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### CRIMINAL RESPONSIBILITY OF THE MEMBER OF COUNTERTERRORISM SPECIAL DETACHMENT 88 (DENSUS 88) RELATED TO THE NEGLIGENCE IN HANDLING SUSPECTED TERRORISM WHICH CAUSE CASUALTY

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#### **ABSTRACT:**

Terrorism is a serious problem throughout countries, no exception in Indonesia. One of the government's efforts in dealing with terrorism is to form a Counterterrorism Special Detachment 88. But in its practice, sometimes the Counterterrorism Special Detachment 88 Members carry out their duty by ignoring the applicable rules. That causes the emergence of casualty, namely one of the suspected terrorist. The incident becomes a polemic in the society related to the criminal responsibility. The research aims to explain the legal basis in every action which taken by the member of Counterterrorism Special Detachment 88 in handling the cases of terrorism criminal acts and explain the criminal responsibility of the member of Counterterrorism Special Detachment 88 due to the negligence in handling suspected terrorist which cause casualty. The researcher used the normative juridical method. Analysis which carried out normatively aimed to support the result of the statement from a thought and/ or as the answer to the legal problems arising from a case, thus if everything has been resolved then the last stage was the explanation which conducted descriptively. Handling of the suspected terrorism case by the member of *Densus 88* that did not comply with the procedures may be subjected to Article 9 of Law Number 48 regarding Judicial Power. *Densus 88* member in carrying out their duty which in accordance with the procedure could

not be asked for the responsibility. The negligence by the member of the Counterterrorism Special Detachment 88 in carrying out their authority was deemed to have violated the code of ethics which needed to be asked for the responsibility.

**Keywords:** Counterterrorism Special Detachment 88 (Densus 88), Criminal, Negligence, Suspected Terrorism.

## INTRODUCTION

The definition of terrorism action in the Law Number 15 of 2003 concerning the Eradication of Terrorism Criminal Acts is not specifically explained. However, in Chapter 3 of the Law on the Eradication of Terrorism Criminal Acts, it states that terrorism is an act that fulfills an element of criminal act. According to the Black's Law Dictionary, terrorism action is an activity that involves the element of violence or which causes harmful effect on human life that violate criminal law and is clearly intended to intimidate civilians, influence government policy, influence the administration of the country by kidnapping and killing. Terrorism action is a crime against humanity and civilization in which this crime is one of the serious threats to the sovereignty of each country because it is international (Galingging, 2009; Elmas, 2020). Terrorism also causes a danger to the security, world peace, as well as harming and disturbing the welfare of the society. Therefore, it is necessary to eradicate in a planned and sustainable manner, thus the human rights can be protected and upheld.

One of the ways to guarantee the human rights is by establishing legislation that ensures the law enforcement. The country must create the law which regulated the rights and obligations of the parties concerned in a criminal case, such as a suspect/ defendant and their family, as well as the law enforcement officer. The law enforcement officer in carrying out their duty must be in accordance with their respective function and authority, for the sake of the establishment of law, justice, and protection of human dignity, creating order, and the existence of legal certainty (Sari, 1996).

Terrorism in the world became actual since the World Trade Center (WTC) incident in New York. The attack which carried out through the air killed 3000 victims. This attack occurred as a result of hijacking the aircraft from American company itself so it was not captured by US radar.

Terrorism attack also cannot be avoided in Indonesia. Many bombing incidents by terrorism in the territory of the Unitary State of the Republic of Indonesia have caused fear for the society resulting in loss of life and loss of property. This has a great effect on social life, economic, political and international relations.

The history of the establishment of anti-terrorism Law in Indonesia is marked by terror action that occurred on October 12, 2002. A car bomb exploded at a club called "Sari Club Discotheque". This explosion killed 187 foreign tourists

and injured approximately 300 others. The explosion also caused the Pady's Club, Panin Bank, and other buildings collapsed. In this incident a group called Al-Qaeda claimed that they were responsible for the bombing (Suradjie, 2005).

After the bombing occurred at Sari Club and Paddy's Club Kuta Legian Bali on October 12, 2002, both foreigners and Indonesian citizens themselves, realized that the regulations in the Criminal Code had not specifically regulated on eradication of terrorism criminal acts. The Government of Indonesia feels that it is necessary to establish the Law of Eradication of Terrorism Criminal Acts, which specifically regulates terrorism criminal acts.

