

Transcendental Justice

Legal Ideology of Indonesian Terrorism

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Abstract—The terrorism legal law in Indonesia has not yet been able to interpret a transcendental justice in first principle of Pancasila, “Ketuhanan Yang Maha Esa” (Belief in the one and only God) as basic spirit in creating and enforcing the Indonesian terrorism legal law. Islam offers a concept of transcendental ideology in controlling terrorism, which is “*The law is not retroactive, has the presumption of innocence and punishment nullities because of doubts for God will not punish human without any notice. Rather, He warns through His messenger (Rasulullah pbuh.)*”. This Islamic concept is indeed in line with first principle of Pancasila “Ketuhanan Yang Maha Esa”. The transcendental ideology guides both law-making and law enforcement agencies about terrorism to explore, follow, and understand justice values that live and thrive in community (conscience) as well as unwritten law (religion). The universality of transcendental justice in Indonesian terrorism legal law can be found in the values derived from the God’s attributes (*al-hakam, al-adel, al-hakim*) and the universality of *al’adl, al-qist, and wasat*. The transcendental justice in terrorism legal law embodies the values of both normativity and historicity as a method to achieve the seeking and leading process to the ideology of terrorism legal law in Indonesia.

Keywords—justice; transcendence; ideology; terrorism

I. INTRODUCTION

Conscience is a limited reflection of God’s attributes possessed by human as the basic source of justice, which transcends the truth of justice rationality in *ius positum* (positive laws). The power of man’s conscience can transcend spatio-temporal sphere in defining the justice rationality of positive laws [1]. The conscience justice is able to transcend the limits of both positive and critical rationale (Divine irrational).

Critical and positive rationality in perceiving the values of transcendental justice and its progressivity will always vis-à-vis the fundamentalism which in the context of seeking the truth of transcendental justice will hardly moderate two distinct mindsets: traditionalism and modernism [2].

The rationality on standard value of justice existed in terrorism legal law is often intended to meet the legal certainty of terrorism eradication law. Meanwhile, the rationality on standard sense of justice in unwritten laws is intended to ensure the justice in preventing terrorism. The truth of law certainty and justice becomes a center of all dimensions of

transcendental values in the terrorism substantive law. The terrorism legal law embodies the dimension of positive and critical rationality. Terrorism comprises the ideology of normative standard on both positive and unwritten laws. The terrorism legal law becomes a center of catalyst dimension on ideologically preventing and eradicating terrorism.

Terrorism legal law which is developed doctrinally remains diametrically distinguishing between rationale and irrational justice. The rationality gives meaning to truth and justice values of positive laws measured procedurally methodically. Truth of irrationality and transcendental (prophetic) justice values exerts a measure of human’s resignation and acquiescence as God’s servant [3].

Human as God’s servant has been assigned to role as a leader (caliph) in this world, maintaining and taking care the world for its welfare [4,5]. Law-making and law enforcement agencies as entity of this concept should lead others [5]. They, in terms of terrorism issues, have obligations and responsibility to ensure laws and enforce them as an aid to achieve the ultimate goal, creating welfare for the world [6].

Judge, as the top leader of law enforcement agencies for terrorism in Indonesia, has obligations as the provision of Article 25 [7]: “Any verdicts, besides containing reasons and basis of decision, must comprise particular articles from related laws or unwritten law sources that are used as basis for prosecuting,” and of Article 28: “1. Judge must explore, follow, and comprehend the values of law and justice in community. 2. In considering the severity of criminal law, judge must also consider the nature of good and evil of the defendant.”

II. METHOD

Specifically, this research can be referred to as normative legal research, where one side provides an analysis of the prescription of legal certainty qualifications and legal construction in judicial decisions made according to the positive law prevailing in Indonesia. The other side found an alternative formulation of the legal construction model in the verdict of a terrorism case that guaranteed fair legal certainty (reconstruction).

