

POLICY ON THE REHABILITATION AND DERADICALIZATION OF CHILDREN PERPETRATORS OF CRIMINAL ACTS OF TERRORISM

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Abstract

Terrorism is a special type of crime, in recent cases terrorism crimes in Indonesia often involve minors in carrying out acts of terror, such as the terrorism case in Surabaya some time ago. By involving children in a criminal act of terrorism, a special treatment is needed for children who are perpetrators of criminal acts of terrorism, because children who are perpetrators of criminal acts of terrorism cannot be sentenced to death or life imprisonment. The special handling in the 2012 SPPA Law and the 2018 Anti-Terrorism Law can be in the form of rehabilitation which is one part of diversion, and deradicalization which is a program of the BNPT. Rehabilitation and deradicalization even though they have the same goal, namely an improvement for children who are perpetrators of terrorism, the two programs have several differences where deradicalization includes programs that are more specific for handling and repairing children who are perpetrators of terrorism crimes such as guidance on national insight, guidance on religious insight, as well as several cooperation programs with various related parties to carry out this deradicalization program, while the social rehabilitation program in the 2012 SPPA Law conducted by LPKS programs is more aimed at general crimes, this is because the programs that found in social rehabilitation is more of a vocational nature and talent development for children. Meanwhile, in handling cases of criminal acts of terrorism, a special treatment is needed to eliminate radical thoughts in children who are perpetrators of terrorism.

Keywords: Terrorism; Child; Rehabilitation; Deradicalization.

1. INTRODUCTION

Several criminal cases that have occurred in Indonesia recently, such as a series of criminal acts of terrorism that occurred in the Surabaya and Sidoarjo areas in May 2018, the perpetrators of terror involved minors in carrying out their actions. In a series of bomb attacks carried out at the Immaculate Santa Maria Catholic Church by two children who are still brothers¹. The bomb attack that occurred at GKI Diponegoro was carried out by a woman with two children,² in addition to Meanwhile, the terror bomb that was detonated at Polrestabas (Police Station) Surabaya also involved a child who had a child in one of the rooms in the Wonocolo Flats in Sidoarjo which contained explosives and also a terrorist.

After investigating the relationship between the perpetrators of the terrorism crime, it turned out that the perpetrators of the series of bombs at the church in the Surabaya area were one family, so that from children to parents were involved in the crime of terrorism³ as well as in the terror case carried out at the Surabaya Police Station. and Rusunawa (low-cost apartment building) Wonocolo it turns out that the perpetrators still have family relations. This is certainly a sad event because these radical ideas can enter and be spread in their own families. In addition, these radical thoughts are also transmitted to their own children so that their children are involved in the terror case. the crime is different and or deviates from what is stipulated in the Criminal Code. In accordance with article 79 of Law Number 11 of 2012, that children can be subject to criminal restrictions on freedom (imprisonment) but the maximum penalty is (one half) of the maximum sentence that can be given to adults, which means an acceptable punishment. by a child if he becomes a perpetrator of a criminal act of terrorism because the child is not allowed to get a life sentence and a death penalty, while the maximum imprisonment for perpetrators of a criminal act of terrorism is 20 years for non-child perpetrators, therefore children can only get a maximum sentence of 10 years.

With a maximum sentence of 10 years on the child, it can be said that in the end the child will most likely definitely return to society after serving his sentence. Thus, it is necessary to have a system of handling or regulation related to deradicalization itself so that children who previously received ideas that could be said to be radical from various sources, including from their families, can be accepted back into society and get their rights. Imprisonment alone for perpetrators of criminal acts of terrorism can be said to be insufficient, without the intention of reducing the prison sentence itself. In addition, in this crime of terrorism, there is a cycle called the vendetta cycle, which is a cycle in which a terrorist is seen as more successful by other terrorists if he gets a criminal sentence even if he gets a death sentence. So that other measures other than criminal action such as rehabilitation/deradicalization are deemed very necessary to deal with things like this vendetta cycle.⁴

As reported by the International Crisis Group (ICG) in 2007 entitled Deradicalization and Indonesian Prisons that in the Kerobokan Bali prison, terrorism convicts are able to influence other inmates and guards.⁵ This shows that the Correctional Institution (LAPAS) can be feared as a means of developing and strengthening the understanding of radicalism. On the one hand, according to the existing laws and regulations, children involved in criminal acts of terrorism are very likely to be sentenced to a maximum prison sentence of 10 years. With a maximum sentence of 10 years, in accordance with the provisions of Article 7 paragraph (2) of Law Number 11 of 2012 that children who can be sought for diversion are children who are threatened with a criminal under 7 (seven) years, this raises a problem, namely how to The fate of this child perpetrator if only gets a prison sentence, while in this crime of terrorism a special treatment is needed, especially in Indonesia, most of the terrorism activities that occur in Indonesia originate from an extreme/radical understanding of a terrorism group so that it must be viewed as incomplete. it's just the person who is wrong, but what is wrong is the understanding of the person who is wrong with this condition, so I think that a rehabilitation/deradicalization action is needed so that the child perpetrator can be

"clean" from radical thoughts which if a radical thought is not true -really cleaned can be worried It can grow again to be bigger and dangerous as the child gets older.

