
**Globalization Of Terrorism And Extra-Judicial Killings:
The Paradox Of Human Rights In Indonesia**

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ABSTRACT

This paper is the result of research with a normative-empirical approach on extra-judicial killings carried out by the state through the Densus 88 against terrorism suspects. Eradication using the extra-judicial killings model clearly violates the 1945 Constitution, namely in Articles 28A and 28I. As a state party, Indonesia has also ratified various international legal instruments on human rights, which are expected to be implemented with good ethics (*pacta sunt servanda*). Of course it is unacceptable when a country ratifies, but never carries it out. This is not because of its inability, but rather because the state does not have the good will to carry it out. The number of victims that occurred was more than 200 people died in vain, in terms of the right to life is the most fundamental right that cannot be reduced under any circumstances (*non derogable rights*). In the perspective of human rights, the state is the duty-bearer who is obliged to respect, protect, ensure, realize (to be fulfilled), and advance (to progress) human rights. Thus the state is responsible for the failure to defend the right to life, because the responsibility lies with the state, so the perpetrators of material extra-judicial killings are exempt from legal prosecution or are immune to the law. Because from a human rights perspective it is only considered a violation of human rights, it cannot be processed as a form of international crime whose perpetrators can be charged under Article 5 of the ICC 1998, even though the victims are more than 200 people.

Keywords: Terrorism, Extra-Judicial Killings, Human Rights Violations, International Jurisdiction.

INTRODUCTION

As we know, in the view of human rights, the state is positioned as an obligation bearer that respects, protects, ensures, realizes (to fulfill) and advances (to progress). Thus, the consequence of a country that ratifies international conventions or covenants on human rights will commit to implementing them.

Indonesia as a law state that recognizes the existence of human rights also includes human rights in the 1945 Constitution, these rights are contained in various aspects in articles 28A - 28J. Likewise, the state has responded to the recognition of various international instruments on human rights by issuing various laws. Indonesia's participation in realizing human rights has been normatively realized by ratifying approximately 27 covenants since 1998.⁽¹⁾

With so many ratifications carried out, it shows that the state is committed to advancing human rights. So normatively, the protection of human rights is very adequate. However, in practice it is far

¹ Arinanto S. Human Rights in Context of the Historical Non-Aligned Countries Debates on Universalism and Cultural Relativism, and Current Human Rights Development in Indonesia. Basic Human Rights Training Materials for Indonesian Human Rights Law Lecturers. PUSHAM UII Yogyakarta in collaboration with Norsk Senter for Menneskerettigheter Norwegian for Human Rights. Yogyakarta Plaza Hotel. 2011; P. 26-30

from what was originally imagined, especially in the case of terrorism. How many hundred people have died at the hands of Special Detachment 88 without going through a fair trial process (extra-judicial killings)⁽²⁾, which raises a question mark for the victim's family. Because it was unclear what kind of mistake he had done, he had to die improperly (tortured or shot). Especially when Densus 88 picks up the suspect without an official letter, it is an act of kidnapping like the Siyono (Klaten) case. Whereas in the world of law there is a principle that must be used as guidance for all parties, namely the presumption of innocence.

With so many extra-judicial killings cases, who should be held responsible? The state which is responsible for the behavior of its organs or individual material actors should be held accountable. In the perspective of human rights, cases that are structural in nature are the responsibility of the state as the bearer of the obligations. However, in reality, these structural measures⁽³⁾ can also be responsible for the individual. If. Violates the Rome Statute 1998 Article 5 of the ICC, namely: crimes of genocide, crimes against humanity, war crimes and crimes of aggression. Allowing the practice of extra-judicial killings to occur without receiving any sanctions from the state is tantamount to granting immunity to the perpetrators.

RESULT AND DISCUSSION

A. Understanding Globalization Terrorism

Two concepts that are often confused with experts on globalization and terrorism are the meanings of both, thus raising the question of what globalization really means and why globalization is so significant. Likewise with terrorism, what is terrorism and why does terrorism appear, so that it affects the global level?

