

LEGAL ANALYSIS OF THE PREVENTIVE AUTHORITY OF THE POLICE'S DENSUS 88 ANTI-TERROR IN COMBATING TERRORISM CRIMINAL ACTS

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Abstract

Terrorism constitutes an extraordinary crime threatening national security, state sovereignty, and the protection of human rights. Indonesia's counterterrorism policy has shifted from relying solely on repressive measures toward emphasizing preventive strategies to prevent the emergence and development of terrorist networks. One of the institutions granted preventive authority is the Indonesian National Police's Special Detachment 88 (Densus 88 Anti-Terror) under Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism. This research aims to analyze the legal framework governing the preventive authority of Densus 88 within Indonesia's national legal system and examine the obstacles encountered in its implementation. The study employs normative legal research using statutory, conceptual, and analytical approaches. The research concludes that Densus 88 possesses a comprehensive legal basis under Law Number 5 of 2018, Law Number 2 of 2002 concerning the Indonesian National Police, Government Regulation Number 77 of 2019, and Presidential Regulation Number 7 of 2021 concerning the National Action Plan for Preventing Violent Extremism Leading to Terrorism. Nevertheless, practical implementation continues to face obstacles including budget limitations, insufficient human resources, inter-agency coordination challenges, and concerns regarding the protection of human rights.

Keywords: Preventive Authority, Densus 88, Terrorism, National Police, Law Enforcement.

INTRODUCTION

As a nation governed by law, as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Indonesia has a constitutional obligation to protect all citizens from various threats that could disrupt national security. One real threat that remains a serious concern is terrorism. Terrorism is a form of crime with distinct characteristics compared to conventional crime. It is committed in an organized manner, has a cross-border network, utilizes modern technology, and aims to instill widespread fear in the community. Therefore, handling it is not sufficient to rely solely on a repressive approach through law enforcement after a crime has occurred, but also requires a preventative approach capable of preventing the development of radical ideology and acts of terror before they occur.

The development of terrorism in Indonesia demonstrates that terrorist networks are increasingly adapting to advances in information technology. The spread of radical ideology is

carried out through social media, digital forums, and encrypted communication applications, thus expanding the scope for terrorist groups to recruit new members. This situation demands that the state develop a more comprehensive countermeasure strategy that integrates legal, security, intelligence, education, and community empowerment approaches.

As a law enforcement institution, the Indonesian National Police (Polri) is authorized to carry out preventive and enforcement actions against acts of terrorism. To implement this, the National Police established the Special Detachment 88 Anti-Terrorism Unit (Densus 88 AT) as a special unit with capabilities in intelligence, investigation, prosecution, and prevention of acts of terrorism. The establishment of Densus 88 demonstrates the state's commitment to increasing the effectiveness of counterterrorism efforts in Indonesia.

The amendment of Law Number 15 of 2003 to Law Number 5 of 2018 expanded the authority of law enforcement officers, particularly Densus 88, to carry out preventive actions. This expanded authority includes early detection, monitoring individuals suspected of links to terrorist networks, coordination with various state institutions, and implementing deradicalization programs with the National Counterterrorism Agency (BNPT). This policy is a response to the increasingly complex dynamics of the threat of terrorism.

However, this expansion of preventive authority has also generated considerable debate from the perspective of the rule of law and human rights protection. Excessive authority without adequate oversight mechanisms has the potential to lead to abuse of power. Therefore, a legal analysis is needed to determine the extent to which Densus 88's preventive authority aligns with the principles of the rule of law, the principle of legality, and the protection of human rights.

In addition to normative aspects, the implementation of Densus 88's preventive authority in practice also faces various obstacles, including limited human resources, a minimal operational budget, the complexity of transnational terrorist networks, and the need for cross-sectoral coordination with various government agencies. These issues are crucial for examining to improve the effectiveness of anti-terrorism policies in Indonesia.

Based on this description, this research is relevant for analyzing the legal provisions regarding Densus 88's preventive authority within the national legal system and evaluating the obstacles encountered in its implementation, allowing for the formulation of recommendations for strengthening the counter-terrorism system in Indonesia.