2. RESEARCH METHODS

The method used in this research is a doctrinal research method. The method is carried out using several approaches, namely the conceptual approach and the statute approach.

3. LITERATURE REVIEW

1. The concept of deradicalization

In handling a case of a criminal act of terrorism, there are two approaches that can be used in handling, namely the hard approach and soft approach, the hard approach is an approach that emphasizes security assurance and law enforcement by the military and police,⁶ in this case the handling of criminal acts terrorism can take the form of a military operation to eradicate a terrorist activity. This approach resulted in various significant achievements with achievements that can be said to be good, even getting recognition from the international world. However, in the long term this approach is seen as less effective. This is because terrorism is not a matter of physical violence, but also involves ideology and is related to social, economic, political, and even cultural factors in society. Therefore, it is known that one other approach that can be used to deal with the problem of criminal acts of terrorism is the soft power approach. more focused on how to eliminate or erode radical thoughts that lead to terrorism which are embedded in the perpetrators of terrorism. One of the efforts of this soft approach is like deradicalization carried out by BNPT. Deradicalization has a linguistic and term meaning, deradicalization comes from the word radical with the suffix de, the word "de" means to reduce or reduce, and isasi has the meaning of a process, method or action, so that the language meaning of deradicalization is an effort to reduce radical activities and neutralize radical ideas for those who are involved or exposed to radicalism.⁷ as well as radical understandings of terrorism held by a person, deradicalization is carried out with various approaches that are considered effective in eliminating radical understandings and thoughts such as legal, psychological, religious, economic, and socio-cultural approaches, on that basis BNPT conducts deradicalization with a focus on efforts yes cognitive changes or moderating one's thoughts or beliefs.

The deradicalization carried out by BNPT in its implementation has several stages in it, namely identification and assessment, which is an assessment process carried out to find out the extent of a person's radical exposure so that it can be seen how appropriate treatment is. Next is rehabilitation which focuses on returning conditions to their original state and providing guidance to deradicalization targets so that they can get out of radical understanding, the next stage is re-education which is filled with providing education that the radical teachings that have been followed are not teachings. Which is then followed by social reintegration so that terrorism convicts who have served their sentences can be readmitted by the community?

A deradicalization process against perpetrators of terrorism crimes can be carried out starting from the suspect stage to the convict stage, related to children who are perpetrators of terrorism crimes, the implementation of this deradicalization program will be much more effective if it is carried out before the child becomes a convict and enters the prison process, this is because if the child undergoes the deradicalization process in prison, it is feared that the child will get a negative effect from other inmates which will actually worsen the situation of the child and complicate the deradicalization process itself.

In its implementation, the deradicalization carried out by the BNPT has several shortcomings related to its regulation and implementation guidelines, the implementation of deradicalization to terrorism convicts in correctional institutions in Indonesia is actually a fairly good and effective program, but in practice it is not uncommon for convicts to refuse to participate in the deradicalization program. alone. The problem is that there are no clear rules regarding what actions can be taken against prisoners who refuse to participate in the deradicalization program implemented by the BNPT. In addition to deradicalization in prisons, deradicalization carried out outside prisons also has a problem related to how the strength of binding this deradicalization program on terrorism convicts who are free and have returned is like being an independent general public, if the ex-convicts also refuse to participate, there is no such thing. the rules governing this matter.