According to Fotopoulos, it is clear that the meaning and significance we attach to globalization is directly important to the political, economic, social, cultural and ecological implications we place on globalization. Although in the minds of many people, economic globalization is usually only one aspect of globalization. Meanwhile, other aspects involved are technology, politics, culture and social globalization.⁽⁴⁾ In relation to terrorism today, Fotopoulos also points out that transnational terrorism is in fact state terrorism against the victims of neoliberal globalization and economic violations. With the main target are countries that reject the NWO (*New World Order*).⁽⁵⁾

Another aspect that is also related to globalization is the spread of terrorism, such as the movement of a virus that is unstoppable throughout the world. This is a problem because it is unclear who is a terrorist, what criteria, individual groups or the state can be categorized as state terrorists. Experts provide various definitions of terrorism. Etymologically, terrorism is derived from

² Republika. 1 April 2016. informed that 121 people were killed by Densus 88, LIMA: Mengerikan Sekali.

³ In a human rights perspective, we do not recognize the term human rights crimes but human rights violations, and are structural in nature. Meanwhile, international crimes is also structural, it's just that the responsibilities are different. In violations of human rights, the one who responsible is the state, while in international crimes the responsible person is the individual, although not the material perpetrator.

⁴ Takis Fotopoulos, Globalization, the reformist Left and the Anti-Globalisation 'Movement'. Democracy & Nature. The International Journal of Inclusive Democracy. 2001; 7 (2).

⁵ Takis Fotopoulos, Transnational Terrorism, The International. www.inclusivedemocracy.org/journal/vol10/vol1. Accessed 3 November 2020.

the Latin *terrere* to threaten and the first term used in France to describe the use of the arrest or execution of post-revolutionary French Jacobin opponents to frighten the general public into obeying the authorities.⁽⁶⁾

Hersh gives a number of characteristics of terrorism, which is having elements of the use of violence, intimidation or threats of violence against people or larger groups to achieve political, ideological, social or religious goals by placing pressure on or intimidating other groups or other individuals to carry out actions where they are on the contrary opposed.⁽⁷⁾ With these characteristics, it is still unclear what exactly terrorists are, because if the definition is like that it means that not only groups are called terrorists, but the state can be included in it. As stated by Fotopoulos above. Historically, this country's terrorists have been carried out by France under Robespierre who were involved in mass executions of civilians who were his political opponents.⁽⁸⁾ As the reigning terror government in his country, Robespierre arrested more than 300,000 people and executed 17,000 prisoners through court engineering and guillotine (beheading) his political enemies.⁽⁹⁾

With elements of terrorism as expressed by Hersh, resistance groups that happen to conflict with the government of the United States and its ally Israel are called terrorists, namely HAMAS in Palestine and Hizballah (Hezbollah) in Lebanon. Conversely, the United States of America which killed millions of people in various parts of the world indiscriminately can also be called a State terrorist. Likewise Israel, which massacres children, women and elderly people in Palestine, can also be called state terrorists. Therefore, in the end the definition of terrorist depends on the country concerned, which has the authority to create domestic laws and international treaties. Because they are the main subjects in the most perfect international law.

Terrorism is now perceived as a movement that marginalizes the aspects of life and human dignity because the terrorism movement kills people en masse without giving them a chance to save themselves.⁽¹⁰⁾ The terrorism movement is so massive at the global level that it is categorized as an "extraordinary crime" and is also categorized as a transnational organized crime and at the same time a generic humanist hostess.⁽¹¹⁾ This has led to an international agreement to take action against extra ordinary crimes with the principle of Universal Jurisdiction. Based on the principle of universal jurisdiction, each country can take the following actions:

1. Every country has the right to implement universal jurisdiction, so that every country feels responsible for actively participating in saving the international community from the dangers caused by serious crimes. This sense of responsibility must be proven by the absence of the

⁶ Priyono H. *Terorisme Fundamental Kristen, Yahudi, Islam*. Jakarta: PT. Kompas Media Nusantara; 2009. P. 62

⁷ Hersh MA. *Terorism, Humans Rights and Ethict: A Modelling, Approach*. Journal of Socialomics. 2016; 5 (2): <http://dx.doi.org/10.4172/2167-0358.1000148>

⁸ Barradori dalam Priyono A.M. H, *Terorisme Fundamental Kristen, Yahudi, Islam*. Jakarta: PT. Kompas Media Nusantara; 2009. P. 40

⁹ Priyono A.M. H, *ibid*, P. 62.

¹⁰ Awaludin H. *HAM, Politik Hukum, dan Kemunafikan Internasional*. Jakarta: Kompas; 2012, P. 49. Even this mass murder can be carried out by state terrorists by dropping bombs on the desired target (targeted killing) without giving the victims the opportunity to defend themselves. The death toll in Iraq during the US occupation has claimed an estimated 1 million people, 220,000 in Afghanistan and 80,000 in Pakistan.

