

THE USE OF TORTURE WHILE INVESTIGATING SUSPECTED TERRORIST

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Abstract : Efforts to fight terrorism draws seriously attention from states in the world. United Nations draws up several Resolutions and Conventions proposed to abolish terrorism. States in the world ratified UN Resolutions and Conventions, then enacted it in to their national legislation. Many kind of procedures are practiced by investigators to collect informations relating to activity of the suspected terrorist, and enabled to identify and apprehends of other terrorists, warned of terrorist plots planned for states around the world. Use of torture to investigate suspected terrorist results a good information for protecting greater civilians. The use of torture and in any proceedings to rely on evidence in the fight against terrorism must be legalized, so that it can be better controlled and regulated. That its more better for a terrorist endures suffering than the slow moving development in humanity manner while investigating the suspected terrorist, so that can emerge other terror accident in other place which could make results suffers on other civilianz. Manner like this is not in line with just and civilized humanity principle. Just and civilized humanity has a significant meaning for the life of the whole society, includes for the suspected terrorist self. Civilized manner investigations must be practiced without result suffer to and disappears the life of suspected terrorist. The purpose of this writing aims to get theoretical view about the use of the method based on just and civilized humanity while investigates a suspected terrorist. Writings method have the descriptive and analitical quality which compares the utilitarian manner to just and civilized humanity.

Keywords: Torture, Just and Civilized Humanity

I. INTRODUCTION

Terrorism cannot be defined as a form of symmetrical conflict, as in the situation of war. Terrorism is a form of asymmetrical conflict with coercive powers, causing the huge cost drain on the military. By contrast, in terrorist side, the way of working is highly confidential or exclusive and in a small size of organization, the people who are involved are used to attack or block counter party purposes, there's no form of obvious organization. Therefore, sudden and unexpected actions, considered to be serious and important. From the war standpoint, there is no recognition towards personal enemy. There is action known in war standpoint, which aims to create suffering for party considered as objective enemy (Objective Enemy, means any person, party, group or country that is seen as an ideological enemy of one party (e.g., Al-Qaeda) to another party (e.g., the United States) or those that are in line or defending the interests of the enemy.

Create suffering on parties regarded as objective enemies, cannot be associated with the activity of creating misery in ordinary criminal incident. Terrorism also, cannot be categorized as ordinary criminal act. The victims of terrorism including psychological trauma, the loss of society in large scale, also the damage of property and public facilities. Through this characterization, terrorism is growing rapidly in many countries in the world, to reach the desired purposes of those terrorists it self. Igor Primoratz emphasizes that the 11 September 2001 events is not a new type of terrorism (Primoratz Igor 2006),(Audrey Kurth Cronin, 2015).

According to Igor Primoratz, the purpose of each act of terrorism not solely lie in the political targets they intend to achieve but also to acts that cause fear or death of the wider community. Victims of suicide attacks is a form of death of terrorists. At the same time it causes many of the death victims or injury It also causes the damage to many societies important property or possessions. Terrorist acts are drastic and may vary. Such actions how's that terrorism not only seen as an ordinary criminal act but also the act of entering the sphere of morality, ideology or religion. Black's Law Dictionary as quoted by Muladi argued that terrorism is an activity that involves an element of torture or which cause harmful effects to human life that violates the criminal law (federation or its states) that are intended to :

- a. Intimidate the civilian population.
- b. Influence government policy;
- c. Affecting the state administration by abduction or murder (Firmansyah, 2002).

Therefore it is very necessary to conduct a serious investigation, which resulted to accurate information. It is known that the investigation is not only against suspected terrorists. Investigations carried out also toward witnesses, victims, the work of intelligence, information from the public as well as information over the phone, internet. Focus of the investigation is not solely intended to ask the accountability of perpetrators. Law enforcement has a responsibility in the form of combating terrorism effectively. Thus it is imperative, law enforcement should as much as possible obtain the information.

II. RESEARCH METHOD

This research is done by using descriptive analysis method with legal normative. This type of research is research literature conducted in several universities, in The Police Headquarters of the Indonesian Republic, in 88 Special Detachment Headquarters of the Anti-Terror (Densus 88 AT). Analysis data is qualitative analysis.

III. RESULT AND DISCUSION

A. Torture in Investigation and Human Rights

Investigation for terrorist suspects using torture raise a concern because even this individual has constitutional rights. Examination of terrorist suspects are expected to provide information without neglecting the essences of democracy within laws that guarantees constitutional rights of individual. A difficulties in dealing with terrorists because of unresolved different stand point between a terrorist group with the state government. Basically terrorism has its own values. It is a way that made the terrorist group is often used in ways that do not conform to the democratic constitutional. On the other hand, examinations are often not conducted in a manner that is humane. Examination conducted by torture. The definition of torture raised by the United Nations has a very broad sense. Definition of torture includes a variety of specific techniques that are cruel. Techniques are used to create physical and psychological suffering. He explained also that the approach to the definition of the meaning of torture would cause three problems :

1. The practices of torture is limited to the act of sadistic torture;
2. The practice of torture is almost always done with various combinations simultaneously (for example, hitting the suspect as he closed eyes), or torture in a row (for example, hitting the suspect then soak in water);
3. If the description of the torture put forward by arranging the details of the act, it can emerge new models or techniques of torture, so it cannot be defined as torture. It was caused by the techniques or new methods of torture, not in accordance with the description of the existing forms of torture.(Costanzo and Gerrity, 2009).

