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*Law Enforcement Against Perpetrators of Terrorism Crimes to Realize Legal Certainty*

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**ABSTRACT**

Terrorism crime is a form of crime with an international dimension that is very frightening to the public. In various countries in the world, terrorism crimes have occurred both in developed and developing countries, and acts of terror have taken victims indiscriminately. The formulation of the problem raised is: How can law enforcement against perpetrators of terroristic crimes in Indonesia be regulated? And how is law enforcement against perpetrators of terrorism crimes in Indonesia to realize legal certainty? The research method used is normative juridical with a case, legislation, and concept research approach. The legal materials used are primary, secondary, and tertiary, while the analysis of qualitative legal materials is qualitative. The results of the study show that terrorism is a complex series of actions, so basically, efforts to prevent and eradicate terrorism crimes will not be adequate if only carried out in one law. The existence of laws and regulations related to terrorism is directed to answer public anxiety over acts of terror that occur, but until now, terrorism crimes continue to occur. So, an ideal concept is needed, in this case, the involvement of all components of society by being outlined in laws and regulations in the context of preventing and overcoming terrorism. This concept is a more effective means of preventing and eradicating terrorism crimes in addition to criminal law. Therefore, making community leaders effective and educating and directed in the prevention and eradication of terrorism is a concrete step in eradicating terrorism.

**Keywords: Law Enforcement, Terrorism, Legal Certainty**

**INTRODUCTION**

Terrorism crime is a form of crime with an international dimension that is very frightening to the public (Pekić, 2020). In various countries in the world, terrorism crimes have occurred both in developed and developing countries, and acts of terror have taken victims indiscriminately. This caused the United Nations in its congress in Vienna, Austria, in 2000 to raise the theme The Prevention of Crime and The Treatment of Offenders, among other things, mentioning terrorism as a development of violent acts that need attention (Heinzelmann, 2020).

Terrorism is a crime that cannot be classified as an ordinary crime. Academically, terrorism is categorized as an "extraordinary crime" and is also categorized as a "crime against humanity".

The criminal acts of terrorism that have occurred so far have disturbed public security and order and have become a serious threat to state sovereignty (Margariti, 2017), so it is necessary to

prevent and eradicate criminal acts of terrorism in order to maintain a safe, peaceful, and prosperous life based on Pancasila and the 1945 Constitution.

Terrorism crimes have also occurred in Indonesia and have also victimized innocent people, both Indonesia's own citizens and foreign citizens (McCabe, 2016). The first act of terrorism in Indonesia was the detonation of a suicide bomb on October 12, 2002, in Legian, Kuta, Bali, which killed approximately 184 people, and hundreds of others were seriously and lightly injured from various countries such as Australia, the United States, Germany, the United Kingdom, and others. So terrorism is a common enemy for the Indonesian nation, an enemy of humanity, an enemy of the Indonesian people, and an enemy of the world (Ferdiansyah, Sumarno, & Afifuddin, 2024).

Given such a category, the eradication certainly cannot use ordinary methods such as dealing with ordinary criminal acts such as theft, murder or persecution (Fox, Levin, & Quinet, 2018). Terrorism crimes always use threats or acts of violence that threaten the safety of lives without choosing who will be the victim.

One way to deal with terrorism is to use criminal law (Penal Policy). According to Marc Ancel, Penal Policy is defined as "a science as well as an art that ultimately has a practical goal to allow positive legal regulations to be formulated better". Thus, the term "penal policy," according to Marc Ancel, is the same as the term policy or politics of criminal law.

The terror incidents in Indonesia have caused sympathy and pressure from the international world to eradicate and find the perpetrators of terrorism (Permono, 2023). In fact, the United Nations has issued 2 (two) resolutions, namely Resolution No. 1438 of 2002 which strongly condemns the bombing in Bali, and expresses deep condolences and sympathy to the government and people of Indonesia as well as the victims and their families, while Resolution No. 1373 of 2002 contains a call to cooperate and support and assist the Indonesia government to arrest and expose all perpetrators related to the incident and process it to the court.