¹¹ Masyhar A. *Gaya Indonesia Menghadang Terorisme*. Bandung: Mandar Maju; 2009. P. 16.

intention to protect the perpetrators by providing safe havens within the territory of their country.

2. Every country that wishes to implement universal jurisdiction does not need to consider who and what nationality the perpetrator is also the victim and where the serious crime was committed.
3. Every country can only exercise universal jurisdiction against the perpetrators of serious crimes or what is commonly known as international crime.⁽¹²⁾

Universal jurisdiction was exercised by Belgium against Abdulaye Yerodia Ndobasi, an official Congolese Foreign Minister who was accused of violating international humanitarian law. Because Yerodia was accused of uttering remarks that aroused racial hatred, which led to inter-ethnic riots.⁽¹³⁾ Based on the examination by the court of claim on the universal jurisdiction of Belgium it was rejected by 15 (five) judges and 1 (one) judge who supported it.⁽¹⁴⁾

With the expanding international terrorism movement today, it forces countries and UN organizations and regional organizations to collaborate in eradicating and eliminating the global terrorism movement. The cooperation that is carried out takes the form of creating conventions, international agreements, as well as through actions especially to deal with transnational terrorists.

However, when the tragedy of the twin towers bombing of the WTC on September 11, 2001, which was then declared war on terrorism, actually created counter-productive actions by committing and violating human rights principles. With this illegal choice of method, millions of people have become victims of the Bush administration's fury. The act of using illegal methods by a democratic country has damaged the international system of protecting human rights, basic freedoms and enforcing the rule of law in a critical tension.⁽¹⁵⁾

According to Rahul Mahajan, "war on terrorism" is not a war on terrorism. From the start there was plenty of reason to believe that the militaristic response we have witnessed since the September 11 tragedy will not be able to overcome and may even be - or have - exacerbated the threat.⁽¹⁶⁾ This war on terrorism is to replace the new Cold War, with terrorism replacing communism as the omnipresent threat we must fight.⁽¹⁷⁾ Mark Boal mentioned "The Kill Team: How US Soldiers in Afghanistan Murdered Innocent".⁽¹⁸⁾ Because what really happened was the massacre of the Afghan people targeting civilians using the boom, analysts report Parrish.⁽¹⁹⁾ There are even areas of Afghanistan that are designed as "kill boxes" that are patrolled day and night in low-flying aircraft with a mission to shoot everything that moves within the area.⁽²⁰⁾

¹² Sefriani. *Hukum Internasional Suatu Pengantar*, Jakarta: Rajawali; 2012. P. 245-246.

¹³ Lihat International Court of Justice General List. No. 121. 14 Februari 2002. At no. 17 about universal jurisdiction. www.internationalhumanrightslexicon.org > hrdoc > docs. Accessed 3 Nopember 2020.

¹⁴ *Ibid*, At no. 78. For The Reason, Court, (1) (A) By Fifteen votes to one

¹⁵ Hammarberg T. *Human Rights in Europe: No. Grounds For Complacency*. France: Council of Europe Commissioner for Human Rights; 2011. P. 255.

¹⁶ Mahajan R. *Full Spectrum Dominance: Power in Iraq and Beyond*, diterjemahkan Anom. *Melawan Negara Teroris Dominasi Amerika Serikat Terhadap Irak dan Kedaulatan Dunia*. Jakarta: Penerbit Teraju; 2005. P. 4.

¹⁷ *Ibid*, P. 16.

¹⁸ Boal M. *The Kill Team: How U.S. Soldiers in Afganistan Murdered Innocent*. Rolling Stone; March 28, 2011.

¹⁹ Ahmed N.M. *September 2001: The Great Deception How and Why America was Attacked*. Selangor Darul Ehsan. Malaysia: Thinker's Library SDN.BHD (110008-D); 2002. P. 253-254.

²⁰ *Ibid*, P. 254.

B. Approach To Human Rights

Political and socio-cultural aspects have a lot to do with problems of the relationship between the state and citizens, which are related to guarantees or violations of human rights committed by the state. Violation can be related to political rights and socio-cultural rights.⁽²¹⁾ Talking about human rights with a legal approach, the focus is on concrete measures, whether someone violates human rights or not. The measure used as the parameter here is the normative measure. Therefore, the measuring instruments are legal instruments, both national and international. Here the role of the state is very strong, because the standard of judgment about whether a person is right or not is made by the state through a legislative mechanism. In fact, it is the state that determines whether these standards have been violated or not.⁽²²⁾

In relation to human rights law. The state is the subject of obligations that must respect, protect, fulfill and advance human rights. Therefore, the state can take an act (act of commission), or the state does not take any action (act of omission) which can be categorized as a violation of human rights.