A banon acts of torture mainly agreed in the *Geneva Conventions and the Convention Against Torture and other Cruel, In human or Degrading Treatment or Punishment*, but these convention simposed on POWs (Prisoners on War). A prisoner of war must be a member of the military. A terrorist suspects are not members of the military of a country (Constitutional Rights Foundation, 2005).

In human rights law the state has the constitutional responsibility also to protect its citizens from attacks that damage or cause loss of life or disability in its citizens. Instead, the state has an obligation also guarantees human rights of its citizens, although its citizens allegedly once as suspected terrorists. Thus Human Rights should provide protection for the general public and at the same time avoiding the excesses of counter terrorism measures such as torture in the investigation process. In addition to torture, Eric Posner and Adrian Vermeule regard violence (coercive) as a species of torture (Vermeule and Posner 2005).

B. Morality of Just and Civilized Humanity

Examination of cases of terrorism which uses methods of torture even if the desired legislation, remains contrary to the principles of a just and civilized humanity. Factors of torture as stated Metin Basoglu includes techniques of sexual torture (e.g., rape, genitals harrasment), physical abuse (e.g., beating, burning with cigarettes), psychological torture (e.g., threat of torture, witnessing torture), humiliation (e.g., stripped by force, put human feces in food), standing imposed (e.g., stand upright for long periods of time in the sun or in the middle of a cold night, tying the body cause limited movement), discomfort (e.g., closed eyes with cloth or tape, standing shirtless in the

middle of the night), decreases the amount of basic needs (e.g., making can not sleep, reducing and feeding unfeasible food).

Treatments such contrary to the principles of civilized humanity. The use of the principle of just and civilized humanity by the author based on the grounds that the nation of Indonesia has in principle as contained in the Pancasila. Statement of Pancasila as a source of law, put each principle that animates each other and inspired by other principles, are in a position as a source of substantive law. The substance of the principle of just and civilized humanity is differentiated by author in two phrases; humanity fair phrases, and phrases civilized humanity. But the discussion will be preceded by a civilized humanity, and humanity fair.

The intention of civilized humanity is human action that uphold human dignity. In connection with the principle deity Almighty, human beings are God's creation. As fellow God's creation, the position of the dignity of human beings are equal. Mistakes made by a person, do not give the right to someone else to put the dignity of the guilty party is lower than himself. Treatment of torture as stated by Metin Basoglu is the treatment degrading human dignity. Not only degrading the dignity of suspected terrorists, but also degrading the dignity of investigators who do. Also degrading the dignity of other human beings. As a source of substantive law, this thinking should be applied to the laws and regulations that prohibit the use of torture in any form and in any case.

In Indonesia, article 26 of Law No. 15 of 2003 on Combating Terrorism, set in paragraph (1) that: "In order to obtain sufficient preliminary evidence, the investigator may use any intelligence report"; in paragraph (2) "Determination that it obtained sufficient preliminary evidence referred to in subsection (1) must be performed under examination by the Chairman or Vice Chairman of the Court"; in paragraph (3) "The process of examination referred to in paragraph (2) shall be conducted in a closed within a period of three (3) days", and in paragraph (4) "If the examination referred to in paragraph (2) set the sufficient preliminary evidence, then the Chairman of the Court immediately ordered an investigation to be carried out".

The fair humanity promoting the balance that benefits all parties. A fair government actions that should save those who will become victims, is the process of evacuation as soon as possible. Fair government action, in this case toward the suspected terrorists is still conducting investigations to obtain information but not through torture and violence, is the way. In a way, suspected terrorists do not lose dignity and status as human beings.

This is a humanitarian action that uphold the moral values of humanity. Moral, in this case, is a balance that benefits the victims and for the suspected terrorists. In this relation, it is interesting to listen to the thought of Emanuel Kant (Acton-Hardani, 2003) quoted by Ronald Titahelu regarding (1) the ability to accept and respect others, (2) the ability to maintain and uphold the principle of communal-collective, (3) the attitudes and behavior of exchanging experiences and opinions about life, and (4) the attitude of sensitivity toward life to be turned into an effort to obtain outward and inward life in balance (Titahelu, 2011).

In the concept of modern pluralistic society, known that the issue of the law does not allow the use of torture in the investigation. This is related with the moral order and the various values associated with it. The values agreed by pluralistic society, is a form of autonomy for the individual, equality and social justice.

IV. CONSLUSION

1. The principle of a just and civilized humanity are the principles that give meaning to the life of the wider community. The principle of civilized humanity is also done fairly to a suspected terrorist. Civilized investigation toward suspected terrorists to obtain important information, can be done by using a lie-detector.
2. Legislation on the use of forensic hypnosis should contain the parameter about people who regarded as experts to run forensic hypnosis. The law should also regulate how the power of information obtained under the influence of forensic hypnosis. Thus, the use of forensic hypnosis is the civilized way than the way of torture and violence in various forms.

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