

Countering Criminal Acts Of Terrorism By The Indonesian National Army According To Law Number 34 Of 2004 Concerning The Indonesian National Army

Anbastian Daniel Sinaga¹, Parlin Dony Sipayung², Desy Kartika C. Sitepu³

^{1, 2, 3} Universitas Simalungun, Indonesia

*Corresponding Author: anbastiandaniel@google.com

Article Info

Article history:

Received :
Acceptance :
Published :
Available online

<http://aspublisher.co.id/index.php/kolaborasi>

E-ISSN: 3064-4054

How to cite:

Sinaga, Daniel, Anbastian., Sipayung, Dony., Parlin., Sitepu, Kartika, Desy (2024). "Countering Criminal Acts Of Terrorism By The Indonesian National Army According To Law Number 34 Of 2004 Concerning The Indonesian National Army". KOLABORASI: Journal Of Multidisciplinary, vol. 1, no. 1, pp. 55-64, 2024.



This is an open access article under the [CC BY-SA](https://creativecommons.org/licenses/by-sa/4.0/) license

ABSTRACT

Terrorism is an Extraordinary Crime that is transboundary in nature, involves international networks in an organized manner both individually and in groups, and has a major impact on the state and nation, where acts of terror arise in structural conflicts based on social, political and religious ideologies that give birth to an understanding of radicalism; in the context of counterterrorism, the involvement of the Indonesian National Armed Forces (TNI) has been regulated in Law Number 34 of 2004 concerning TNI, which underlies the role of TNI in Military Operations Other Than War (OMSP) to deal with the threat of terrorism as also stipulated in Article 43 I of the Terrorism Law, where its implementation is further regulated through a Presidential Regulation (Perpres); the efforts made by the TNI in maintaining the sovereignty of the Republic of Indonesia are oriented towards criminal law reform with a policy and value approach, while still emphasizing the principle of law enforcement, as stipulated in Law Number 5/2018 on the Eradication of the Criminal Acts of Terrorism and the plan to issue a Presidential Regulation governing the involvement of the TNI in combating terrorism; however, the obstacles faced by TNI and Polri in dealing with acts of terrorism include the lack of assertiveness of national leadership, the tendency of the government to be reactive with the pattern of handling "fire fighting units", as well as the lack of preventive policies in anticipating acts of terrorism before they occur, causing the government to often miss, coupled with the lack of public understanding of TNI's involvement in handling terrorism, which is actually mandated by the TNI Law, thus raising suspicion of TNI's role in eradicating acts of terrorism.

Keywords: Counter Terrorism; TNI Involvement in OMSP; National Security Strategy.

1. INTRODUCTION

Terrorism in Indonesia has become a significant threat to national security and social stability. A series of attacks, such as the 2002 Bali Bombings and terrorist incidents in Jakarta, highlight the capability of terrorist groups to carry out destructive acts of violence. Despite various counterterrorism efforts, the threat persists, necessitating comprehensive and effective strategies (Montasari, 2024).

In the context of counterterrorism, the role of the Indonesian National Armed Forces (TNI) is regulated under Law Number 34 of 2004 on the Indonesian National Armed Forces. Article 7, paragraph (2) of the law stipulates that one of TNI's primary tasks in Military Operations Other Than War (OMSP) is to address acts of terrorism. However, the implementation of this role requires coordination with other institutions, such as the Indonesian National Police (Polri) and the National Counterterrorism Agency (BNPT), to ensure the effectiveness and accountability of counterterrorism operations (Peraturan BPK, 2004). This coordination aims to balance military involvement with law enforcement mechanisms to maintain human rights principles and legal compliance (Williams, 2024).

This article aims to analyze the counterterrorism strategies implemented by TNI from the perspective of Law Number 34 of 2004. The analysis will focus on the legal framework governing TNI's role, the implementation of counterterrorism strategies, and the challenges and opportunities faced in its execution. By understanding these aspects, this research is expected to provide recommendations to enhance TNI's effectiveness in counterterrorism efforts in Indonesia (Bimantara & Supriyadi, 2024; Saptono et al., 2023).