The definition of human rights violations is "violations of state obligations that arise from international human rights instruments". In another formula, human rights violations are "acts or negligence by the state against norms which have not been convicted in the national criminal law but which are internationally recognized human rights norms."⁽²³⁾

In the above formulation, it is clear that the responsibility lies with the state, not individuals or other legal entities. So what becomes a pressure point in violations of human rights is the responsibility of the state (state responsibility). The concept of state responsibility in international law is usually understood as "responsibility that arises as a result of violations of international law by the state". In relation to international human rights law, the definition of state responsibility shifts to mean "responsibility that arises as a result of violations of the obligation to protect and respect human rights by the state". The obligation in question is an obligation that arises from international human rights treaties as well as from international customary law, especially *jus cogens*.⁽²⁴⁾

Where actually the emergence of this human rights paradox? As stated above, the state is the holder of the obligation to respect, protect, fulfill, ensure and even advance human rights. These obligations are often not carried out under various excuses or referred to as derogation or deviating from what should be done, because there are potential violations that must be hidden so that the state is deemed not to have committed human rights violations. So in this case the state is the bearer of the obligation to uphold human rights but also as a human rights violator.

In relation to protecting the human rights of terrorist suspects, the state has made a legal instrument for the Perpu No. 1 of 2002 jo. UU no. 15 of 2003, which in Article 37 states that:

1. Every person has the right to receive rehabilitation if the court determines that he is acquitted or is acquitted of all legal claims whose decision has permanent legal force.

²¹ Awaludin H, op cit, P. 58.

²² Ibid.

²³ C. De Rover. To Serve and to Protect, Acuan Universal Penegakan HAM. Jakarta: RajaGrafindo Persada; 2000. P. 455.

²⁴ Rhona K.M. Smith. Hukum Hak Asasi Manusia. Yogyakarta: Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia; 2008. P. 69.

2. Rehabilitation shall be granted and included at once in the court decision as referred to in paragraph (1).

The provisions in Article 37 are provisions of a minimal nature in the protection of citizens who have the status of terrorist defendants. It is said that the minimum guarantee only concerns rehabilitation without giving material compensation as compensation (compensation) or restitution. Meanwhile, those who are still in suspect status but who have already died from bullet shots or tortured do not receive adequate protection from the state. Ironically, in the new law, namely Law No. 5/20018, the provisions of Article 37 are actually deleted. Thus, the minimum rights of a defendant who is acquitted or who is acquitted of legal action and has permanent legal force will not receive any compensation.

In this case, because the aspect of human rights violations, the emphasis is on the state, the perpetrators as state organs of human rights violations (minor) against the suspected terrorists or suspected terrorists will not get punishment, meaning they will gain immunity. Therefore, it is not surprising that many members of the public who have become victims of the Densus 88 malignancy with the stigma of terrorism that they have to stretch their lives cannot demand justice.

Of course, this is different when the state commits serious human rights violations,⁽²⁵⁾ as covered by Law no. 26 of 2000, so even though the state is responsible for the material, individual perpetrators can be prosecuted in a human rights court and cannot take cover behind the positions they hold. As for the gross violations of human rights are war crimes, genocide and crimes against humanity, as well as terrorism. In other terms, it is the most serious international crime which in Indonesian translation is a serious violation of human rights. In terminology, the use of the word "gross violation of human rights law" is inappropriate and does not comply with international human rights law standards.⁽²⁶⁾

Thus the coverage of the most serious international crime is in accordance with the ICC 1998 which in Article 5 states:

1. The crime of genocide;
2. Crimes against humanity;
3. War crimes;
4. The crime of aggression.

By looking at the description above, the treatment of state organs (Densus 88) against terrorist suspects or defendants because they are not covered in cases of serious human rights violations as covered in Article 5 of the ICC, the perpetrators cannot be prosecuted or are immune to the law. This case will repeat itself, such as the Siyono 1 case if the state does not have the good will (good will) to punish the behavior of individual state organs, because the perpetrators can take cover behind "responsible human rights violations is the state" as the bearer of the obligations.

²⁵ This term should be replaced by serious crimes, not serious violations in order to be close to the provisions in the ICC 1998, because it turns out that those included in Law no. 26 of 2000 is only half of the provisions of Article 5 of the ICC which do not include provisions for war crimes and crimes of aggression.

