

The Implication of the Terrorist Label Given to a Rebel Group by the State

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Abstract

This study aims to analyze the implications of giving a terrorist label to a rebel group by the state. The research method used is normative legal research by analyzing the laws relating to the problem under this study. The data obtained is secondary data. The results of the study indicate that under international law, terrorism is a serious international crime and is categorized as a heavy violation of human rights that must be eradicated by any country. In international law, the labeling of “terrorists” means that states must take action in accordance with the 1999 International Convention on the Financing of Terrorism. This makes the rebel organizations that have been given terrorist status viewed as dangerous organizations internationally and therefore other countries can participate in eradicating the rebel organization.

Keywords: Implication, Rebel organization, Terrorist



Introduction

A Non-international armed conflict is an armed conflict that occurs within the territory of a country between the armed forces of the government and the armed forces of the opposition groups or between any armed groups against each other. This conflict is different from international armed conflict where the conflict is involving two or more countries and can be considered as a war.

In a broader sense, war involves concepts such as crisis, threat, use of force, guerrilla action, conquest, occupation, and even terror. The Interdisciplinary Research Program on Causes of Human Rights Violations (PIOOM) at Leiden University divides the stages of conflict into 5 parts, namely: 1. “Peaceful and stable situation” which is defined as “political stability and high-level regime legitimacy”; 2. “Political tension situation” is defined as “an escalating stage of systemic tension and an increase in the division of social and political factions, often along factional lines; 3. “Political conflict with the use of violence”, tensions have escalated into “political crisis” as political legitimacy declines and the acceptance of factional politics using violence becomes more apparent, which is roughly calculated in terms of the number of people killed in one year is less than 100; 4. “Low-intensity conflict”, i.e. open hostilities and an armed conflict between factions, suppression of the ruling regime and rebellion, with 100 to 999 people killed in one year; 5. “High-intensity conflict”, i.e. open war between groups and/or mass destruction and displacement of civilians where the number of victims killed during the conflict could reach 1,000 people or more. (Hugh Miall, 1999: 26)

The armed conflict that occurs in a country requires a serious and careful approach to handling by the government of the country. The existence of terror and threats causes the government of the sovereign state to take all necessary and appropriate actions to protect its citizens, especially civilians. The government of a sovereign state should not be labeling the armed group as terrorists without thorough and careful judgement, considering the implications and consequences behind the terrorist label.

International humanitarian law can be one of the legal bases used to determine what type of armed conflict is currently occurring. The type of armed conflict includes the practice of dangerous crimes of terrorism that targets people. The Geneva Conventions contain regulations regarding the status of parties involved in a crime against humanity. This status is distinguished depending on the role of each party involved, where this status later can be used in categorizing things that will be related to the party, both in the protected area as well as the punishment area.

In reviewing the labeling of perpetrators of terrorism acts according to one of the international humanitarian law sources, which is the Geneva Conventions, there have been several studies that have analyzed this matter. The perpetrators of terrorism are recognized as non-state actors where most of the perpetrators are tied to an organized terrorism group with a certain command from one party.

The implication of any recognition or any labeling of the rebel group is the basis for the author to further analyze "*The Implication of the Terrorist Label Given to a Rebel Group by the State*". This paper intends to provide an analysis of such labels given to rebel organizations as perpetrators of crimes against humanity, both perpetrators who carry out actions as groups as well as individuals according to international humanitarian law, especially the Geneva Conventions. The granting of this label can be used to unravel issues related to violations of law or the sentencing of terrorists as perpetrators of crimes against humanity.

