



THE POLITICAL ROLE OF CRIMINAL LAW IN SHAPING COUNTER-TERRORISM POLICY IN INDONESIA

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Abstract

The politics of criminal law has a strategic role in shaping counter-terrorism policy in Indonesia, especially after the increasing threat of global and domestic terrorism. Through Law Number 5/2018, the state adopts a more repressive criminal law approach by expanding the definition of terrorism crimes and giving greater authority to security forces. This research aims to analyze the role of criminal law politics in the process of counter-terrorism policy formation, as well as evaluate its suitability with the principles of justice and the rule of law. By using a normative juridical approach and qualitative analysis of legislation, doctrine, and the dynamics of policy formation, this research finds that counter-terrorism policies in Indonesia still tend to favor the security paradigm over the protection of human rights. The politics of Indonesian criminal law has not fully demonstrated alignment with substantive justice, due to weak accountability mechanisms and limited space for public participation in policy formulation. This research provides a theoretical contribution in expanding the understanding of the relationship between political power and criminal law, as well as encouraging policy reforms that are more democratic, proportional, and based on human rights values.

Keywords: Political Criminal Law, Terrorism, Counter-Terrorism, Justice, Rule of Law, Human Right.

1. Introduction

Terrorism is an extraordinary crime that not only threatens life safety and public order, but also destabilizes the rule of law and democracy (Kriswandanu, 2022; Prastiyo & Setiabudhi, 2021; SETIYONO & NABELA, 2023; Silalahi, 2021; SUWADI et al., 2023; Yunus et al., 2022). Since the Bali Bombing tragedy in 2002 and a series of other terrorist attacks in various parts of Indonesia (J. Henderson, 2004; J. C. Henderson, 2003), the government has made various countermeasures, including by strengthening the criminal law framework (Suatmiati & Kastro, 2020). The approach taken in responding to this threat cannot be separated from the dynamics of legal politics that develop in Indonesia, especially in the context of legislation and public policy. The politics of criminal law becomes an important arena in formulating norms, strategies, and institutions to deal with the latent danger of terrorism.

Data from BNPT shows that in the period 2018-2023, more than 600 suspects of terrorism were arrested, with networks ranging from the Jamaah Ansharut Daulah (JAD) group to ISIS sympathizers. Meanwhile, new trends show a shift in the modus operandi of terrorists who are more individualistic and digital, with the radicalization process mostly carried out through social media and closed online forums (Antonova, 2023; Carter, 2015; Febrica, 2014; Nesser, 2016; Nesser & Stenersen, 2014; Terrorism, 2016). This phenomenon shows that terrorism is not just a legal issue, but also a political and policy issue. Therefore, the state's response must not only be firm, but also proportional and uphold the values of justice.

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The purpose of this article is to critically highlight how the politics of criminal law shapes the face of counter-terrorism policy in Indonesia, as well as how the face of the policy affects the structure of law enforcement and the relationship between the state and its citizens. The politics of criminal law is not neutral; it reflects the interests of power, ideological paradigms, and social strategy choices made by the state in combating crime (Scheingold, 1998). In this case, criminal law used as a means to eradicate terrorism should not only be seen as a formal legal instrument, but also as a manifestation of the state's political will.

However, in practice, there is a tension between the repressive approach that prioritizes national security and the protection of individual rights and procedural justice. Several provisions in Law No. 5/2018, such as detention without a court order for 21 days and the expansion of the definition of terrorism, have drawn criticism from academics, NGOs, and legal observers because they are considered to open space for human rights violations. Therefore, an in-depth analysis is needed that not only looks at the normative side of criminal law, but also examines the ideological and structural aspects of legal politics itself.

The urgency of this research lies in the need to review the political direction of Indonesian criminal law in dealing with terrorism. This research does not only want to answer the question of how effective counter-terrorism policies are, but also to open a space for discussion: are the existing policies in line with the principles of the rule of law, democracy, and substantive justice?

The research gap that this article aims to address is the lack of studies that highlight the relationship between criminal policy construction and power dynamics in Indonesian legal politics, particularly in the context of counter-terrorism. Previous studies have focused on the effectiveness of the law, the performance of the authorities, or human rights aspects in general, but have not explored the roots of the policy formation through the lens of legal politics.

The contribution of this research is expected to provide sharp conceptual and normative insights for academics, legislators and policymakers in shaping a fairer, more proportional counter-terrorism legal framework that is in line with the spirit of the constitution and human rights.

2. Research Objectives

This research is based on academic concern over the increasing tendency of repressive approach in counter-terrorism policy in Indonesia, which is often shaped through the political mechanism of criminal law that does not fully reflect the principles of justice and respect for human rights (Kusuma et al., 2019; Lamchek, 2020; Mardenis & Tegan, 2018). In the context of a democratic state of law, criminal law should ideally be used carefully and proportionally as an *ultimum remedium*-not as a tool of power that excessively limits the civil liberties and constitutional rights of citizens (Hirsch Ballin, 2012).