²⁶ Wiratraman R.H.P. Hukum Acara Peradilan Hak Asasi Manusia: Pengantar. Makalah Untuk Pendidikan Khusus Profesi Advokat (PKPA) IADIN-PERADI- Fakultas Hukum Universitas Airlangga Surabaya: 2008. P. 2.

C. Extra-Judicial Killings

Murder outside the judicial process is a policy taken by a country to resolve a problem facing the country concerned. In other terms, it is called Extra-judicial killings because the victim was killed or tortured to death without going through a judicial process by violating legal norms. Meanwhile, human rights NGOs and institutions within the United Nations refer to them as extra-judicial executions, especially for targeted killings.⁽²⁷⁾ Another term that is also used by the Supreme Court of Pakistan is Extra-legal executions with the characteristic "which has no sanctions or is not legally permissible or cannot be protected or maintained based on the existence of a legal stipulation".⁽²⁸⁾

The methods used to carry out non-judicial killings are carried out in various variations such as sniper fire, shooting at close range, missile fire from helicopters, armed ships, the use of car bombs, with poison and targeted attacks launched by air vehicles drone known as the drone.⁽²⁹⁾ In the methods used to commit extrajudicial killings, the state has violated international humanitarian law and human rights law. Governments that choose to adopt these measures fail to explain how legal standards of use have been adhered to, if the principles of necessity are respected in proportion to their needs.⁽³⁰⁾

The question is why does the state commit murder outside the judicial process? According to Amnesty International, extra-judicial killings are a policy at the government level to eliminate certain individuals as an alternative to arrest and bring them to court.⁽³¹⁾ Especially in this case, it often happens that in cases involving "suspected terrorists", extra-judicial killings are easily carried out, so that victims and their families do not seem to have adequate legal protection from the state, because the state does not intend to do so.

From a historical perspective, killings outside the judicial process were carried out during the Suharto government to end the life of criminals with the "petrus" policy. This policy was carried out to provide "shock therapy" so that public safety could be guaranteed again, after the people were previously in a state of fear. It is as if the peace in the country no longer exists.⁽³²⁾ KP3T (Commission for Investigation and Examination of Human Rights Violations in Tanjung Priok) referred to the term summary killing in the Tanjung Priok case.⁽³³⁾

Since the separation of the Indonesian National Police from ABRI (now TNI), with Law no.2 of 2002 concerning Polri, it is stated that the duty of the police is to enforce the law, builders of public order and security, as well as public servants. However, since obtaining wide-ranging autonomy and getting out of control from ABRI (TNI), the police cannot escape violence in enforcing the law. It can even be said that the police had a monopoly on the use of physical violence after they were not

²⁷ *Op cit.*

²⁸ Jamal A. Extra-Judicial Executions in Pakistan: Killing with impunity. Human Rights Commission of Pakistan. Aiwan-i-Jamhoor. 107-Tipu Block. New Garden Town. Lahore-54600. P. 12.

²⁹ 3rd Committee of the General Assembly, Topic Area B: "The Question of extra-judicial, arbitrary and summary executions", University of Macedonia Thessaloniki, Greece, www.UOM.GR – www.Thessismun.ORG, Hal. 5.

³⁰ *Ibid*, P. 12.

³¹ Clark S. Targeted Killings: Justified Act of War or Too Much Power For One Government. Global Security Studies. Summer. 2012; 3 (3): 18.

³² Soeharto. Pikiran, Ucapan dan Tindakan Saya. Otobiografi. Jakarta: Citra Lamtoro Gung Persada; 1989. P. 389-390.

³³ Lembaga Studi dan Advokasi Masyarakat (ELSAM). Preliminary Conclusive Report Pengadilan Hak Asasi Manusia Ad Hoc Kasus Tanjung Priok. www.elsam.or.id. Accessed 5 July 2014.

under the control of the TNI, because no agency dared to remind them. It can be said that the Police are an unmatched Super Body institution.