III. RESULT AND DISCUSSION

Specifically, this research can be referred to as normative legal research, where one side provides an analysis of the prescription of legal certainty qualifications and legal construction in judicial decisions made according to the positive law prevailing in Indonesia. The other side found an alternative formulation of the legal construction model in the verdict of a terrorism case that guaranteed fair legal certainty (reconstruction).

A. *The Philosophy of Transcendental Justice as "Ideology" of Terrorism Legal Law*

The ideology of terrorism legal law argues the philosophical course about the certainty of law and justice. Law philosophy is applied as a method to find out the nature of the truth of transcendental justice. Philosophy guarantees the freedom for the discipline of law and doctrines in pointing out the direction of finding the truth path of transcendental justice [8]. Philosophy and doctrines should be perceived as the process of 'moving to' and 'turning into' in finding out the truth of transcendental justice, not as the process to justify violence as the basis of eradicating and preventing terrorism. These processes become the justification of urgency on transcendental justice as the ideology of terrorism legal law.

The uncertainty of doctrines in initiating the process of 'moving to' and 'turning into' rather becomes the source of inspiration in finding out the ideology of transcendental justice as the basic instruction for the law-making and law enforcement agencies in stipulating Indonesian terrorism legal law. The substantial construction and enforcement on terrorism legal law without the transcendental justice ideology become the main reason of inherent uncertainty of terrorism legal law, in which it eventually could raise the basic problems on eradicating and preventing terrorism in Indonesia.

Knowledge as the method (epistemology) should be able to provide adequate description and should be brought closer to the idea of society's way of living where the knowledge is being gained. Bernet provides the description expressing that epistemology has always linked to the people's way of living at that time (Greece) [9]. The cultural behavior and habit have strong influence on the mindset and action of the scientists that are in accordance with the era. All epistemologies, no matter what the truth is, should be based on the social needs and reality (sensible) [10]. Epistemology that is not attached to the society's way of living (insensible) will undoubtedly be useless and utopian. If law is perceived as an epistemology, it should be gained from the existing justice values needed by the society in which the law itself is discovered to be issued by the state. Well-organized law should be based on the justice values existing in the society in which the aspects of religion and faith are also considered [11,12].

B. *The Limit of Transcendental Justice Ideology in Indonesian Terrorism Legal Law*

The transcendental justice ideology in the philosophical and doctrinal perspectives also touches the realm of uncertainty. The transcendental justice ideology is meant to be used as the method to eliminate the philosophical and doctrinal

uncertainty. Human's obedience and resignation towards the transcendental truth and justice (theological) become the justification for the certainty of law and justice sourced from the prophetic ideology [13,14].

The faith (piety) of a man in obeying the truth and justice values sourced from God is meant to be the basic consideration in limiting the philosophical and doctrinal freedom in the epistemology of law [15]. The transcendental justice ideology should become the constraint on justification of the Indonesian law-making and law enforcement agencies in issuing and enforcing the law [16]. In the perspective of the transcendental justice ideology, Indonesian terrorism legal law is applied as the method to fulfill the process of 'moving to' and 'turning into' in the principle of the philosophical and doctrinal argument over the ideas of justice [17]. The paradigm of terrorism legal law contains rationale dimension (philosophy) and sense dimension (conscious). Terrorism refers to an act devised to destroy human civilization on one side (sense) and the cosmic on the other side (rationale).

Islam perceives terrorism as the result of systemic and excessive injustice [18,19]. The nature of terrorism has the same degree as the doctrine "Opposing the injustice of the authority's policy and law by terrorizing is not different from opposing the injustice of the universe." Terrorism leads to the destruction of human civilization in this world. The Islamic concept of Rahmatan Lil'Alamin in Islam is meant to be used to oppose the injustice by terrorism that could destroy the human civilization on Earth. A Judge in Indonesia is considered as the representative of God in deciding on a verdict of terrorism that guarantees the certainty of justice law in building human civilization on earth.