At the insistence of the United Nations, the government of Indonesia issued a Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Terrorism Crimes. In its development, Perppu No. 1 of 2002 was approved by the House of Representatives to be ratified into Law Number 15 of 2003 concerning the Eradication of Terrorism Crimes and now it has been changed to Law Number 5 of 2018 concerning the Prevention and Eradication of Terrorism Crimes.

Terrorism Crime is a serious crime committed by using violence or the threat of violence deliberately, systematically, and planned, which creates an atmosphere of terror or fear widely with the target of state apparatus, the civilian population at random or unselected, as well as strategic vital objects, the environment, and public facilities or international facilities and tends to grow into a symmetrical danger that endangers the security and sovereignty of the state. territorial integrity, peace, human welfare, and security, both national, regional, and international.

To optimize the eradication of Terrorism Crimes, it is necessary to strengthen a stronger legal foundation to ensure legal protection and certainty in the prevention and eradication of Terrorism Crimes (Jian, Nai, Yu, & Yang, 2020), as well as to meet the needs and legal

developments of the community, it is necessary to make proportional changes while maintaining a balance between the needs of law enforcement, human rights protection, and socio-political conditions in Indonesia.

Therefore, the prevention and eradication of terrorism in the future is not enough to rely on the strength of the police or the Special Detachment 88 Anti-Terror of the National Police. Prevention and eradication of terrorism needs to be strengthened with a stronger policy framework and political decisions (Argomaniz, 2015). The main substance is that proactive efforts to prevent acts of terrorism need to be strengthened with a firmer and more definite legal framework (Posen, 2017). Referring to the background of the above problem, the problem that the author wants to research is: How is the regulation of Law Enforcement Against Perpetrators of Terrorism Crimes in Indonesia? And how is law enforcement against perpetrators of terrorism crimes in Indonesia to realize legal certainty?

## **RESEARCH METHODS**

The type of legal research used in this study is normative legal research. Normative legal research is legal research that examines library materials or secondary data, which includes research on positive legal inventory, legal principles, research on legal systematics, research on vertical and horizontal synchronization levels, comparison of law and legal history, and legal research in concreto.

The research approach used is the legislative approach, the case approach, the concept approach and the comparative approach, the legal materials used are primary, secondary, and tertiary legal materials The analysis of the legal materials used is qualitative.

## **RESULTS AND DISCUSSION**

### **Law Enforcement Arrangements Against Perpetrators of Terrorism Crimes in Indonesia**

Regulations regarding the eradication of terrorism crimes also contain criminal sanctions listed in Articles 6 to 24 of Government Regulation in Lieu of Law No. 1 of 2002, which has been ratified into Law No. 15 of 2003 concerning the Eradication of Terrorism Crimes. One of the articles, namely Article 6, states: Any person who deliberately uses violence or the threat of violence to create an atmosphere of terror or fear against people widely or causes mass casualties (Combs, 2022), by depriving others of their independence or loss of life and property, or causing damage or destruction to strategic vital objects or the environment or public facilities or international facilities, shall be sentenced to death or life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years. Therefore, every person who commits a criminal act of terrorism will be subject to criminal sanctions according to Article 6 of the regulation. The death penalty is still maintained and applies to perpetrators of terrorism crimes. The threat of the death penalty is still needed to provide a deterrent effect to the perpetrators of crimes and prevent more serious violations, especially in cases of terrorism (Untoro, Chrisbiantoro, & Yusuf, 2023).

The eradication of terrorism crimes will not be effective if it is only carried out and aimed at criminal law enforcement on a case-by-case basis (Guild & Kuskonmaz, 2018), but a law enforcement system is needed through a counter terrorism approach that uses all means systemically and continuously, not only relying on repressive criminal law enforcement but requires a pre-emptive and preventive approach. For example, through deradicalization efforts.

Based on this theory, the orientation of criminalization is directed to achieve legal goals and social goals through law enforcement that is authorized, obliged and responsible for the implementation of law enforcement firmly (Farmer, 2016), consequentially and consistently against all forms of unlawful acts, both in the public and private fields, including the Crime of Terrorism which is very detrimental to Indonesia .