In cases related to the terrorist movement in Indonesia, through Densus 88, many human rights violations have occurred.⁽³⁴⁾ However, there has never been a legal process that openly prosecuted these human rights violators. One of the cases whose resolution has not been found yet is the Siyono case. Without going through a fair trial process, Siyono died in vain. Likewise, the death of Jepri who was arrested in Indramayu, West Java, who according to the Jepri police died of heart disease. Meanwhile his wife stated that her husband did not have an internal disease.⁽³⁵⁾

Rostanti wrote in *Republika*, mentioning the number 121 victims killed by Densus 88.⁽³⁶⁾ In 2017, 6 victims of murder in the eradication of terrorism increased in Tuban.⁽³⁷⁾ Perhaps the use of armed violence could still be justified if the suspects used firearms to fight back. What if they are unarmed and caught, do these terrorist "suspects" deserve to be killed outside the judicial process (extra-judicial killings). Doesn't this act violate legal norms that should be upheld by law enforcers, because it is not clear whether the suspect's subject is the target, whether it is a terrorist or not.

According to the Islamic Study and Action Center (ISAC), many suspected terrorists have had a worse fate than Andika. If according to Andika's parents his condition was very pathetic, he received acts of violence or torture even though he was still being arrested and examined by Densus 88. Meanwhile, Nur Hamzah, who tried to defend Andika, did not escape the torture from Densus 88. The two suspects had paralyzed legs, so just kneeled down when asked to pray by Andika's father.⁽³⁸⁾

According to ISAC, who also visited Nur Hamzah at the Mobile Brigade Station, Nur Hamzah was indeed subjected to severe torture, when sleeping, her feet were burdened with wooden logs and trampled on with wooden sticks, her head was put into the toilet, her hands were beaten with wood, her face was swollen due to being slapped, even was also electrocuted.⁽³⁹⁾ Meanwhile, other terrorist suspects have not even had time to be questioned but were immediately shot dead, or in

³⁴ Interview with Teguh Wiyono, a parking attendant at Pasar Legi Solo who was arrested while on duty by Densus 88 who was then taken to the Mobile Brigade Command Headquarters in Jakarta. During her five consecutive days of detention, she was subjected to physical torture, the most cruel and unbearable torture according to her was when she was shocked on the neck. In a state of torture his eyes are always closed, so that he does not know the situation day or night, all he knows is that when the call to prayer he performs prayers only based on memory (eling-eleng - in Javanese language), when he is praying he can only sit and cannot bow himself because his body is all sick But because it was not proven that he was a terrorist suspect, finally after one week he was sent back to Solo without any compensation and the incident had been going on for about four years. Even though Teguh Wiyono has been released, the authorities are still frequently visited by the authorities, at first at his parents' house in Giritoto Boyolali. But his parents were Schok, so Teguh asked the authorities to meet him at his workplace in the parking lot, who is now a parking guard in front of Grogol Sukoharjo District. Interview date. June 4, 2018 at "Yu Cempluk" food stall in Solo during fast breaking time.

³⁵ Kompas.Com. 16 February 2018. Densus 88 Tak Langgar Prosedur Terkait Meninggalnya Teroris Indramayu. Accessed 2 September 2019.

³⁶ Commarria Rostanti, op cit.

³⁷ Kompas.com. Accessed 10 June 2017.

³⁸ Interview with Mr. Pono on Saturday 2 June 2018 at 10.30. In MUI Surakarta.

³⁹ Interview with Endro Sudarsono on Thursday, August 22 2019 at 1:00 p.m. at the Baitussalam-Solo mosque.

the climax they were shot dead, although there were also traces of torture like what happened to Ponda alias Dodo.⁽⁴⁰⁾

Likewise, what happened to Jabir who was grounded in Binangun Village, Kretek Wonosobo District, was not far from Ponda's fate. According to Edro Sudarsono from ISAC who was tasked with picking up Jabir's body or also known as Gempur Budi Angkoro at the Central Java Police, Jabir's head was still bleeding and soft like "boiled cucumber". Therefore, when it was taken from RS. If the corpse cannot be opened, Edro and his family have just opened the cloth to replace it with a shroud, so that the wounds he suffered are visible.⁽⁴¹⁾

Extra-judicial killings also occurred in the Sigit and Endro cases in Solo. Both of them are mosque activists who are members of Nahi Munkar Pekat (Community Disease), namely members of the community who care about a good life, whose activities are to disperse drinking, gambling and others. On that night, Sigit and Endro just came home from recitation around 9:45 p.m., both of them said goodbye to Pak Manto (Endro's father) who wanted to find a shop to drink tea (wedangan). According to Pak Manto, this was also confirmed by Endro Sudarsono from ISAC.⁽⁴²⁾ After both of them got off their motorbikes and entered the shop, they were immediately greeted with gunfire, until both of them died. The shooting included the owner of the stall. According to Pak Manto and Endro Sudarsono (ISAC) the incident did not last long, less than ten minutes were clean and the corpse was gone, but Pak Manto stated that there was a milk can with a bullet hole.⁽⁴³⁾