Research Method

The type of research in this legal research is normative or doctrinal legal research. The approaches used in this research are: the Statue Approach, which is carried out by examining all laws and regulations related to the issue under the study, and the Conceptual Approach, which is carried out by studying the doctrines in law. The sources of legal materials used in the research are (1). Primary Legal Materials, namely all regulatory documents that are binding and determined by the competent authorities relevant to the problem of the research, namely regulations, conventions, international agreements, etc. The primary legal materials used consist of statutory regulations, official records, and judges' decisions. The laws and regulations used are laws and regulations related to the research used, namely: the 1949 Geneva Convention, Additional Protocol II 1977, and the International Convention for the Suppression of Terrorist Bombings. (2). Secondary Legal Materials, namely materials that are closely related to primary legal materials and can further be providing help in analyzing and understanding the primary legal materials, consist of drafts of laws and regulations, legislation that is not applicable, the research results, and conclusions of scholars, journals, and others related to the problems of the research. (3). Tertiary legal materials, which are complementary to secondary and tertiary legal materials, for example, all documents containing concepts and information that support primary legal materials and secondary legal materials such as legal dictionaries, language dictionaries, encyclopedias, etc.

The data collection technique used in this research is literature/document study. The data analysis method used in this research is descriptive analysis, which is analyzing data from the literature by explaining the results or facts that will be arranged logically.

Result And Discussion

A. Terrorism as an International Crime

In some cases, the act of terrorism can be considered as a complex and extreme political action that arises from a combination of various backgrounds such as cultural, economic, political, and psychological aspects. (IOM, 2010: 7).

The practice of terrorism has several changes which are indicated by the trend of action from time to time. Wave I of terrorism practices occurred around the 1880s to the 1920s. In this era, acts of terrorism are aimed at winning civil political reform from the authoritarian government. An example of acts of terrorism in this

wave is the Russian Revolution where there was terror and the murder of the family of Tsar Nicholas II by terrorists of left-wing politicians. Then there is Wave II of terrorism which ran between the 1920s and 1960s. The acts of terror in this wave were dominated by groups trying to fight for their national sovereignty. An example of this wave of terrorism is the Irish Revolutionary Army (IRA) from Ireland which carried out acts of terror in the face of the British Government for their demands for Britain to join Ireland. In addition, there is also the Front Liberation Nationale (FLN) from Algeria which carried out acts of terror in the face of the French colonial government by shooting police officers and detonating bombs in the city of Casbah. Terrorism Wave III occurred in the 1970s when the actions carried out in this wave were based on the perception of themselves as defenders of the interests of third-tier world countries against global capitalist groups. An example of the action in this third wave is the Italian Red Brigade group, which has a Marxist premise and is trying to get Italy out of NATO, its action was carried out by kidnapping members of the government of Italian Prime Minister Aldo Moro. From Japan, there is also a similar group called the Japanese Red Army who carried out the attack on Tel Aviv International Airport and hijacked a Japan Airlines plane flying to the Netherlands. The latest period of the practice of terrorism is Terrorism Wave IV which occurred in the 2000s with the existence of revolutionary ideology and the encouragement of the religious aspect. The terrorist act in this wave no longer has the fear of targeting civilians as the target for their act of terror. With increasingly blurred state boundaries, there are terrorist groups that are organized with a recruitment system and network formation. An example of a terrorist group from this wave is Al-Qaeda which was the mastermind of the nine eleven attacks in New York, United States. In addition, there is also a terrorist network group ISIS (Islamic State of Iraq and Syria) which has various networks in world countries and has carried out many acts of terror such as the attack in the city of London, England. (Abdulsalam, 2017).

The development in the acts of terrorism from generation to generation shows how the targets that are being targeted have also changed. Terror acts started from the fourth generation targeting civilians either in general or specific to become targets for terror attacks. The dominance of the religious aspect in this generation makes the target pattern formed by terrorists visible. Attacks are aimed at those who seem to have views or beliefs that are contrary to what they profess and are used as the basis for them to carry out acts of terror. Victims of acts of terror have also increased over a period of time.

B. Regulations Regarding Terrorism in International Law

The first codifications of international rules relating to occupation can be found in the Hague Conventions of 1899 and 1907, which build upon customary international law. Many lessons were drawn from the crimes committed in occupied Europe and the Far East during the Second World War and were later incorporated into the Fourth Geneva Convention of 1949, which codified an important part of

modern international law applicable to occupations. The law is further strengthened by the basic guarantees set out in Article 75 of Additional Protocol I of 1977. The elements of international human rights law also apply.