1. What are the legal regulations regarding the preventive authority of the Indonesian National Police's Densus 88 Anti-Terror Unit in countering acts of terrorism according to the national legal system?

2. What obstacles does Densus 88 Anti-Terror Unit face in exercising this preventive authority??

METHOD

This research is a normative legal study that uses a statute approach, a conceptual approach, and an analytical approach. The legal materials consist of primary, secondary, and tertiary legal materials, which are analyzed qualitatively using a descriptive analytical method.

RESULTS AND DISCUSSION

Legal Regulations Concerning the Preventive Authority of the Indonesian National Police's Densus 88 Anti-Terror Squad in Combating Criminal Acts of Terrorism

Eradicating criminal acts of terrorism is one way the state implements its function of protecting citizens, as mandated in the Preamble to the 1945 Constitution of the Republic of Indonesia. As a nation based on the rule of law, every action by law enforcement officers must be based on legitimate authority (*rechtmatigheid van bestuur*) so that the implementation of police functions remains within the principle of legality.

The increasingly complex threat of terrorism has shifted the paradigm of counterterrorism in Indonesia. Prior to the enactment of Law Number 5 of 2018, the law enforcement approach focused primarily on repressive measures, such as arrests, investigations, and prosecutions of perpetrators of terrorism after the crime occurred. This approach was deemed ineffective because it failed to break the chain of radicalization or the recruitment of new members of terrorist groups.

This change was then realized through the amendment of Law Number 15 of 2003 to Law Number 5 of 2018, which provides greater scope for preventive efforts. This law expands the authority of law enforcement officers to conduct early detection, surveillance, intelligence coordination, prevent the spread of radical ideology, and implement deradicalization programs.

According to the theory of the rule of law (*Rechtsstaat*), all government authority must be derived from statutory regulations. Philipus M. Hadjon explains that government authority can only be obtained through attribution, delegation, or mandate, so that every action of state administrative officials has clear legal legitimacy. Therefore, the preventive authority of the National Police's Densus 88 Anti-Terror Squad cannot be viewed solely as operational police authority, but rather as authority derived from attribution under the law.

Legally, the basis for the authority of the National Police's Densus 88 Anti-Terror Unit can be found in several interrelated laws and regulations.

- a. Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia

Law Number 2 of 2002 is the primary foundation for the implementation of police functions. Article 13 stipulates that the main duties of the National Police include:

1. maintaining public security and order;
2. enforcing the law; and
3. providing protection, assistance, and services to the community

These three functions demonstrate that the National Police is not only tasked with enforcing the law after a crime has occurred (law enforcement), but also has a preventative function (crime prevention). Therefore, the establishment of Densus 88 as a special unit is an implementation of the National Police's institutional authority in maintaining national security.

Furthermore, Article 14 of the National Police Law authorizes the National Police to conduct investigations into all crimes, including acts of terrorism. From a state administrative law perspective, investigations are a form of preventive action because they are carried out to obtain information before they develop into crimes that result in victims.

b. Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism

Law Number 5 of 2018 represents a significant milestone in the legal reform of counterterrorism in Indonesia. The fundamental changes to this law lie in strengthening the prevention aspect.

Articles 43A to 43D stipulate that prevention is carried out through:

1. national preparedness;
2. counter-radicalization;
3. deradicalization.

These provisions demonstrate that Indonesian criminal law policy has adopted the concept of preventive criminal policy, namely preventing crimes before they occur.

Counter-radicalization is carried out on individuals and community groups vulnerable to exposure to radical ideology through education, counter-narratives, counter-propaganda, and increasing national insight. Deradicalization, meanwhile, is carried out on suspects, defendants, prisoners, former prisoners, and individuals who have been exposed to terrorist ideology.

In implementing this program, Densus 88 plays a strategic role as a technical implementer, collaborating with the National Counterterrorism Agency (BNPT), the Indonesian National Armed Forces (TNI), relevant ministries, local governments, religious leaders, community leaders, academics, and community organizations.

c. Government Regulation Number 77 of 2019

Government Regulation Number 77 of 2019 strengthens the mechanism for preventing criminal acts of terrorism and provides legal protection for investigators, public prosecutors, judges, and correctional officers handling terrorism cases.