On October 8, 2002, the government through the Government Regulation in lieu of Law Number 1 of 2002 concerning Eradication of Terrorism Criminal Acts which was ratified on April 4, 2003 changed it to the Law Number 15 of 2003 concerning Eradication of Terrorism Criminal Acts. Besides establishing the Law, the government also formed an Anti-Terrorist Agency namely the Counterterrorism Special Detachment 88 (Densus 88) which is an Anti-Terrorist Unit under the Indonesian National Police. *Densus 88* was formed through the Chief of Police Decree Number 30/VI/2003 dated on June 20, 2003, to implement the Law No. 15 of 2003 concerning the Stipulation of the Government Regulation in Lieu of Law No. 1 of 2002 concerning the Eradication of Terrorism Criminal Acts.

*Densus 88* in carrying out the duty of handling terrorism criminal acts in Indonesia often gets pros and cons from the society. As in the death case of the suspected terrorist, Siyono in Solo that considered was the negligence from *Densus 88* team and the handling procedure which ambiguous in this Terrorism Law. But, the Counterterrorism Special Detachment 88 Team has also eradicated and prevented terrorism criminal acts and radical movements that endanger the sovereignty of the Unitary State of the Republic of Indonesia.

Based on the description above, it is interesting to do a study related to the title "Criminal Responsibility for the Negligence". It is expected that this research can provide benefits in the form of clarity about the legal basis of the Counterterrorism Special Detachment 88 action in handling terrorism criminal acts and the criminal responsibility of the member of the Counterterrorism Special Detachment 88 (Densus 88) for the negligence in handling suspected terrorism which cause casualty.

## **RESEARCH METHODS**

This research used a normative juridical method which was conducted by collecting primary legal material in the form of the laws and regulations, as well as the secondary material sources in the form of legal books, legal journal articles and the opinion of experts. The approach used was the statute approach and the conceptual approach, which was complemented by case

studies (Marzuki, 2011). All the collected legal materials were classified according to the problems that have been determined. The result of the research was explained descriptively.

## RESULT AND DISCUSSION

Criminal responsibility in foreign terms was referred to as *teorekenbaardheid* which lead to the conviction of the offender with the aim to determine whether a suspect or defendant was responsible or not for a criminal act that occurred. G. Van Hamel explained the conditions for people to be asked for the responsibility, including, people's souls must be such that he understood the value of his action; people had to realize that his action according to social procedures was prohibited; and people had to be able to determine their will against their action (Ilyas, 2012).

A person who has committed a criminal act could be convicted depending on whether there was a mistake or not in himself when committing the act. Since 1930, it was known the principle of *keine strafe ohneschuld* (no criminal without mistake), it meant that only those who were guilty or the acts that could be accountable to the doer that could be convicted (Hamzah, 1994).

A mistake was included in the issue of responsibility. Someone was said to make a mistake while carrying out offense, in which if it was seen from the terms of society it was despicable. Thus, a person could be convicted, depending on two things namely there must be an act that was contrary to the law or there was an element against the law. Then, it was called as an objective element and there was an element of mistake in the offender which was a form of intentional and/ or negligence, thus the act which was against the law could be accounted for to him, and referred to as an objective element.

In order to be accounted for criminally, the member of *Densus 88* Team in handling suspected terrorist, the conditions for the responsibility in criminal law must be fulfilled. The conditions that must be fulfilled were the offender has committed a crime, above a certain age and was capable of being responsible, there was a form of mistake both intentional and/ or negligence, and there was no reason for forgiveness. If these conditions were not fulfilled, they could not be accounted before criminal law.

The member of *Densus 88* Team was in charge in groups. If there was negligence in handling that has implication for criminal acts could be carried out in groups or in teams. Therefore, the Article 55 of the Criminal Code concerning participation applied. In determining the forms of participation, such as: the doer, people who order, people who participate or people who suggest, then it must be paid close attention to their action.

In order to be accounted before criminal law or not, the action of the member of *Densus 88* Team could be distinguished into the action which was in accordance with the procedure and which was not in accordance with the

procedure. The action of the member of *Densus 88* which was in accordance with the procedure, in its principle could not be asked for the responsibility if they carrying out their duty and authority have been in accordance with applicable procedure. If the process of handling suspected terrorism was in accordance with the provision in Criminal Procedure Law Article 18 section (1), which stated that the arrest was carried out by the Republic of Indonesia National Police officers by showing a letter of assignment and giving the suspect an arrest warrant which stated the identity of the suspect and stated the reason for the arrest and a brief description of the alleged crime case as well as the place where he was examined and informed the rights of the suspect and how to use these rights, in the form of the right to remain silent, obtaining legal assistance and/ or being accompanied by legal counsel, as well as other rights in accordance with Article 50 to Article 68 of the Criminal Procedure Code (Mulyadi, 2009).