International Humanitarian Law or “law of war” consists of the limits established by international law where the necessary force is used to subdue an enemy, and its principles determine the treatment of individuals during war or armed conflict. Without such regulations, the savagery and brutality of war would have no limits. These laws and customs arose from the longstanding practices of belligerent nations. (J. G. Starke, 1989: 237).

Humanitarian law applies in every form of armed conflict, be it conventional war, non-conventional war, or modern war. Even in certain situations, humanitarian law can also be applied within the framework of a war which some countries call the war against terrorism. (Philip Alston, 2008: 333).

Humanitarian law only becomes effective in the event of an armed conflict. The main difficulty in this regard is how to distinguish non-international armed conflicts, where the minimum standards of Article 3 of the Geneva Conventions of 1949 and Protocol II of 1977 apply, from internal tensions, riots, or actions of security forces against terrorist ideas or activities and guerrilla actions. In both cases, human rights tend to be limited both legally and in practice, but it is only in the first case that human rights can be properly implemented, albeit only partially, with the additional application of humanitarian law. Furthermore, most countries in the fight against terrorism tend to not consider military actions carried out as armed conflicts as referred to in humanitarian law because this implies recognition of the existence of combatants and limits state sovereignty. (Manfred Nowak, 2003: 39).

The Geneva Conventions explain the statuses granted to parties who can meet the requirements and have the conditions under which the Geneva Conventions can be applied.

In international armed conflicts, combatants are members of the armed forces of a party. The main feature of their status is that they have the right to directly participate in hostilities. Consequently, if they fall into enemy hands, they become prisoners of war who may not be punished for having directly participated in hostilities. In return, they may remain in captivity until the end of active hostilities. In non-international armed conflict the term, and therefore the status of, ‘combatant’ does not exist. (ICRC).

In determining the status of combatants, according to articles 43 and 44 of Protocol I of 1977, this status was reorganized according to the legality of the parties involved in the conflict. Combatants are parties who have the right to be involved in conflict and if caught can be treated as prisoners of war. It can be said that they are legitimate members of the armed forces and have a legal basis and are included as lawful combatants (Haryomataram, 1984: 72-73).

In order for the combatants to be considered legal, they must meet the required criteria in carrying out armed force, namely: (Haryomataram 1984: 80)

1. The existence of an organization;
2. The existence of discipline;

3. Command that is responsible for compliance with the provisions of the laws of war.

If these three conditions have been met, then the parties involved are recognized as lawful combatants according to international humanitarian law. Combatants who do not meet the requirements to carry out armed forces are given the status of unlawful combatants or combatants who are illegal under international humanitarian law. As combatants who are illegal under international humanitarian law, it will be more severe risks that can be obtained at any time if they are arrested at any time. They remain subject to arrest and detention and may be tried or sentenced by special military courts for their actions. (Permanasari et al., 1999: 107)

During an armed conflict, “terrorists” do not form a specific group legally identified by humanitarian law. The Geneva Conventions and Additional Protocols allow for only one kind of distinction: between civilians and combatants or between those who are taking part in hostilities and those who are not (or are no longer involved). Humanitarian law prohibits war crimes acts aimed at spreading terror among the civilian population. Thus, those who use methods of terror are committing a crime. Authorities who have control over such people must prosecute them according to the rule of law. Where these people act in agreement with, or on behalf of, an authority involved in the conflict, they then qualify as combatants taking part in it. A combatant who uses such methods can be arrested, detained, and prosecuted for the crime committed, but does not lose combatant status. (Médecins Sans Frontières, *The Practical Guide to Humanitarian Law*)

The International Convention for the Suppression of the Financing of Terrorism, signed on 9 December 1999, defines terrorism in its Article 2.1.b as “any . . . act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.” The United Nations Security Council, in its resolution 1566 of October 2004, elaborates this definition, stating that terrorists acts are “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act.” The Security Council recalls that such acts are “under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.” The UN General Assembly reaffirmed this definition in January 2006 (Resolution 60/43), defining terrorist acts as “criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes.” (Médecins Sans Frontières, *The Practical Guide to Humanitarian Law*)

Perpetrators of terrorism when linked to international humanitarian law, especially the Geneva Conventions, can be categorized as unlawful combatants.