This government regulation also emphasizes that preventive measures must be implemented in an integrated manner through coordination across ministries and institutions, so that they are not solely the responsibility of the police.

This approach reflects the fact that eradicating terrorism is the responsibility of all elements of the nation (a whole-of-government approach).

d. Presidential Regulation Number 7 of 2021

Presidential Regulation Number 7 of 2021 concerning the National Action Plan for the Prevention and Countermeasures of Violent Extremism Leading to Terrorism (RAN PE) serves as the basis for national policy in strengthening preventive measures.

The RAN PE prioritizes prevention through three major strategies:

1. community preparedness;
2. counter-radicalization;
3. strengthening international cooperation.

Through this policy, Densus 88 no longer works sectorally, but instead becomes part of the national counter-terrorism system that involves all stakeholders. According to Philipus M. Hadjon, government authority is the core of state administrative law because every government action must have a clear legal basis. When analyzed using the theory of attribution of authority, Densus 88's preventive authority derives directly from the law and therefore has constitutional legitimacy. Unlike administrative discretion, this authority is an attributive authority granted by lawmakers to the Indonesian National Police. Furthermore, when examined using Soerjono Soekanto's law enforcement theory, the effectiveness of the implementation of preventive authority is influenced by five factors:

1. legal factors;
2. law enforcement officers;
3. facilities and infrastructure;
4. society;
5. legal culture.

These five factors influence each other, so the success of Densus 88's preventive actions is determined not only by the quality of regulations but also by the professionalism of officers, public support, inter-agency coordination, and the legal culture that develops within society. From a criminal policy perspective, preventive action is a form of non-penal policy that aims

to eliminate the factors that cause crime. Barda Nawawi Arief explained that crime prevention is far more effective than post-crime response because it reduces the number of victims and lowers law enforcement costs. Based on this analysis, it is clear that the legal provisions regarding the preventive authority of the National Police's Densus 88 Anti-Terror Unit have a strong normative basis. However, effective implementation still requires regulatory synchronization, inter-institutional coordination, increased human resource capacity, and oversight of the use of authority to ensure it remains aligned with the principles of the rule of law and the protection of human rights

Obstacles faced by the Indonesian National Police's Densus 88 Anti-Terror Unit in Exercising Preventive Authority in Combating Criminal Acts of Terrorism

The implementation of preventive authority by the National Police's Densus 88 Anti-Terrorism Squad is a crucial instrument in the national policy of eradicating criminal acts of terrorism. This preventive approach aims to anticipate emerging threats before they develop into acts of terrorism that result in loss of life or harm to state interests. This concept aligns with the paradigm of preventive criminal policy, a crime prevention policy that prioritizes prevention over enforcement after a crime has occurred.

Although normatively, preventive authority has been adequately legally based through Law Number 5 of 2018, its implementation in practice has not been fully optimal. Various legal, institutional, technical, social, and international obstacles continue to affect the effectiveness of this authority. These obstacles demonstrate that the success of counterterrorism depends not only on the quality of regulations but also on the ability of law enforcement institutions to implement legal norms professionally and proportionally.

Normative Constraints in the Arrangement of Preventive Authority

The first problem lies in the legal regulatory aspect. Although Law Number 5 of 2018 has expanded the preventive authority of law enforcement officials, several norms still provide considerable room for interpretation regarding the implementation of preventive measures. This situation has the potential to give rise to differences of interpretation between law enforcement officials, supervisory institutions, and the public.

From the perspective of state administrative law, all government authority must comply with the principle of legality (*legaliteitsbeginsel*). Philipus M. Hadjon states that the use of government authority must fulfill three main elements: the legal basis, the purpose of granting the authority, and the limits of the authority's use. If any of these elements are not met, government action can be categorized as an abuse of authority (*detournement de pouvoir*).