Another case that also claimed the lives of two people was the case of Eko Peyang and Wawanair. The two men were heading to Jakarta in a chartered vehicle. Where Eko Peyang acts as a driver, because he is the driver of the Samudera cigarette company in Banyuwangi Solo. The second unlucky day was while driving, both of them were hit with bullets, finally both of them died. When the shooting took place that took her husband's life, his wife was watching TV broadcasts and hearing the news she was very scheming. Never expected, when her husband said goodbye to her those were her last words. According to Agus, who is also Eko Peyang's cousin, this is a mistake because Eko Peyang's face is similar to Bayu.⁽⁴⁴⁾

With this incident, extra-judicial killings prioritized the principle of presumption of guilt which is commonly used in war law or humanitarian law. In war there is only one "kill or kill" option, although in practice not everything ends in murder. Because in humanitarian law, wars that occur between parties still use international legal norms by using the principles of committing violence.

⁴⁰ Febriana Firdaus, Mereka yang Dieksekusi Sebelum Diadili, <http://www.rappler.com/indonesia/130779-daftar-terduga-teroris-korban-densus-88-siyono> Accessed 29 July 2017. In an interview with Mr. Pono, namely Andika's parents, when he met his son at the Mobile Brigade Police Station in Jakarta, the situation was very sad, he was invited to pray at sunset, he could only sit, his body was beaten by members of Densus 88 during his arrest. Meanwhile, Nur Hamzah was far worse than Andika, because when asked to pray in congregation the three of her could only ndeprok (a Javanese term). The officer supporting Hamzah told Pono that he would recover later. On the statement of the officer, Pono was just silent and did not respond. Interview on Saturday, date. 2 June 2018 at 10.30 at the MUI office in Surakarta.

⁴¹ Interview with Endro Sudarsono. on Thursday 22 August 2019 at 13.00 at the Baitussalam mosque-Solo.

⁴² The victim's first name Endro happens to be the same name as Endro Sudarsono from ISAC.

⁴³ Interview with Logimin Manto Sumarto and Endro Sudarsono on Monday, August 26, 2019 at 1:00 p.m.

⁴⁴ Interview with Mr. Agus on Tuesday, August 27 2019 at the Baitussalam Mosque Solo at 13.00. According to him, Eko Peyang, Bayu and Wawanair, the three of them are close friends. Besides that, Eko Peyang's face with Bayu is indeed similar, so that if there is a wrong target it can also happen. So between those who are targeted and those who are victims are different.

Some of these principles are the principles of interest which in their implementation must pay attention to the principles of proportionality and limitation, the principle of humanity, the principle of chivalry, and the principle of distinction.⁽⁴⁵⁾ Even in certain situations humanitarian law can also be applied within the framework of war which some countries call the war on terrorism.⁽⁴⁶⁾ The War against Terrorists is indeed being declared George W. Bush after the collapse of the WTC twin towers on September 11, 2001, by declaring War on Terror in front of Congress September 20, 2001.⁽⁴⁷⁾ A new anti-terrorist war was launched by the transnational elite, especially the G7 countries, which implemented The New World Order (NOW) of neoliberal globalization.⁽⁴⁸⁾

In this fight against terrorism there are the standard of international legal norms intended to combat acts of terrorism is The ICJ Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism which was held in Berlin Germany on 27-29 August 2004.⁽⁴⁹⁾ Based on the declaration agreed by the Juris, there are 11 principles where countries must give full influence to follow up on these principles. The 11 principles are: 1) Duty to Protect.; 2). Independent Judiciary; 3) Principal of Criminal Law; 4) Derogations; 5) Peremptory Norms; 6) Deprivation of Liberty; 7) Fair Millions of people; 8). Fundamental Rights and Freedoms; 9) Remedy and Reparation; 10) Non-Refoulement; 11) Complementarity of Humanitarian Law.

By looking at the explanation above, a paradox of human rights emerges. Where this paradox arises, because the state as the bearer of human rights obligations, namely respecting, protecting, ensuring, realizing and advancing human rights, it turns out that through its organs (Densus 88) it has committed extra-judicial killings of terrorist suspects. Meanwhile, the state has ratified the norms of international human rights law and created national laws governing the eradication of terrorism. The consequence of being a country that has ratified the norms of international human rights law is implementing it with good ethics (pacta sun servanda).