This status is based on the non-fulfillment of the conditions for them to carry out armed force in the form of terror. Of the three conditions, they only meet the first requirement as an organization. However, in this organization, no discipline and command are responsible for the observance of the provisions of the laws of war. This is evidenced by acts of terror targeted at civilians who are specifically protected by international humanitarian law.

IHL only applies to armed conflicts and therefore covers terrorist acts only when they are committed within the framework or as part of an armed conflict. Acts of terrorism committed in situations of internal violence or in times of peace are not covered by IHL. However, acts of terrorism are also prohibited by internal and international criminal law. Violence does not constitute an armed conflict simply because it is committed with terrorist means. As shown above, international armed conflicts are characterized by the fact that two States use violence against each other, while non-international armed conflicts are characterized by the degree of violence and organization of the parties. In both cases, it does not matter whether lawful or unlawful means are used. Terrorist acts may therefore constitute (and trigger) an international armed conflict (when committed by a State – or its de jure or de facto agents – against another State) or a non-international armed conflict (when committed by an organized armed group fighting a State and its governmental authorities). In both cases (or when terrorist acts are committed during a pre-existing armed conflict), IHL prohibits the most common and typical acts of terrorism, even if committed for the most legitimate cause: attacks against civilians, indiscriminate attacks, acts or threats whose main aim is to spread terror among the civilian population and acts of “terrorism” aimed against civilians in the power of the enemy. In most cases, such acts are considered war crimes that must be universally prosecuted. (ICRC)

The labeling of the terrorist as perpetrators of terror crimes with unlawful combatants raises another idea that gives the opinion that not all terrorists or terrorist actors are members of terrorist organizations. Many of the actions are carried out based on individual interests, one of the examples is that of Brendon Tarrant for his terrorist attacks and shootings in the Christchurch area of New Zealand. In addition, terror attacks carried out by individuals also occurred in Texas by a young man named Patrick Crusius who shot and killed 22 visitors to the modern Walmart market. Connor Stephen Betts is also an individual terrorist who killed 10 victims after shooting in a bar in Ohio, United States. (Utomo, 2019)

The crime of terrorism violates several provisions of the 1949 Geneva Conventions and the 1977 Additional Protocol, among others; attacks against civilians as explained in Paragraph 2 Article 51 of Additional Protocol I of 1977 and Paragraph 2 Article 13 of Additional Protocol II of 1977, indiscriminate attacks as explained in Paragraphs 4 and 5 Article 51 of Additional Protocol I 1977, acts or threats where the main purpose is to spread terror among the civilian population as explained in Paragraph 2 Article 51 of Additional Protocol I of 1977 and Paragraph 2 Article 13 of Additional Protocol II 1977, and acts of "terrorism" directed against civilians in enemy forces as explained in Article 33 of Geneva Convention IV 1949.

In addition to other forms of violations of humanitarian law which are regulated in the 1949 Geneva Conventions and the 1977 Additional Protocol, the crime of terrorism is also regulated in several special conventions concerning terrorism crimes, including; International Convention for the Suppression of the Financing of Terrorism 1999, International Convention for the Suppression of Terrorist Bombings 1997, International Convention for the Suppression of Acts of Nuclear Terrorism 2005, International Instruments related to the Prevention and Suppression of International Terrorism 2008. The existence of numerous conventions related to the crime of terrorism is because terrorism is considered as an act of heavy human rights violation and is not in accordance with the principles contained in the Universal Declaration of Human Rights.

C. The Implications of Giving Terrorist Status by the State

In its development, expanded international law concerns legal subjects in certain circumstances, namely individuals in a limited sense, namely those who are limited to war criminals. The particular situation in question is a development which, although similar to the status of a party to a war dispute, has a distinctive feature, namely the recognition of the liberation movement. To provide a definition of this organization of liberation, legal experts have difficulty because the views of this organization are strongly influenced by political issues, therefore until now the commonality of views among legal experts has not been found as claimed by observers. (Jahawir Thontowi et al., 2006).