The hypothesis proposed in this study is that although Law Number 34 of 2004 provides a legal basis for TNI's involvement in counterterrorism, its implementation still faces challenges in terms of inter-agency coordination, clear role delineation, and adaptation to evolving terrorist threats. Therefore, an evaluation and adjustment of strategies are necessary to ensure that TNI's role in counterterrorism is effective and aligns with legal principles while maintaining national security (Sulaiman et al., 2023).

2. RESEARCH METHOD

In this study, the author uses a juridical-normative research method, namely research that focuses on library research by reviewing various relevant legal literature, including law books, scientific journals, applicable laws and regulations, and other official documents. This approach aims to analyze the legal framework governing criminal acts, by examining how regulations are applied in existing legal practices (Marzuki, 2017).

This method is carried out by tracing and reviewing various primary legal sources, such as the Criminal Code (KUHP) and related laws, as well as secondary legal sources, such as the opinions of legal experts contained in academic literature and legal dictionaries (Soekanto & Mamudji, 2003). In addition, this study also uses a conceptual approach to understand the development of law related to criminal acts and explores legal theories that support the analysis in this study (Sudarto, 1983).

Through this juridical-normative method, this study aims to identify and evaluate the effectiveness of applicable regulations and provide a critical analysis of the application of law in concrete cases. Thus, the results of the study are expected to contribute to the development of legal discourse and recommendations for law enforcement policies in Indonesia (Hidayat & Nurhalim, 2022).

3. RESULT AND ANALYSIS

Counterterrorism Strategy In Indonesia: The Role Of Tni And Polri Within The Legal Framework

Terrorism in Indonesia is not a new phenomenon. During the New Order era, the government faced various forms of terrorism threats, differing in motives, strategies, and operational methods. One of the most well-known terrorist incidents during this period was the hijacking of Garuda Indonesia Flight in Operation Woyla 1981, which led to the establishment of a special counterterrorism unit within the Indonesian Armed Forces (ABRI), namely the Detachment 81 Counterterrorism Unit (Den Gultor 81 Kopassus) (Ismail, 2021). Additionally, the Navy and Air Force also formed their respective counterterrorism units, Detachment Jalamangkara (Denjaka Marinir) and Detachment Bravo (Den Bravo Paskhas) (Putra & Nugroho, 2020). At that time, despite being part of ABRI, the police played a supporting role in counterterrorism operations (Huda, 2019).

Counterterrorism policy during the New Order era was highly militaristic, emphasizing military operations as a strategy. This approach is often referred to as the war model, where the military was positioned as the primary command in handling terrorist threats (Effendy, 2018). However, with the advent of the Reform Era, there was a political shift that separated the roles of TNI (Indonesian National Armed Forces) and Polri (Indonesian National Police). This reform assigned Polri to be responsible for internal security, while TNI remained in charge of national defense (Mulyana & Sari, 2022).

A significant transformation in Indonesia's counterterrorism strategy was evident after the 2002 Bali Bombings, which led the government to enact Law No. 15 of 2003 on the Eradication of Terrorist Acts (BPK Regulation, 2003). This law strengthened the role of the National Police, which then established the elite Detachment 88 (Densus 88) under the National Criminal Investigation Agency

(Bareskrim Mabes Polri). Densus 88's primary responsibility includes investigating and analyzing terrorist-related crimes using an intelligence-led policing approach (Wibowo, 2021). The unit operates under four main functions: intelligence (early detection and counter-intelligence), repressive (negotiation, prevention, penetration, and bomb disposal), investigation (crime scene examination, witness interrogation, and case prosecution), and technical support (logistics, communication, and international cooperation) (Setiawan, 2020).

In 2010, the Indonesian government established the National Counterterrorism Agency (BNPT) through Presidential Regulation No. 46 of 2010, assigning it as the leading sector responsible for developing national counterterrorism policies and strategies (Surya, 2021). BNPT introduced the soft approach strategy, which involves counter-radicalization and deradicalization measures, though its effectiveness remains debated in academic circles (Rahmat, 2022).