Law enforcement efforts are inseparable from the ideals of law embraced in society into a set of various positive legal rules, legal institutions and bureaucratic behavior processes of the government and citizens). Furthermore, in enforcing the law, there are three elements that must be considered, namely legal certainty (*rechtssicherheit*), usefulness (*zweckmassigkeit*) and justice (*gerechtigkeit*).

Terrorism is an extraordinary crime (Extra Ordinary crime) that also requires handling by utilizing extraordinary means (Extra Ordinary Measure ) (Crenshaw & LaFree, 2017). In this regard, Ridlo & Dewi said: Every effort to overcome terrorism, even if it is said to be domestic because its characteristics contain elements of "Ethno Socio or Religios Identity", in overcoming it, inevitably must consider these extraordinary standards by considering the advancement of modern communication, informatics and transportation technologies. Thus, it is not surprising if there is a transborder terrorism identity.

Indonesia currently already has regulations to tackle terrorism crimes as stated in Law Number 15 of 2003 concerning the Stipulation of Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Terrorism Crimes into Law. The lawmakers place Law Number 15 of 2003 as an umbrella and coordinating regulation that functions to strengthen the provisions in other laws and regulations related to the eradication of terrorism crimes.

The prevention and eradication of terrorism in Indonesia continues to make efforts by promulgating Law of the Republic of Indonesia Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Terrorism Crimes into Law. This law explains that the crime of terrorism that has occurred in Indonesia is a serious crime that endangers state ideology, state security, state sovereignty, human values, and various aspects of society, nation and state life, and is cross-country, organized, and has a wide network and has a specific purpose so that its eradication needs to be carried out in a special, planned, directed manner, integrated, and sustainable, based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Various government efforts have issued various policies and replaced laws and regulations in order to prevent and eradicate terrorism starting from Law No. 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law No. 1 of 2002 concerning the Eradication

of Terrorism Crimes into Law and Law No. 8 of 2010 concerning Money Laundering Crimes, and in connection with foreign politics that is free and active. The Government of the Republic of Indonesia has promulgated Law Number 37 of 1999 concerning Foreign Relations and Law Number 24 of 2000 concerning International Agreements, and the last is Law Number 9 of 2013 concerning the Prevention and Eradication of Terrorism Financing Crimes and Law Number 5 of 2018 concerning the Eradication of Terrorism Crimes. The existence of the laws and regulations mentioned above is directed to answer the public's anxiety over the acts of terror that occur, but until now terrorism crimes continue to occur (Bennett, 2018).

### **Law Enforcement Against Perpetrators of Terrorism Crimes in Indonesia to Realize Legal Certainty**

Law Number 15 of 2003 concerning the Eradication of Terrorism Crimes in the formulation of terrorism crimes almost always include elements of intentionality or forgetfulness. There are three forms of criminal sanctions imposed on terrorism perpetrators, namely the death penalty, imprisonment, and fines for corporate actors. The pattern of criminal law threats is one of the most trusted mirrors given to a civilization that reflects fundamental values at this time (Bina, Mateus, Pereira, & Caffa, 2017). In the history of criminal law, especially regarding its sanctions, it would be difficult to believe that humans were really very cruel creatures. How unusual, the types of crimes known from the eastern end to the western end and from the northern end to the south of the planet all rely on retribution and the way it is carried out is very inhumane (Bassiouni, 2023).

The Government of Indonesia has established 3 (three) paradigms that are considered suitable in the context of the developing political culture, namely: first, the protection of the sovereignty of the territory of the unitary state of the Republic of Indonesia; second, the protection of the human rights of citizens of the Republic of Indonesia, both living in the country and abroad; and third, the protection of the human rights of suspects/defendants of terrorism crimes which are already universal rights and therefore not negligible .

According to (Gunawan, 2017) has warned that "Criminal imposition (een strafpleggen) must be sought to be appropriate and balanced with the values of legal awareness, which move according to the development of space, time and circumstances that require the imposition of a special nature, as a reaction to the act of raping the system (law) that is imposing a penalty .