Preventive authority, such as monitoring individuals suspected of being exposed to radical ideology, monitoring social media, and police intelligence activities, often sparks debate regarding the limits of protection of citizens' privacy rights. Therefore, more detailed regulations are needed through implementing regulations to avoid multiple interpretations in their implementation.

Human Resource Limitations

The next obstacle relates to the quality and quantity of human resources (HR). Countering acts of terrorism requires personnel with specialized competencies in intelligence, digital investigation, foreign languages, psychology, negotiation, terrorist network analysis, and an understanding of radical ideology. Advances in information technology have transformed the communication patterns of terrorist groups. Currently, most recruitment processes are conducted digitally using encrypted communication applications, necessitating advanced digital forensic skills.

In practice, increasing personnel capacity requires continuous education and training. However, not all personnel have the opportunity to participate in specialized training due to budget constraints and the capacity of police educational institutions. According to Soerjono Soekanto, law enforcement officers are a key factor in the success of law enforcement. Good regulations will not produce optimal results without the support of professional and integrity-based officers.

Limited Facilities and Infrastructure

The evolving modus operandi of terrorist groups demands the use of increasingly sophisticated technology. Monitoring digital activity, tracking financial transactions, analyzing electronic communications, and identifying international networks require modern technological devices with significant operational costs. In some cases, limited digital equipment means the process of identifying terrorist networks takes longer than the speed of the perpetrators' communications. This presents a challenge for Densus 88 in carrying out its early detection function. In addition to information technology, operational vehicles, digital forensic laboratories, intelligence equipment, and a national data integration system also require strengthening to keep pace with evolving transnational crime patterns.

Budget Constraints

Implementing prevention programs requires relatively substantial funding. Unlike repressive measures, which focus on law enforcement after a crime has occurred, a preventive approach requires ongoing activities, including:

1. publicizing the dangers of radicalism;
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2. counter-narratives on social media;
3. deradicalization programs;
4. empowering former terrorist convicts;
5. developing communities vulnerable to radicalism.

These programs require substantial budgetary support. In practice, budget constraints prevent some community development activities from being implemented optimally. Petrus Reinhard Golose explained that the success of deradicalization is not solely determined by the security approach but also depends on the economic empowerment of former terrorist convicts to prevent them from rejoining radical networks.

Inter-Agency Coordination

Terrorism prevention is not solely the responsibility of the Indonesian National Police. Various other institutions also have interrelated authorities, including:

1. The National Counterterrorism Agency (BNPT);
2. The Indonesian National Armed Forces (TNI);
3. The State Intelligence Agency (BIN);
4. The Ministry of Religious Affairs;
5. The Ministry of Communication and Digital Affairs;
6. Regional Governments;
7. Educational institutions;
8. Community organizations.

The large number of institutions involved often creates coordination challenges, particularly in the exchange of intelligence information, the division of authority, and the synchronization of prevention programs. According to the theory of government coordination, the effectiveness of public policy is greatly influenced by the ability of each institution to establish communication and share information quickly and accurately.

Challenges of Human Rights Protection

One of the greatest challenges in implementing preventive authority is maintaining a balance between national security interests and the protection of human rights. Indonesia, as a state governed by the rule of law, is obliged to guarantee respect for the constitutional rights of every citizen. Therefore, every preventive measure must adhere to the following principles:

1. legality;
 2. proportionality;
 3. accountability;
 4. necessity;
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5. due process of law.

Monitoring individuals suspected of being exposed to radicalism must not be carried out arbitrarily without a clear legal basis. Jimly Asshiddiqie emphasized that a modern state governed by the rule of law requires not only legal certainty but also the protection of human rights as part of the principles of constitutional democracy.

The Influence of Information Technology Development

Advances in digital technology present new challenges for law enforcement. Terrorist groups are currently utilizing:

1. social media;
2. cryptocurrency;
3. encrypted communication applications;
4. artificial intelligence;
5. the dark web;
6. digital propaganda.

These changes make conventional prevention approaches less effective if they are not accompanied by improvements in the technological capabilities of law enforcement officers. From a criminal law policy perspective, technological developments demand changes in crime prevention strategies through cyber policing and predictive policing approaches, allowing preventive measures to be implemented based on data analysis and digital intelligence.