If in the process of handling suspected terrorism, the procedures were carried out correctly and in accordance with standard operational procedure for the arrest, but the suspected terrorist was resisting, the member of the Counterterrorism Special Detachment 88 could not be asked for the responsibility because they were protected by justification which stated there was a forced power or *overmacht* (Article 48 of the Criminal Code), forced defense or *noodweer* (Article 49 section (1) of the Criminal Code), because it carried out the Law (Article 50 of the Criminal Code), because it carried out the legal position order (Article 51 section (1) of the Criminal Code) (the Criminal Code) (Wetboek van Strafrecht)).

The action of *Densus 88* member could be asked for the responsibility if carrying out their duty was not in accordance with the procedure. In which in that process, there was negligence in handling so that it lead to the death of suspected terrorists. In carrying out every action, *Densus 88* member was always guided by an authority, namely the authority to act according to his own judgment. This could be misused by the member of *Densus 88*. The member of the Counterterrorism Special Detachment 88 Unit which was a part of the Indonesian National Police should follow the procedures which have been stipulated in the Criminal Procedure Code (Hukum Acara Pidana, 1981).

The negligence of the Counterterrorism Special Detachment 88 member in carrying out their duty has killed one suspected terrorist in Central Java. *Densus 88* together with Klaten Resort Police conducted a search without bringing search warrant from the local court. This was not in accordance with the procedure in carrying out the duty that should be fulfilled by *Densus 88* (Wijanarko, 2016).

The arrest of suspected terrorist by *Densus 88* in its application did not apply the principle of presumption of innocence. This was evidenced by violating the procedure such as the process of arrest, confiscation, and search in which they did not show a search warrant as stated in Article 33 of the Criminal

Procedure Code, in which within the search must have a permit from the Head of the District Court. In this case, the action which taken by the law enforcer was not in accordance with the Standard Operational Procedure, namely by carrying out repressive method that resulted in the death of suspected terrorist when examining evidence.

The handling of suspected terrorism cases by the member of *Densus 88* that did not comply with the procedure so as to seize the independence of suspected terrorism may be subjected to legal consequences. The member of *Densus 88* who intentionally did that may be subjected to Article 9 of Law Number 48 regarding Judicial Power which stipulated that:

- (1) Every person who is arrested, detained, prosecuted, or tried without reason based on the Law or because of a mistake regarding the person or the law that it applies to, is entitled to claim for compensation and rehabilitation.
- (2) Officials who intentionally commit an act as referred to in section (1) shall be convicted in accordance with the provision of the laws and regulations.
- (3) Provision regarding the procedure for claiming compensation, rehabilitation and imposition of compensation are regulated in the Law.

Based on these provisions, the member of *Densus 88* who has committed action that was contrary to the law or the act against the law in carrying out the process of investigation, examination, arrest, detention could be subjected to the provision of applicable laws and could be accounted for before the criminal law.

The member of Counterterrorism Special Detachment 88 was a unit of the National Police that was proven to have neglected their duty, which could be criminally processed through the general court. If in carrying out its authority has violated the procedure, it could be deemed to have violated the code of ethics. Sanction imposed on the member of the Indonesian National Police who violated the professional code of ethics based on Indonesian Police Chief Regulation No. Pol: 7 of 2006 concerning the Professional Code of Ethics of the Police of the Republic of Indonesia in Article 11 section (2) including: 1. Violators' behavior is declared a despicable act; 2. Obligation of the offender to apologize limited or directly; 3. Obligation of the offender to follow the re-development of the profession; and 4. Violatoris declared no longer fit to carry out the profession/ function of the police. While, the sanctions mentioned in Article 11 section (2) letter D was administrative sanctions in the form of recommendation for: 1. Moved the duty to different position; 2. Moved the duty to different area; 3. Dismissal with respect; and 4. Dismissal with disrespect.

## CONCLUSION

The member of the Counterterrorism Special Detachment 88 in carrying out their duty which has been in accordance with the procedure could not be asked for responsibility. Implementing the law was a justification reason. There was a justification for removing the unlawful nature of the act. Negligence of the

member of *Densus 88* in carrying out its authority was deemed to have violated the code of ethics which caused casualty. For this negligence, the member of *Densus 88* could be asked for the responsibility for their actions. the member of *Densus 88* was a unit of the National Police that could be criminally processed through the general court.

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