2. The concept of Social

Rehabilitation Rehabilitation according to the Big Indonesian Dictionary (KBBI) has the meaning of restoring the situation back to what it used to be, while the word "social" itself according to the KBBI is defined as something related to the community/public interest. Social rehabilitation in Indonesia is regulated in several laws and regulations in Indonesia including the 2012 SPPA Law and Law no. 35 of 2009 concerning Narcotics (hereinafter referred to as the 2009 Narcotics Law). SPPA social rehabilitation is regulated in article 10 paragraph (2) as one of the agreements of diversion, but in the explanation of article 9 of the 2012 SPPA Law on perpetrators of serious crimes such as murder, rape, drug dealers, and also terrorism. From this explanation, it can be seen that children who are perpetrators of criminal acts of terrorism cannot be diverted, but in the guidelines for implementing social rehabilitation, namely the Minister of Social Affairs Regulation Number 9 of 2015 concerning Guidelines for the Social Rehabilitation of Children in Conflict with the Law by the Social Welfare Organizing Institution (hereinafter referred to as the Minister of Social Rehabilitation). Social Rehabilitation 2015), in article 4 children who have an age of less than 12 years, and children who have received a legal determination/decision can still be subject to social rehabilitation programs. From this article, it can be understood that even though children cannot be subject to diversion, they can still be subject to social rehabilitation programs after obtaining a decision from the court, social rehabilitation in the 2012 SPPA Law is carried out by LPKS (Social Welfare Organizing Institutions) these institutions are under the Ministry of Social Affairs of the Republic of Indonesia. Indonesia.

In addition to the 2012 SPPA Law, social rehabilitation programs are also regulated in the 2009 Narcotics Law, in the 2009 Narcotics Law, social rehabilitation programs are carried

out by narcotics social rehabilitation institutions appointed by the government. The social rehabilitation program in the 2009 Narcotics Law is aimed at addicts and victims of narcotics abuse, this is because both categories can be considered as "victims" of the narcotics distribution itself, but this itself must be proven in court. In addition to the evidence in the trial to decide on the provision of rehabilitation, an addict or narcotics abuser can also take the initiative to report to the relevant institutions that he is an addict/abuser, this is intended so that he can get treatment and rehabilitation both medical and social by the relevant institution. In the event that the addict/abuser is a minor, the Narcotics Law stipulates that the parent can report and take their child directly to a rehabilitation institution to get treatment and rehabilitation without having to wait for the child to be caught or processed in court, this of course really requires the active role of the public. old to bring his son. The social rehabilitation program in the 2009 Narcotics Law is not aimed at narcotics dealers or traffickers, because the 2009 Narcotics Law views that these narcotics dealers and dealers are the main perpetrators in narcotics crimes so that traffickers and dealers must be severely punished.

From the two concepts of social rehabilitation in the two laws, namely the 2012 SPPA Law and the 2009 Narcotics Law, it can be seen that there are several differences, such as in the rehabilitation of narcotics addicts/abusers there is an opportunity to come with their own initiative and parents without the need for an arrest or court process, while in social rehabilitation in the 2012 SPPA Law, social rehabilitation is a program aimed at children who are in conflict with the law, in other words, children who are involved in a criminal act. The next difference between the two concepts is that, apart from the main focus of social rehabilitation, which is a process of improving children so that they are accepted back into society, social rehabilitation in the 2009 Narcotics Law has another main focus, namely eliminating dependence on drugs for addicts and drug users, which is manifested by the existence of a health approach to social rehabilitation participants eliminating dependence on drugs. The next difference between the two concepts of social rehabilitation is related to the time period for the implementation of social rehabilitation in the social rehabilitation of addicts/narcotics abusers in Article 55 of the Minister of Social Affairs 9 2017 there is a period of at least 3 months and a maximum of 12 months, while for social rehabilitation in the 2012 SPPA Law. is not regulated regarding the minimum and maximum period but is more varied in accordance with the criminal decision handed down.

Provisions Regarding Deradicalization in the 2018 Anti-Terrorism Law Deradicalization is regulated in several regulations, such as the latest deradicalization being part of the revision of the terrorism law, namely Law Number 5 of 2018, deradicalization is a form of handling terrorism in Indonesia which is not only focus on the hard approach in handling terrorism cases but also focus on prevention, as well as guidance from parties in the terrorism crime case itself, apart from Law Number 5 of 2018 deradicalization is also regulated in several regulations but more in technical arrangements and implementation such as Presidential Regulation Number 46 of 2010 concerning the National Agency for Countering Terrorism, as well as Regulation of the Head of BNPT Number PER-01/K.BNPT/I/2017 concerning the

Organization and Work Procedures of Countering Terrorism, which regulates the duties of BNPT in the deradicalization program which is realized by formation Deputy for Prevention and Protection of the BNPT. In Law Number 5 of 2018, deradicalization is regulated in Article 43 D paragraph 1 which reads:

"Deradicalization is a planned, integrated, systematic and continuous process carried out to eliminate or reduce and reverse radical understanding Terrorism that has occurred"