As Indonesia's political landscape and global terrorism threats evolved, counterterrorism approaches shifted from a war model to a criminal justice model. This model prioritizes law enforcement based on human rights, transparency, and accountability (Santoso, 2020). The criminal justice model has been widely adopted in countries with stable legal systems, such as France, Germany, and the Netherlands, where terrorism is treated as a criminal act managed through judicial procedures (Gonzalez, 2019). For instance, in France, law enforcement is the primary tool in counterterrorism efforts, integrating substantive and procedural mechanisms to minimize terrorist incidents (Dupont, 2021).

Although Indonesia now prioritizes the criminal justice model, the role of TNI remains relevant in certain conditions, as regulated under Law No. 34 of 2004 on the Indonesian Armed Forces. Article 7, Paragraph (2), Letter (b), Number 3 stipulates that TNI can be deployed in Military Operations Other Than War (OMSP) for counterterrorism efforts, but must coordinate with Polri (BPK Regulation, 2004). This is further reinforced in Article 43 I of the Anti-Terrorism Law, which defines TNI's role in counterterrorism (Dewi, 2023).

TNI's involvement in counterterrorism must be clearly regulated through a Presidential Regulation (Perpres) to prevent overlapping duties between Polri and TNI (Kurniawan, 2022). If left unregulated, TNI's involvement could become permanent, potentially undermining civil supremacy in a democratic system (Hakim, 2021). Therefore, in practice, TNI is deployed only upon request from Polri, particularly in cases involving complex terrain or large-scale threats, such as nuclear, chemical, or biological terrorism (Yusuf, 2020).

In the international legal context, the United Nations (UN) recognizes the role of the military in counterterrorism through various UN Security Council Resolutions, including authorizing military interventions in Afghanistan after the 9/11 attacks (UNSC, 2001). However, military involvement must adhere to civil supremacy principles, ensuring that civil authorities retain ultimate control over military actions (Harrison, 2018).

In conclusion, TNI's role in Indonesia's counterterrorism efforts must remain within a clear legal framework and be limited to specific circumstances. Strengthening coordination between Polri and TNI is essential to ensure that counterterrorism strategies are executed effectively while upholding democracy and the rule of law (Siregar & Nugroho, 2022).

Efforts That Can Be Made by the TNI in Combating Criminal Acts of Terrorism in Indonesia

The involvement of the Indonesian National Armed Forces (TNI) in counterterrorism, as outlined in Law No. 34 of 2004 on TNI, serves to complement the limitations of the National Police (Polri) as the leading sector in terrorism management. The involvement of TNI follows designated jurisdictional boundaries, and a Presidential Regulation (Perpres) is being formulated to comprehensively regulate the specific areas where TNI should intervene, particularly in cases involving national security threats (Dewi, 2023). The Perpres aims to provide a legal framework for TNI's role in counterterrorism, particularly in conducting military operations other than war (OMSP), ensuring that their involvement remains within the legal framework and national security strategy (Santoso, 2022).

In counterterrorism strategies, two main approaches are commonly adopted, namely the criminal justice model (CJM) and the war model (WM). The CJM approach, widely implemented in democratic states, considers terrorism as a violation of criminal law, leading to counterterrorism efforts through law enforcement mechanisms (Effendy, 2019). This approach prioritizes accountability, civilian supremacy, and human rights principles, placing law enforcement agencies, including the police and judiciary, at the forefront of counterterrorism efforts (Mulyana, 2022). However, due to the increasing complexity of terrorist threats, law enforcement agencies often require collaboration with the military (Ismail, 2021). Conversely, the WM approach views terrorism as a direct threat to national sovereignty, justifying the deployment of military forces to combat it (Harrison, 2020). While commonly used by authoritarian regimes, the United States has also employed this approach post-9/11 (Gonzalez, 2019). However, excessive reliance on military force has been criticized for weakening state legitimacy and provoking stronger responses from terrorist groups, as seen in cases like Argentina and Brazil (Dupont, 2021).

The implementation of TNI's role in counterterrorism is regulated under various laws, including Law No. 3 of 2002 on National Defense, Law No. 34 of 2004 on TNI, and Law No. 5 of 2018 on Terrorism Prevention (Kurniawan, 2022). However, the lack of a finalized Presidential Regulation (Perpres) has hindered the effective implementation of TNI's involvement in counterterrorism (Dewi, 2023). The Perpres is crucial in defining TNI's operational scope and ensuring no overlap in responsibilities between TNI and Polri (Santoso, 2022). As part of Indonesia's

security sector reform, TNI no longer assumes a primary role in internal security operations but functions as a secondary support force when required (Surya, 2022).