So at an empirical level the state has failed to protect the right to life of terrorist suspects. The number of victims of extra-judicial killings of more than 200 people is quite a number⁵⁰. If you add to the cases other than terrorism, from 3 July to 12 July 2018 there were 11 criminals who were killed by firearms. Meanwhile, LBH noted that throughout 2017, extra-judicial killings were carried out

⁴⁵ Rhona K.M. Smith dkk. *Hukum Hak Asasi Manusia*. Yogyakarta: Penerbit Pusat Studi Hak Asasi Manusia (PUSHAM) UII; 2008. P. 334.

⁴⁶ Ibid, P. 333-334.

⁴⁷ Parry N. The 'War on Terror' Has Been Lost. <https://The 'War on Terror' Has Been Lost Consortiumnews.htm>. Accessed 5 July 2016.

⁴⁸ Fotopoulos T. Transnational Terrorism, *The International Journal of Inclusive Democracy*, Vol, Nos. ½ (Winter-Summer 2014), <<http://english.pravda.ru/world/americas/29-09-2014/28627-transnationalterrorism-0/>>

⁴⁹ International Commission of Jurist; 'Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism'. [Http://www.unhcr.ch/terrorism/index](http://www.unhcr.ch/terrorism/index). Accessed 22 July 2014.

⁵⁰ According to another source "Komnas HAM pada semester 2 tahun 2019 merilis jumlah korban yang diculik Densus 88 sepanjang tahun 2004-2019 sekitar 895 orang yang seluruhnya terdiri dari para aktivis Islam semuanya tewas akibat disiksa". I tried to browse through the Intelligent Community Sources but it turned out that it was not available except for members. <https://www.facebook.com/groups/145597852649940/permalink/578656462677408/>

against 99 narcotics suspects.⁽⁵¹⁾ Judging from the number of victims killed, it could be categorized as genocide or crimes against humanity. However, the international community appears to have taken no action to pressure the Indonesian government to comply with and implement norms of international human rights law to prevent the killing of suspects, especially terrorists and others.

If we rely solely on pressure from domestic organizations to stop the police from carrying out extra-judicial killings, it is unlikely that they will succeed, because they do not have effective pressure to stop them. Due to its structural nature, the state is responsible for it, unless it is categorized as an international criminal crime, then the perpetrators can be prosecuted individually without being able to take cover behind the position they hold.

CONCLUSION

Terrorism has grown rapidly to a global level since the collapse of the WTC twin towers on September 11, 2001, which later Bush declared war on terrorism. The main targets were Iraq and Afghanistan which caused extra-judicial killings which killed more than 1.2 million people in three countries including Pakistan. This is clearly a barbaric act that leads to genocide, and an invasion that violates the provisions of Article 5 of the ICC 1998, whose leaders can be brought before the International Criminal Court.

The state is the subject of human rights obligations that must guarantee to respect, protect, to fulfill and to progress. The state can commit the violation by taking an act (act of commission) or by letting it not take any action (act of omission). so there is a paradox that the state should have to guarantee the enforcement of human rights but instead has committed human rights violations, through Densus 88 by carrying out extra-judicial killings. In fact, the state has ratified various international human rights conventions or covenants that must be used as instruments to provide protection for human rights.

Therefore, the state can carry out derogation under any pretext so as not to face demands from citizens. Meanwhile, state organs that have taken material actions have never received any sanctions by taking cover behind the "responsibility of the state". As a result, it happened repeatedly and the perpetrators were immune to lawsuits. So as long as the state does not have the good will to improve the quality of human rights, the potential for human rights violations will continue to be repeated.

Especially human rights violations related to extra-judicial killings committed by the state through Densus 88 have eliminated criminal procedural law procedures that should be used as a barrier for law enforcers. With the criminal procedural law set aside, what then applies is the law of the jungle, because Densus 88 can carry out extra-judicial killings on the pretext of terrorists. Thus this Densus 88 victim may not be able to file a claim for compensation, rehabilitation or restitution, because there is no legal basis on which the victim's family can rely on submitting a claim.

⁵¹ Institute For Criminal Justice Reform. Usut Tuntas Extra-Judicial Killing dalam operasi Kwilayahan Mandiri 2018 Polda Metro Jaya. <https://icjr.or.id/usut-tuntas-extra-judicial-killing-dalam-operasi-kewilayahan-mandiri-2018-polda-metro-jaya/print>

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