of investigators and public prosecutor, as well as research of criminal terrorism case files by the public prosecutor." So, additional time and extension of time, both for arrest and detention, is in the interests of investigators and public prosecutors. Apart from that, arrests have important benefits, namely preventing criminal acts of terrorism from occurring or preventing suspects from repeating acts of terrorism.

In connection with objections from the human rights aspect in Law Number 5 of 2018 in the General Explanation section, an explanation is given that "in order to provide a stronger legal basis to guarantee legal protection and certainty in preventing and eradicating Criminal Acts of Terrorism, as well as to fulfill needs and developments in community law, it is necessary to make changes proportionally while maintaining a balance between the needs for law enforcement, protection of human rights and socio-political conditions in Indonesia." So, the Law on the Eradication of Criminal Acts of Terrorism, with the updates carried out through Law No. 5 of 2018, has attempted to maintain a balance between the needs of law enforcement, the protection of human rights, and socio-political conditions in Indonesia.

As one form of implementation of the general explanation section, there is a provision in Article 28 paragraph (3) of Law Number 5 of 2018 that the implementation of arrests of people

suspected of committing Terrorism Crimes as referred to in paragraph (1) and paragraph (2) must be carried out by upholding the principles of human rights. So, there is an emphasis on implementation to continue to uphold the principles of human rights.

In the explanation section of the article, information is given that in this provision, arrests are carried out while still being based on human rights, including being treated humanely, not being tortured, not being treated cruelly, and not having one's dignity as a human being humiliated. In fact, this provision is accompanied by a criminal threat for investigators, which is stipulated in Article 28 paragraph (4) that, every investigator who violates the provisions as intended in paragraph (3) will be punished in accordance with the provisions of statutory regulations.

CONCLUSION AND RECOMMENDATION

Conclusion

Conditions for arrest in suspected criminal acts of terrorism still take into account the conditions of arrest according to the Criminal Procedure Code with exceptions specified in the Law on the Eradication of Criminal Acts of Terrorism, namely with regard to the requirement of "sufficient preliminary evidence" where as a special provision, namely: 1) evidence in criminal acts terrorism is broader because it includes electronic documentary evidence; and 2) there are special procedures to determine whether there is sufficient preliminary evidence in the form of a court decision; and 3) sufficient preliminary evidence can be used for each intelligence report. The period for arrest in criminal acts of terrorism was originally a maximum of 7 x 24 hours according to Article 28 of Law Number 15 of 2003 in conjunction with Perppu Number 1 of 2002, which was later increased to a maximum of 14 days with a maximum extension of 7 (seven) days according to Article 28 Law Number 5 of 2018.

Recommendation

Conditions for arrest in suspected criminal acts of terrorism must always be carried out in accordance with the provisions of the law so as not to give rise to criticism from a human rights perspective. The addition of the arrest period in Law Number 5 of 2018 has maintained a balance between the need for law enforcement, protection of human rights, and socio-political conditions in Indonesia, but in practice arrests should be carried out while remaining based on human rights.

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