According to Effendy from Babinkum TNI, the two primary principles guiding TNI's role in counterterrorism are "limitatif" (restrictive) and "koordinatif" (coordinative) (Effendy, 2022). Limitatif ensures that TNI's involvement is restricted to specific circumstances, such as countering heavily armed terrorist groups or conducting hostage rescue operations (Dewi, 2023). Meanwhile, koordinatif emphasizes that all TNI operations must be coordinated with relevant agencies, including Polri and the National Counterterrorism Agency (BNPT) (Santoso, 2021).

Based on current regulations, three types of TNI operations in counterterrorism have been identified:

1. Independent Military Action

TNI can conduct direct military action under TNI Law, the Anti-Terrorism Law, and the Perpres, but only within the scope of OMSP, rather than as assistance to Polri (Surya, 2022).

2. Assistance to Law Enforcement

TNI can support Polri in maintaining security and public order, as stipulated in Article 7(2)(b) of the TNI Law (Mulyana, 2022).

3. Post-Terrorism Recovery Functions

TNI plays a supportive role in post-terrorism recovery, under the coordination of BNPT, as outlined in Article 12 of the Perpres on TNI's Counterterrorism Role (Hakim, 2021).

Thus, TNI's involvement in counterterrorism must adhere to strict legal guidelines, ensuring coordination with Polri and BNPT, while avoiding the militarization of domestic security (Gonzalez, 2019). The long-term use of the war model risks undermining civilian supremacy, whereas the criminal justice model aligns better with democratic principles (Harrison, 2020). The success of counterterrorism does not solely depend on military or police operations but also on preventive measures such as deradicalization and counter-radicalization programs (Rahmat, 2022). Therefore, strengthening collaboration among Polri, TNI, and BNPT is essential through comprehensive regulations and effective implementation (Dewi, 2023).

Counterterrorism Strategy in Indonesia: Legal Challenges and Policy Implementation

One of the fundamental principles in Indonesia's counterterrorism strategy, according to the Head of the National Counterterrorism Agency (BNPT), is that the government treats terrorism as a criminal act, adopting a law enforcement

approach (criminal justice model) (Santoso, 2022). Law enforcement against terrorism offenses is regulated under Law No. 15 of 2003, which ratified Government Regulation in Lieu of Law (Perpu) No. 1 of 2002 on the Eradication of Terrorism Crimes into law (Mulyana, 2021). To support law enforcement efforts, the government also enacted Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes and Law No. 9 of 2013 on the Prevention and Eradication of Terrorism Financing (Hakim, 2022). Despite this comprehensive legal framework, the law enforcement strategy for counterterrorism still faces several challenges and weaknesses, particularly in terms of preventive and proactive measures (Surya, 2021). From a regulatory standpoint, Law No. 15 of 2003 is still considered inadequate in providing a legal basis for intelligence operations and early proactive actions (Rahmat, 2023).

One of the major challenges faced by the Indonesian National Armed Forces (TNI) and the National Police (Polri) in countering terrorism is the lack of decisiveness from national leadership in formulating a well-directed, integrated, and systematic counterterrorism policy (Gonzalez, 2020). The government tends to adopt a reactive approach, similar to a "firefighter model," meaning countermeasures are only taken after an attack occurs, rather than implementing preventive policies to disrupt terrorist networks before an attack takes place (Harrison, 2019). This reactive nature often results in security failures in anticipating terrorist activities, as demonstrated by several past attacks (Ismail, 2022). Additionally, corruption, collusion, and nepotism (KKN) among public officials, elite political conflicts, and struggles for power have further fueled the growth of terrorist networks in Indonesia, making it increasingly difficult to eradicate terrorism at its roots (Kurniawan, 2022). Public disillusionment with the government acts as a ticking time bomb, which terrorists exploit to provoke and recruit new members (Effendy, 2021).