When discussing “people” as a subject of international law, it is important to remember two main uses of this term in the context of international law: a. “society” as the entire population of an area; b. “society” as a group of people who share the same ethnic, linguistic, cultural and historical ties. Some other meanings of the term “society” mentioned above, such as mankind as a whole, or non-dominant population faced with the establishment, or people who are against the state or government, are beyond the scope of this paper. Although the rights of “peoples” are often mentioned in different international instruments, Mosler rightly claims that “uncertainty in determining the criteria for the definition of persons entitled to such rights makes their status in international law obscure”. (Fleur Johns, 2010: 230)

Apart from communities and individuals who are considered as subjects of international law, there is also recognition of rebel groups. Rebel groups that are recognized under international law must meet the conditions to be recognized. Terrorists themselves can be categorized as a rebel group that has their own ideas and therefore carries out an act of rebellion by spreading terror. However, a rebel group cannot be given the status of a terrorist just like that, because not all rebel groups are terrorists and the labeling of terrorists has serious implications and consequences.

It is important to make a clear distinction between terrorist acts and activities and the use of terror as a method of warfare in the context of an armed conflict carried out by States or non-states belligerents who may not have been

formally recognized by national authorities (such as guerrilla and other resistance movements). Where terror is used within an armed conflict, international humanitarian law applies to all parties concerned; it sets out mandatory rules regarding methods of warfare and the use of force by State and non-state actors, treatment of combatants and civilians, and penalties for crimes. Humanitarian law applies to military occupation. What governments often call acts of “terrorism” may be non-international armed conflicts if acts of violence are organized in a continuous and concerted way and from areas of territory that is—even partly—not under the control of the national authorities. In such situations, authorities must respect humanitarian law; it is not enough to respect national law applicable in situations of emergency and to strengthen the authority of the police force. (Médecins Sans Frontières, *The Practical Guide to Humanitarian Law*)

In times of armed conflict, “terrorist” is not a specific legal category under humanitarian law. Geneva Conventions and Additional Protocols only allow for a distinction between civilians and combatants—or between those who take part in hostilities and those who do not or who have since laid down arms. Further, humanitarian law prohibits methods of warfare that are primarily designed to spread terror among the civilian population. Persons who employ such methods commit a crime yet remain members of the civilian population. Therefore, authorities in charge of such persons must indict and prosecute them according to the rule of law. If such persons act as members of a non-state armed group or with the support or on behalf of a State authority in the framework of an armed conflict, they enter into the category of combatants or one of the civilians directly participating in hostilities. A combatant who resorts to such practices can be arrested, detained, and prosecuted for his or her criminal activities. If so, guarantees regarding detention, interrogation, and fair trial provided by IHL must be respected. Terrorists do not have any specific legal status under humanitarian law. Besides, the jurisprudence of domestic courts interpreting international humanitarian law has shown that, under IHL, the so-called global war on terror does not constitute a third type of conflict involving “unlawful combatants” who would escape any rules provided for international and non-international armed conflicts. This was confirmed by several judgments pronounced by the United States and the Israel Supreme Courts, which denied, on this issue, the doctrine developed by governmental authorities and jurists in the context of their management of the terrorist threat. (Médecins Sans Frontières, *The Practical Guide to Humanitarian Law*)

In international law, the labeling of “terrorists” means that countries must take action following the 1999 International Convention on the Eradication of the Financing of Terrorism. This makes rebel organizations seen as dangerous organizations internationally and commits international crimes therefore other countries can participate in eradicating the rebel organization.

Conclusion

Acts of terrorism can be regarded as a complex and extreme political act that grows from a combination of various backgrounds such as cultural, economic, political, and psychological aspects. The practice of terrorism itself has occurred for a long time and has several changes which are shown by the trend of action from time to time. Under international law, giving the status of a terrorist to a rebel group results in the state having to take action by the 1999 International Convention for the Eradication of the Financing of Terrorism. This makes the rebel organization viewed as an internationally dangerous organization that commits international crimes and therefore states others can participate in eradicating the rebel organization. ***

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