When analyzed using Soerjono Soekanto's theory of legal effectiveness, all of the above obstacles indicate that the effectiveness of Densus 88's preventive authority is influenced by five main factors:

1. the quality of legal substance;
2. the professionalism of law enforcement officers;
3. the adequacy of facilities and infrastructure;
4. community participation;
5. the community's legal culture.

These five factors are interrelated, so addressing one obstacle alone will not yield optimal effectiveness without addressing the others.

Based on the analysis, it can be concluded that the biggest obstacle lies not in the lack of a legal basis, but rather in policy implementation, institutional strengthening, improving human resource quality, modernizing police technology, and strengthening cross-sector coordination. Therefore, a more integrated national policy is needed to ensure Densus 88's

preventive authority can provide effective protection to the community while respecting the principles of the rule of law and human rights.

CLOSING

Conclusion

1. Based on the research results and discussion regarding the Legal Analysis of the Preventive Authority of the Indonesian National Police's Densus 88 Anti-Terror Squad in Countering Criminal Acts of Terrorism, the following conclusions can be drawn.
2. The legal provisions regarding the preventive authority of Densus 88 Anti-Terror Squad have a strong legal basis within the national legal system. This legal basis is contained in the 1945 Constitution of the Republic of Indonesia, Law Number 2 of 2002 concerning the Indonesian National Police, Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, Government Regulation Number 77 of 2019 concerning the Prevention of Criminal Acts of Terrorism and Protection of Investigators, Public Prosecutors, Judges, and Correctional Officers, and Presidential Regulation Number 7 of 2021 concerning the National Action Plan for the Prevention and Countering of Violent Extremism Leading to Terrorism. This regulation legitimizes the National Police's Densus 88 Anti-Terror Unit to implement various preventive measures, including early detection, investigation, surveillance, counter-radicalization, deradicalization, intelligence coordination, and cross-sectoral cooperation to prevent acts of terrorism. From the perspective of the theory of authority, this authority is attributive authority granted directly by the legislator, thus having constitutional legitimacy in its implementation.
3. The implementation of Densus 88 Anti-Terror Polri's preventive authority in practice still faces various obstacles, both normative and empirical. Normative obstacles are evident in the fact that regulations still do not provide detailed definitions regarding the scope of preventive measures, potentially leading to multiple interpretations in their implementation. Furthermore, the rapid development of information technology often causes regulations to lag behind the development of terrorist groups' modus operandi. From an institutional perspective, obstacles faced include limited human resources with specialized competencies in information technology, digital intelligence, terrorist network analysis, and foreign language skills. Furthermore, limited facilities and infrastructure, budget support, and the need for digital equipment modernization also

impact the effectiveness of preventive measures. Inter-agency coordination still requires strengthening to ensure the integrated exchange of intelligence information, implementation of deradicalization programs, and counter-radicalization activities. Furthermore, the greatest challenge in exercising preventive authority is maintaining a balance between national security interests and the protection of human rights, ensuring that all police actions remain within the principles of the rule of law.

Suggestion

1. Based on the research findings, the authors offer the following recommendations.
The government needs to refine regulations regarding the implementation of preventive authority in eradicating criminal acts of terrorism, particularly through the development of more detailed implementing regulations regarding preventive action mechanisms, standard operating procedures, human rights protection, and oversight mechanisms for the use of these authorities.
2. The Indonesian National Police (Polri), particularly Densus 88 Anti-Terrorism, needs to continuously improve the professionalism of its personnel through ongoing education and training in intelligence, digital forensics, cybersecurity, social media analysis, and a human rights-based approach.
3. The National Counterterrorism Agency (BNPT) needs to expand collaboration with ministries, local governments, educational institutions, community organizations, religious leaders, traditional leaders, academics, and the mass media to develop a community-based radicalism prevention system.
4. For the community, the community is expected to participate more actively in efforts to prevent acts of terrorism by increasing vigilance against the spread of radical ideology, using social media wisely, and establishing good communication with law enforcement officials if they find indications of activities that lead to acts of terrorism

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