From the definition of deradicalization above, it can be seen from the word "reversing the radical understanding of terrorism that has occurred" that the main purpose of this deradicalization program is that how radical thoughts can be eliminated by parties involved in criminal acts of terrorism. It is certainly very good if this deradicalization program is applied to children involved in criminal acts of terrorism because most children involved in criminal acts of terrorism are exposed to dangerous radical thoughts from their own families. the. Deradicalization in its implementation can be imposed on suspects, defendants, convicts, convicts, ex-convicts and or people or groups who have been exposed to radical terrorism, this is in accordance with Article 43 D paragraph (2) of Law Number 5 of 2018. The article shows that the target scope of the deradicalization program that is being implemented is quite broad, this is in the sentence "people or groups who have been exposed to radical terrorism" it is evident that it is not necessary to determine a suspect or become a convict to get a deradicalization program, people who are exposed to radical ideas even though they have not or have not been convicted. not committing a criminal act of terrorism can already undergo a deradicalization program, this is certainly very good as preventive/preventive measures for terrorism crimes that occurred in Indonesia, moreover this program also includes former terrorism convicts this also reflects the existence of preventive actions to prevent The deradicalization carried out by BNPT in its implementation has several stages as regulated in Article 43 D paragraph (4), namely as follows:

1. Identification and assessment, in the program This deradicalization is realized by the existence of an assessment of the parties involved in criminal acts of terrorism, this assessment is quite necessary in order to find out the extent of the radical thoughts or understandings of the perpetrators of the criminal act of terrorism themselves so that what actions will be implemented can run more efficiently. effective and maximum against the perpetrators of the crime of terrorism.

- 2.Rehabilitation, the rehabilitation stage itself has the meaning of a return of the situation to a good state as before, in terms of deradicalization, rehabilitation can mean fostering the parties involved in criminal acts of terrorism, both in terms of fostering the understanding of radicalism adopted so that radical understanding can be built into a normal understanding as before. In addition, rehabilitation in terms of deradicalization also means fostering the parties involved in terrorism so that they have something that can be used when returning to society and so that it can be well received.

- 3.Re-education, the re-education stage in the deradicalization program of terrorism crimes is a stage in which it is filled with the provision of education that the radical teachings that have

been embraced by terrorists are deviant and incorrect teachings, of course the delivery of this matter. this must be delivered in stages with a careful process in order to ensure that terrorist actors can receive an understanding of the re-education properly and effectively.

4. In terms of language according to the KBBI "reintegration" itself has the meaning of a reunification or reaffirmation and "social" has the meaning of something related to society, while from the term "social reintegration" it has the meaning of an effort to be able to re-create a trust or good social conditions after a process of social disintegration. In the process of deradicalizing the criminal act of terrorism, the stage of social reintegration is intended so that the parties involved in this criminal act of terrorism are expected to be able to re-mingle and be accepted by the community after serving their sentence.

4. DISCUSSION

Social Rehabilitation in Act No. 11 of 2012 is one part of a diversion, while the terms of a criminal act can be enforced diversion pursuant to Article 7 of Law No. 11 of 2012 on Child Criminal Justice System is as follows:

“(1) At the level of investigation, prosecution and examination of a child's case, diversion must be sought

(2) Diversion as referred to in paragraph (1) is carried out in the event that a criminal act is committed:

- a. is threatened with imprisonment of less than 7 (seven) years; and
- b. is not a repetition of a criminal act.”

The crime of terrorism itself if the perpetrator is a child has a threat of a sentence of 10 years in prison, this arises as a problem in how social rehabilitation which is part of diversion is applied to children involved in cases of criminal acts of terrorism. . It is regulated in the explanation of Article 9 of the 2012 SPPA Law as follows:

“This provision is an indicator that the lower the criminal threat, the higher the priority of Diversion. Diversion is not intended to be carried out against perpetrators of serious criminal acts, such as murder, rape, drug dealers, and terrorism, which are punishable by imprisonment for more than 7 (seven) years.”

From the explanation of the article, it can be understood that children who are perpetrators of terrorism are seen as serious crimes so that diversion cannot be attempted. However, this still creates confusion as to whether children involved in these terrorist activities can be categorized as perpetrators or categorized as victims because most of them commit these acts of terror at the invitation of their closest people such as parents or other family members. of Social Rehabilitation by SPPA, there is a separate regulation which is the implementation guideline of the social rehabilitation program by the SPPA Law, namely Minister of Social Affairs Regulation Number 9 of 2015 concerning Guidelines for the Implementation of Social Rehabilitation by LPKS. In this 2015 Permensos Social Rehabilitation, what is meant by social rehabilitation is regulated in Article 1 number 1, namely:

“Social Rehabilitation is a process of re-functionalization and development to enable a person to be able to carry out his social functions properly in community life”

From the definition given by this regulation, it can be seen that there are main elements of the social rehabilitation program, namely :

1. Refunctionalization

In this case can be interpreted as returning the function of children undergoing social rehabilitation to function properly, such as restoring the child's psychological condition that may be disturbed by the case he is facing, therefore in a series of social rehabilitation activities there are ways such as motivation so that the child does not lose his enthusiasm as a result of the case he is undergoing, besides that in the rehabilitation program there is a process of social guidance, mental spiritual guidance, other things This can certainly help the functionalization process of the child.