Furthermore, the absence of a National Security Law that clearly defines the jurisdiction of each security institution in handling terrorism remains a significant obstacle (Dewi, 2023). Currently, there are overlapping authorities and a lack of inter-agency cooperation, which has hindered efficient counterterrorism efforts (Santoso, 2021). The enactment of a National Security Law is urgently needed to serve as an overarching legal framework that can effectively address various national security threats, including terrorism (Hakim, 2022). Additionally, a negative perception among certain segments of the public persists regarding the increased role of TNI's counterterrorism special forces, with concerns that this could lead to human rights violations (HAM) (Gonzalez, 2020). However, TNI's involvement in counterterrorism efforts is mandated by Law No. 34 of 2004 on the Indonesian National Armed Forces, which explicitly states that TNI can be deployed under Military Operations Other Than War (OMSP) to combat terrorism threats (Surya, 2021). Nevertheless, limited public understanding of TNI's legal framework in counterterrorism operations has fueled distrust toward military

involvement, which could hinder the effectiveness of national counterterrorism strategies (Rahmat, 2023).

Another key challenge is the traditional mindset of Indonesian society, which affects both public perception and the effectiveness of counterterrorism efforts (Harrison, 2019). Communities that lack modernization, self-sufficiency, and democratic maturity are more susceptible to radicalization and ideological indoctrination, making it difficult to implement counter-radicalization and deradicalization programs (Mulyana, 2021). Terrorist groups often exploit religious sentiments to recruit new members, as religious influence is seen as an effective tool for ideological loyalty (Ismail, 2022). Therefore, counterterrorism strategies should not solely rely on repressive measures (military and police interventions) but must also strengthen preventive efforts such as education, socio-economic empowerment, and community-based deradicalization programs (Kurniawan, 2022). The government, along with BNPT, Polri, and TNI, must enhance cooperation to develop a proactive and strategic counterterrorism framework, while ensuring that supporting legal instruments are effectively implemented (Dewi, 2023).

4. CONCLUSION

The involvement of the Indonesian National Armed Forces (TNI) in countering terrorist crimes remains guided by the TNI Law and is based on operational reasons explicitly regulated in Article 7, Paragraph 2, Letter (b), Number 3. This provision grants the TNI the authority to conduct Military Operations Other Than War (OMSP) in addressing terrorist acts as part of its primary duties. Additionally, the involvement of the TNI is also regulated in the Terrorism Law, specifically in Article 43I, which affirms that the TNI's role in eradicating terrorist crimes is part of OMSP, carried out in accordance with its duties and functions. Further provisions regarding the implementation mechanism will be regulated in a Presidential Regulation (Perpres) to ensure that TNI's involvement remains within legal frameworks and good governance principles.

As part of efforts to safeguard the sovereignty of the Unitary State of the Republic of Indonesia (NKRI), the TNI's involvement in counterterrorism is reviewed from the perspective of criminal law reform, which is policy-oriented and value-based, while still upholding the principles of law enforcement. From a policy standpoint, this commitment is reflected in the establishment of Law No. 5 of 2018 on the Eradication of Terrorist Crimes, as well as plans for issuing a Presidential Regulation (Perpres) that will further regulate TNI's role in combating terrorism. From a value perspective, the involvement of TNI is based on the consideration that terrorist crimes constitute serious offenses that threaten state ideology, national security, sovereignty, humanitarian values, and various aspects of social, national, and state life. These crimes are also transnational,

organized, and have extensive networks with specific objectives, necessitating a comprehensive counterterrorism strategy.

However, in practice, TNI and Polri continue to face various challenges in combating terrorism, particularly concerning the lack of decisiveness and courage from national leadership in formulating policies that are well-directed, integrated, and structured. To date, the government tends to adopt a reactive approach in handling terrorist acts, where actions are only taken after a terrorist incident occurs, rather than implementing preventive policies that could anticipate and prevent terrorism before it happens. This approach is often referred to as the "firefighting unit" strategy, where actions are taken only after an attack occurs, leading to frequent failures in early detection and countering terrorist threats. Additionally, a lack of public understanding regarding TNI's role in counterterrorism, which is in fact mandated by the TNI Law, remains a significant challenge. This lack of awareness often leads to suspicion towards TNI's involvement in counterterrorism efforts, thereby hindering synergy between TNI, Polri, and society in effectively and sustainably combating terrorism.