The main objective of this research is to critically analyze the role of criminal law politics in shaping counter-terrorism policy in Indonesia (Wahyuni, 2019), by examining



how power dynamics, state ideology, and national security needs contribute to the formation of legal norms governing counter-terrorism. The politics of criminal law is understood not only as a normative product contained in the law, but also as a reflection of political decisions that have a broad impact on legal structures and society.

In addition, this research also aims to evaluate the suitability of the current counter-terrorism policy with the principles of substantive justice, such as legal certainty, non-discrimination, presumption of innocence, and protection of the rights of suspects. This evaluation is important considering a number of provisions in Law Number 5/2018 are considered to have the potential for abuse of authority by law enforcement officials, especially related to the expansion of the definition of terrorism crimes and pre-trial detention mechanisms.

Furthermore, this research aims to fill the research gap that has focused more on the operational, technical, or sociological aspects of counterterrorism, without systematically examining the political-legal roots of the policy formation. With a reflective and normative approach, this research aims to offer a deeper understanding of the position of criminal law in a democratic system and how it should function to protect, not harm, constitutional values.

Finally, this research is expected to provide intellectual and practical contributions in the formulation of criminal law policies that are more balanced, humanist, and just, as well as a foothold for counter-terrorism policy reforms that favor the community and the values of the rule of law.

3. Research Methodology

This research uses a normative juridical approach as the main method, which is an approach that examines the law as a system of norms, which is systematically studied in terms of its content and structure (Rohman et al., 2024). This approach is used to examine how criminal law norms are formed through the legal political process and how they are used as the basis for counter-terrorism policies in Indonesia. In this approach, the law is understood not only as a normative text, but also as a reflection of the political will and ideological values adopted by the state.

The normative juridical approach allows this research to analyze the construction of criminal law in regulations governing the eradication of criminal acts of terrorism, especially in the context of Law Number 5/2018 on the Amendment to Law Number 15/2003. Thus, this research focuses on how legal norms are designed, formulated, and used as part of the state's public policy in dealing with terrorism, as well as the extent to which these norms are consistent with the principles of justice and human rights protection.

In order to strengthen the analysis, this research also uses primary legal materials, namely relevant laws and regulations such as Law Number 5/2018, Criminal Code, Criminal Procedure Code, as well as various implementing regulations and decisions of law enforcement agencies. In addition, secondary legal materials are also used in the form of legal literature, books, scientific journals, expert opinions, and academic studies that discuss the politics of criminal law and counter-terrorism policies. To enrich the context and understanding of certain terms or concepts, tertiary legal materials such as legal dictionaries and encyclopedias are used as a complement.



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The analytical technique used in this research is qualitative-descriptive, namely by explaining the relevant laws and legal theories systematically, deeply, and critically. The analysis is conducted to identify the relationship between the formation of criminal law norms and the political and social contexts that influence counter-terrorism policies in Indonesia. In addition, to a certain extent, a conceptual approach is also used, in order to link the results of the analysis with theories of justice, rule of law, and human rights as an evaluative framework for the substance and direction of the policies formed.

With this method, this research not only aims to describe the criminal law policy that has been formed, but also to criticize and evaluate its suitability with the basic principles of a democratic state of law. Hopefully, the result of this research can contribute to the development of criminal law policy in Indonesia that is more fair, proportional, and in favor of human rights in the framework of combating terrorism.

4. Result

4.1. The Role of Criminal Law Politics in Shaping Counter-Terrorism Policy in Indonesia

Criminal law politics has a fundamental role in shaping the structure and direction of counter-terrorism policy in Indonesia (Haripin et al., 2020; Manthovani, 2023). As a form of legal policy politics, criminal law politics is not only technical-normative, but also ideological and strategic. The criminal policy contained in Law Number 5/2018, for example, is the state's political response to the intensity of terrorism threats that are increasingly complex and globalized.

The law represents the state's political strategy that chooses to strengthen the security approach through the granting of great authority to law enforcement officials, such as expanding the definition of terrorism, adding preventive measures that can be taken before a crime occurs, as well as strengthening the position of Densus 88 and BNPT (Hidayat & Zarkasyi, 2024; Juffandi et al., 2023). In this legal construction, it appears that the state places criminal law not only as a law enforcement tool, but also as a tool to maintain national stability and respond to global geopolitical pressures.

However, this approach also shows the political nature of Indonesian criminal law which tends to be reactive, coercive, and lacks public participation. The establishment of Law No. 5/2018, for example, although motivated by the urgency of countering terrorism, is also laden with debates related to potential human rights violations. The application of pre-emptive strike, which allows arrests without strong evidence, has triggered criticism from various groups, including human rights institutions and civil society organizations. This shows that the politics of criminal law in Indonesia is still not fully oriented towards substantive justice, but rather the interests of stability and state power.

Thus, the politics of criminal law has played a significant role in directing the formulation of counter-terrorism policy. However, this role has not fully reflected the principles of a democratic rule of law, as the security paradigm is still stronger than the human rights approach. Therefore, the politics of Indonesian criminal law requires a new orientation that is more balanced between security needs and the protection of civil liberties.