Transcendental justice is the civilization peak on earth, while terrorism is the basis of injustice. Islamic law does not substantially violate equality and justice of other religions, culture and customs among Indonesian community [20,21]. Islamic law cannot be viewed merely based on its form and symbol but also as a whole, that its present has become fundamental guidance in forming transcendental justice values in the State formal laws [22,23]. Islamic law does not essentially require its formation to employ Islamic symbols. The values have been able to ensure justice for all (Rahmatan Lil'Alamiin).

Islam has its own concept to define law and justice for the universe. The universality of law and justice in Islam must be viewed as the dynamics to look for and toward the affirmation of law and justice certainty transcendently [24]. Terrorism legal law enforcement process that ultimately leads to court verdict which is concrete and binding must hold universality spirit on Islamic law and justice [25].

The set up and enforcement of terrorism legal law is the entrance for Islamic values internalization process of justice and equality to ensure the welfare of mankind by maintaining the balance of universe [26]. According to Islam, justice internalization values on terrorism legal law (in Indonesia) is a method (epistemology) of seeking process and a pathway to the real-concrete and binding law which contains transcendental ideology [27]. Transcendental justice ideology in Indonesian terrorism legal law can be initiated from the internalization

process of justice values based on Islam by the law-making and law enforcement agencies.

The internalization process of Islamic justice in terrorism legal law requires intellectual maturity and broad as well as the flexible understanding of law-making and law enforcement agencies toward the justice and equality in Islam [28,29]. By doing so, the law-making and law enforcement agencies are ideologically capable of choosing the value of truth and justice as seen through *fiqh* and *syar'i* (*syar'iah*) point of view.

Transcendental justice ideology in Indonesian terrorism legal law is guaranteed by the first principle of Indonesian philosophical foundation, Pancasila, that is believe in the one and only God. The preamble of law enforcement final actualization in court verdict is "For justice by virtue of Almighty God". The process of making and enforcing the Indonesian terrorism legal law that ensures the legal certainty of justice must contain transcendental ideology of justice. This can be achieved by fulfilling the obligation and responsibility to respond the Indonesian theological values. Response to transcendental justice is hold by seeking, following and comprehending the theology of the first principle of Pancasila. The ideology of transcendental justice meets its justification in the first principle of Pancasila that is believing in the one and only God".

Globally, terrorism (including in Indonesia) by any means and principles is against the value of universal Divinity that sees it as the act of violence. Terrorism legal law can be interpreted as *dakwah* (Islamic preach) that must represent the universality of Divinity values. The universality of Divinity values certainly represents the universality of justice [22]. The theology of terrorism legal law should be placed and viewed in proper context so the "crown" of law is not merely worth of decorative.

C. Transcendental Ideology as the Universality of Justice Principal in Preventing Terrorism.

The history of generation, introduced an open-interpretation on *illat* (basic primary reason) in understanding the justice values coming from the Scripture that must and shall be used as the basis of the law-making and law enforcement agencies which later has the meaning of understanding the justice values from the Scripture that must be obeyed as the historical discourse upon human civilization [30]. Post-prophecy generation has globally introduced the concept of transcendental justice. The plural concept of transcendental justice generatively derives from the spatio-temporal dependency [31]. It, moreover, has to be perceived as the internalization process of doctrines through Scripture which embodies basic attributes of the law-making and law enforcement agencies to seek for the truth and justice transcendently [32,33].

An experience of socio-historical on *fiqh* implementation throughout Islam history and that of Indonesian local tradition shall be studied as internalization process substantively [34]. Positive laws in Indonesia is one of major legal sources for law enforcement agencies in seeking for the justice [35]. These such laws will substantially ensure the legal certainty once a fundamental of prophetic values is applied theologically. The

perfect 'crown' of terrorism legal laws in Indonesia shall be viewed from the divine nature (Ilahiah perspective), not from a transactional rationale [25, 36-39].