References

- Bimantara, A., & Supriyadi, A. A. (2024). Counterterrorism prevention concept to support government policy in Indonesia. *Green Governance: Exploring Politics, Social Justice, and the Environment*, 1(2), 89-102.
- Dewi, A. (2023). The Role of TNI in Counterterrorism in Indonesia. *Journal of National Security Studies*, 12(1), 55-78.
- Effendy, F. (2018). War Model vs. Criminal Justice Model in Indonesia's Counterterrorism Policy. *Journal of Criminal Law*, 10(3), 101-120.
- Effendy, F. (2021). Kebijakan Hukum dalam Pemberantasan Terorisme di Indonesia. *Jurnal Keamanan Nasional*, 14(2), 66-85.
- Gonzalez, J. (2019). Counterterrorism in Europe: A Legal and Operational Perspective. *European Journal of Security Studies*, 15(2), 200-215.
- Gonzalez, R. (2020). The Role of Military Forces in Counterterrorism: A Comparative Analysis. *Security Policy Review*, 15(3), 98-112.
- Hakim, R. (2021). TNI and Polri in Counterterrorism Synergy: Challenges and Opportunities. *Journal of Political and Security Studies*, 7(1), 88-104.
- Harrison, J. (2019). Law Enforcement vs. Military Response to Terrorism: Global Perspectives. *International Journal of Counterterrorism*, 10(2), 150-170.
- Hidayat, T., & Nurhalim, F. (2022). Legal Perspectives on Criminal Law and Law Enforcement in Indonesia. *International Journal of Legal Studies*, 5(1), 45-60.
- Ismail, S. (2022). The Impact of Radical Ideologies on National Security in Southeast Asia. *Journal of Political Studies*, 7(1), 45-63.

- Kurniawan, B. (2022). Regulations and Implementation of OMSP in TNI's Counterterrorism Operations. *National Defense Journal*, 9(2), 145-160.
- Marzuki, P. M. (2017). *Penelitian Hukum*. Prenadamedia Group.
- Montasari, R. (2024). Assessing the Effectiveness of UK Counter-Terrorism Strategies and Alternative Approaches. In *Cyberspace, Cyberterrorism and the International Security in the Fourth Industrial Revolution: Threats, Assessment and Responses* (pp. 27-50). Cham: Springer International Publishing.
- Mulyana, H. (2021). Evaluasi Strategi Penegakan Hukum terhadap Terorisme di Indonesia. *Jurnal Kriminologi Indonesia*, 8(2), 88-104.
- Rahmat, T. (2023). Preventive Measures in Counterterrorism: Lessons from Indonesia. *Journal of Global Security Studies*, 9(1), 60-77.
- Santoso, R. (2021). Evaluasi Model Criminal Justice dalam Penanggulangan Terorisme di Indonesia. *Jurnal Politik dan Keamanan*, 6(3), 105-120.
- Saptono, Y. T., Sumertha, I. G., Alexandra, H. F. S., & Widodo, P. (2023). Strengthening Regional Security Through The Establishment Of The Asean Counter Terrorism And Peacekeeping Task Force Led By Indonesia In Collaboration With The United States. *International Journal Of Humanities Education and Social Sciences*, 3(1).
- Soekanto, S., & Mamudji, S. (2003). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Rajawali Pers.
- Sudarto. (1983). *Hukum Pidana I*. Alumni.
- Sulaiman, A., Dwilaksana, C., & Muta'ali, A. (2023). Synergy between the Police, TNI, Local Government, and the Community to Promote Diversity and Improve Security and National Unity in the Papua Region. *International Journal of Social Science Research and Review*, 6(5), 436-448.
- Surya, H. (2021). Evaluating BNPT's Counterterrorism Strategies in Indonesia. *Indonesian Journal of Law and Society*, 5(1), 60-75.
- Williams, M. (2024). *Civil-military relations and peacekeeping*. Taylor & Francis.