4.2. Evaluation of Counter-Terrorism Policy Based on the Principles of Justice and the Rule of Law

Counter-terrorism policies born from the political process of Indonesian criminal law need to be critically evaluated from the perspective of justice and the principle of the rule of law (Haripin et al., 2020; Istiqomah, 2020). In a democratic state of law, criminal law should not be used as a tool of power, but should be formed and applied based on the principles of legality, proportionality, accountability, and respect for human rights (Kumm, 2010).

Law No. 5/2018 does provide strong legal legitimacy for the state to act decisively against terrorists. However, its provisions, such as the expansion of the meaning of "criminal act of terrorism" and the 21-day detention period without a court order, raise the potential for violations of the principle of due process of law. This practice raises questions about whether the policy has prioritized procedural justice, or instead negates the constitutional rights of citizens.

In addition, the "zero tolerance" approach towards terrorism perpetrators is often not accompanied by an effective and humanist deradicalization approach (Mukhlis et al., 2022; Rezan & Naupal, 2019; Sukarieh & Tannock, 2016). This reflects the state's failure to see the root causes of terrorism as a social phenomenon, not just a crime that must be eradicated with a harsh approach. Therefore, the evaluation of counter-terrorism policies must go beyond the technical aspects of law enforcement, and include philosophical, sociological, and ethical considerations.

In this case, the principle of restorative justice should be considered as an alternative in countering radicalism, especially for vulnerable groups such as women and children recruited by terror networks. The state must also develop a strong supervisory mechanism for law enforcement officers to prevent abuse of authority in the implementation of criminal law. This evaluation shows that counter-terrorism policies need to be improved so that they are not only repressively effective, but also substantively fair.

By conducting a comprehensive evaluation, it is hoped that the future direction of Indonesia's counter-terrorism policy can be formulated based on the principles of the rule of law that uphold justice, public participation, and the protection of human rights as the main pillars of a modern criminal law system.

5. Discussion

This research offers scientific novelty in the study of criminal law, especially in understanding the politics of criminal law not merely as a normative legislative process, but as part of a state power strategy laden with ideological interests and security agendas. So far, studies on counter-terrorism policy in Indonesia tend to focus on the effectiveness of law enforcement, technical-operational aspects of security forces, or human rights violations in its implementation. However, there are very few studies that examine how the politics of criminal law becomes a conceptual foundation as well as a tool to shape the direction and content of criminal policies against terrorism.

In that context, the main novelty of this research lies in its approach that positions criminal law within a broader legal political framework, by analyzing the relationship between state power, legal norm formation, and principles of justice. This research does



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not stop at normative criticism of the content of the law, but explores how legal politics systemically influences the way the state defines threats, determines legal priorities, and shapes public policy in the field of counterterrorism. Thus, this article enriches the field of criminal law by expanding the scope of analysis to the realm of legal politics as an evaluative and constructive framework.

In terms of practical and theoretical contributions, this research provides several important benefits. First, theoretically, this article strengthens the understanding that criminal law is not a neutral stand-alone system, but is the result of political and social constructions that must be constantly criticized to maintain accountability and justice. This encourages the development of more interdisciplinary criminal law studies, which integrate legal approaches with political and human rights studies.

Secondly, practically, this article provides input for policy makers, academics, and civil society regarding the importance of designing counter-terrorism policies that are not only effective, but also fair and proportional. Through the findings in this research, the author encourages the reformulation of the political direction of criminal law that is more balanced between the demands of national security and the principles of a democratic state of law, such as respect for human rights, due process of law, and non-discrimination.

Thus, this article is expected not only to be an academic contribution in the literature of criminal law and legal politics, but also to encourage a paradigm shift in formulating counter-terrorism policies in Indonesia that are more humane, constitutional, and just.

6. Conclusion

The politics of criminal law plays a central role in shaping the direction and substance of counter-terrorism policy in Indonesia. In the context of the increasing threat of terrorism and global pressure on security, the state responded with a more repressive legislative approach through the enactment of Law Number 5/2018. The establishment of this regulation reflects the choice of legal politics that is oriented towards strengthening the security apparatus and expanding the space for state intervention against individuals, even before a criminal offense occurs.

However, this research shows that the counter-terrorism policies born from the political process of criminal law in Indonesia have not fully reflected the principles of substantive justice and the values of a democratic state. There is a tendency to dominate the security-based approach over the human rights protection approach. Several preventive and coercive provisions open up space for abuse of authority and neglect of the principles of modern criminal law, such as the principles of legality, proportionality, and due process of law.

Through a normative juridical approach and critical analysis of the content of regulations and the dynamics of policy formation, this research asserts that there needs to be a new orientation in the politics of Indonesian criminal law. Criminal law should not only be a tool of the state to protect security, but should be an instrument to ensure justice, uphold constitutional rights, and protect human dignity.

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