2. Development

The development of the social rehabilitation process for children as regulated in this Minister of Social Affairs Regulation also strongly supports a development process in children, this is manifested by the existence of a vocational guidance program in which there is a channeling of interests, talents, and preparing independence in the form of work skills, in addition to a vocational training in social rehabilitation measures there is also a counseling method. There are requirements for children who can be given social rehabilitation, which is regulated in article 4 of the Minister of Social Affairs of the 2015 Social Rehabilitation in Conflict with the Law by the Social Welfare Organizing Institution as follows:

“ABH Social Rehabilitation addressed to:

- a. Children who are not yet 12 (twelve) years old have committed a crime or are suspected of committing a crime;
- b. Children who are undergoing legal processes at the level of investigation, prosecution, and court;
- c. Children who have received a diversion determination; or
- d. Children who have received a court ruling and/or decision that has permanent legal force. “

From the requirements above, it can be seen that children who can undergo social rehabilitation programs are "children who have received a diversion determination" from this it can be seen that this social rehabilitation is a form of diversion itself. Although children who are perpetrators of crimes of terrorism cannot be diverted, in accordance with Article 4 of the Minister of Social Affairs for Social Rehabilitation 2015 children, even though diversion cannot be carried out, can still undergo the social rehabilitation process, but social rehabilitation is carried out when there has been a decision that has permanent legal force from the court.

In addition to the 2012 SPPA Law, provisions regarding social rehabilitation are also regulated in Law Number 35 of 2009 concerning Narcotics. The social rehabilitation program for someone in conflict with the law is also regulated in the 2009 Narcotics Law, the social rehabilitation program contained in the Narcotics Law is aimed at addicts and narcotics abusers, this is as regulated in article 54 of the 2009 Narcotics Law, namely as follows: “Narcotics addicts and victims of narcotics abuse must undergo rehabilitation and social rehabilitation”.

In the article related to what is meant by addicts and victims of narcotics abuse, the definition is someone who accidentally uses narcotics by being persuaded, coerced, or deceived. With this regulated, drug users must be able to prove before the court to be able to get a medical and social rehabilitation process that he is not a dealer or dealer but an addict or victim of drug abuse by proving the things mentioned above. This is because if a person is proven to be a drug dealer or dealer, social and medical rehabilitation programs cannot be given to that person.

From the comparison of the three arrangements regarding social rehabilitation above, it can be seen that there are several differences and specificities in it, in the social rehabilitation regulated in the 2012 SPPA Law, social rehabilitation is more aimed at general criminal acts committed by children. While the social rehabilitation arrangements in the 2009 Narcotics Law, the social rehabilitation program is specifically aimed at addicts and victims of narcotics abuse, in addition there are special arrangements, namely reports on their own initiative for addicts and victims of narcotics abuse. In addition, the 2009 Narcotics Law also regulates the obligation of parental participation in reporting children who are addicts or victims of narcotics abuse to the authorized institution to obtain programs, both medical rehabilitation and social rehabilitation. Furthermore, rehabilitation in the 2018 Anti-Terrorism Law, in this law rehabilitation is regulated as one of the processes in the deradicalization program.

5. CONCLUSION

In terms of the concept of deradicalization and social rehabilitation, there are two programs that have the same goal, namely, to correct a social deviation in the subject, which in this case deradicalize the subject, namely people who have radical ideas and terrorist actors ranging from children to adulthood, while social rehabilitation in the 2012 SPPA Law has a special subject for children who are in conflict with the law. Although it has the same goal, in terms of children related to terrorism crimes, the deradicalization program has more specific treatments for the thoughts and ideas of radicalism in exposed children. radical thinking, deradicalization also has programs such as national insight programs, ideological insights, and religious insights that are quite effective in reducing or even eliminating radical ideas they have.

Regulations regarding deradicalization of perpetrators of criminal acts of terrorism still do not have rules that can be imposed on parties involved in criminal acts of terrorism who refuse to participate in deradicalization activities by BNPT. In terms of social rehabilitation, various

kinds of social rehabilitation are regulated in several settings, but with different implementing institutions such as BNN, BNPT, and LPKS.

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