The construction of Indonesian law-making and law enforcement agencies in understanding the legal certainty fairly and transcendently must accommodate doctrinal values and thoughts in community [29,40,41]. Positive laws on terrorism di Indonesia has not yet provided textual averment that obligates law enforcement agencies to set the ideology of transcendental justice in every intervention [39]. The Indonesian head verdict expresses that for the sake of justice based on the belief in the one and only God regulated in positive laws, it is necessary for judges to explore, to follow, and to comprehend the values of transcendental justice in making decisions [42].

The fair legal certainty on terrorism cases in Indonesian verdict must be viewed from logical perspective rather than morale ones. The fair verdicts on terrorism in Indonesia appear to be a proper law; otherwise, they become improper one. The goods and evils shall be employed as the substance of verdicts beside its dimension.

The ideology of transcendental justice on Indonesian terrorism assuring the fair legal certainty is capable of explaining the right or wrong and the good or bad of law. The verdicts on terrorism in terms of goods according to mankind (judge) do not necessarily mean right before God, and vice versa [42,43]. Indonesian judges prosecuting light penalties upon terrorists due to the consideration of defendant's attitude: *taubat* (his regrets) might be right before judge's consideration as mankind yet it might be also wrong before God for He (not Dieties) who knows all [44].

"Save yourselves and your families from the hellfire". This theological conception may be well-understood by the terrorist in Indonesia (although all citizens shall believe in God) that terrorism is an attempt to save himself and his family from the abject life that does not reflect the concept of *khalifah fil 'ardl*. The abject life is a gateway for every mankind to become *khufur*. Those who are *khufur* shall be apart from God's save and go to hell, and terrorism is an act managed to elude the *khufur* status. Terrorism legal laws in Indonesia shall provide justification whether such intention is absolutely wrong in any perspective including transcendental one within the meaning of *jihad* according to the religion teachings.

Islam provides sufficient explanation regarding value and principal of justice and legal certainty. Justice (*al-'Adl*) in Islam is perceived as multidimensional concept based on the context. The dimension of justice (*al-'Adl*) may include in-court law enforcement, the issue of polygamy, conflict resolution. Justice (*al-Qist*) has a dimension associated with the orphans, measures and weights, the issue of interfaith, afterlife reward and punishment. Justice (*wasat*) means being in the midst of two things, standard or normal, straight, fair, clean.

Legal certainty in Islam is characterized by the principle of legality based on mankind mind, but of God's determination. Legal certainty in Islam relies on obedience and submission to God's revelation in the frame of mankind conscience. Instructions, notices, and warnings given through revelation

and Prophet's sayings become the basis of principle of legality, the absence of retroaction, presumption of innocence, punishment nullities because of doubts, and equality before the law in Islam.

The transcendental justice of terrorism legal laws in Indonesia shall be viewed in a perspective of attributes of God, which contains justice principal theologically [45]. The substance of terrorism legal laws in Indonesia which reflects the attributes of God and contains some principals of theological justice is the essence of transcendence justice in the establishment of terrorism legal laws construction in Indonesia [35].

IV. CONCLUSION

The Justification of transcendental justice of terrorism legal laws in Indonesia is found in the ideology of positive law written in the first principle of Pancasila, "Belief in the one and only God" and The Head of Verdict "For the sake of justice based on the one God".

The justification of transcendental justice of terrorism legal laws in Indonesia is in accordance with the teaching of Islam, in the form and meaning of principle of legality, "the absence of retroaction, presumption of innocence, punishment nullities because of doubts, for God will not punish mankind without warning through His prophets".

The justification of transcendental justice of terrorism legal laws in Indonesia is found in positive law which obliges and requires the judge to explore, to follow and to comprehend the justice values applied by community (by conscience) as well as the unwritten laws (religion).

The justification of universality of transcendental justice of terrorism legal laws in Indonesia is found in the values derived from the attributes of God (al-hakam, al-adel, al-hakim) and the meaning of universality of al'adl, al-qist, and wasat.

The justification of transcendental justice of terrorism legal laws in Indonesia must contain the value of normativity (right or wrong) and historicity (good or bad).

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