In other words, to measure the extent to which a type of criminal sanction can meet the criminal objectives determined by the criminal law system concerned (Sudarti & Sahuri, 2019). This is considering that criminal is essentially only a "tool" to achieve goals. Various criminal theories that emerged in his time have formulated different criminal objectives. However, one thing worth noting is that the development of criminal theory shows a shift in the philosophy of punishment from the philosophy of "punishing" to the philosophy of "coaching", including in Indonesia.

The application of action sanctions as a sanction for perpetrators of terrorism crimes is based on several streams or opinions (Ruys & Ryngaert, 2020). First, the Positive School sees crime empirically by using scientific methods to confirm facts on the ground in relation to the occurrence

of crime. This school is based on the idea of determinism which states that a person commits a crime not based on his will because humans do not have free will and are limited by various factors, both their personal disposition, biological factors, and environmental factors. Therefore, the perpetrators of crimes cannot be blamed and punished, but must be given treatment for the resocialization and improvement of the perpetrators (Martínez & Leongómez, 2024).

Sanctions for criminal actions can reduce violations through 1) deterring the offender, which is persuading the offender to refrain or not violate the law again through their memory of the crime imposed; 2) deterring potential imitators; 3) reforming the offender, namely improving the behavior of the offender so that the awareness of the offender to tend not to commit crimes again even without fear of criminal threats; and 4) educating the public to think more seriously about the occurrence of terrorism crimes, so that in this way, it can indirectly reduce the frequency of terrorism crimes. In addition, sanctions for criminal actions are used as a treatment for criminal purposes. This positive argument is based on the reason that the perpetrator of the crime is a sick person who needs treatment and repair (Sered, 2019).

Terrorism criminalization requires criminal sanction formulation techniques. Where it is one of the legal politics in the preparation of a revision of the terrorism law. The formulation of criminal sanctions related to the existence of sanctions for actions from a previously existing norm must be agreed upon by the lawmakers. The agreement can be interpreted as a formulation policy. The issue of criminal determination is inseparable from the formation of a law, which is basically a state political policy or legal policy formed by the House of Representatives and the President (Tarr, 2019). The revision of the criminalization of terrorism perpetrators in positive law requires limitations and conditions for the application of action sanctions in the Revision of the Law in terms of the type of crime and the perpetrator of the crime. In the future, in the revision of Law No. 5 of 2018 concerning the Eradication of Terrorism Crimes, types of crimes and perpetrators of crimes that can be subject to sanctions if these types and perpetrators are based on the weakness of the wrong religious ideology. Perpetrators are sought to change their orientation (*mens-rea*) towards the wrong beliefs in their *actus-rea*.

Countering Terrorism Crimes through an Integral Approach. In the concept of countering terrorism crimes, the state of Indonesia has used various methods ranging from the use of soft approaches to hard approaches (Sumarwoto, Mahmutarrom, & Ifrani, 2020). All forms of using approaches in countering terrorism are considered insufficient to eradicate terrorism crimes. Law Number 15 of 2003 concerning the Eradication of Terrorism Crimes which was later amended by Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003; The issuance of this law on terrorism began with the Bali I Bombing incident, which was then responded by the state by issuing Government Regulation in Lieu of Law No. 1 of 2002 concerning the Eradication of Terrorism Crimes and Government Regulation in Lieu of Law No. 2 of 2002 concerning the Enactment of Government Regulations in Lieu of Law No. 1 of 2002 concerning the Eradication of Terrorism Crimes, on the Bomb Detonation in Bali.

Then a year later, Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Terrorism Crimes was passed into law with the issuance of Law Number 15 of 2003. Within a period of 14 (fourteen) years, this law became an instrument and legal umbrella in the eradication of terrorism crimes in Indonesia, but because terrorism crimes always come in new ways, finally in 2018 the government together with the House of Representatives passed the Terrorism Crime Bill into Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Eradication of Terrorism Crimes. With this new instrument, law enforcement officials immediately carry out various kinds of prevention and enforcement efforts against everyone suspected of committing terrorism crimes (Gaines, Kappeler, & Powell, 2021).

This educational pillar (especially Law Universities that build a "legal culture" including national legal science) is rarely involved in dealing with terrorism crimes, other than only as an academic manuscript maker for a draft law or invited as an expert in law enforcement efforts against terrorism crimes. This makes criminal law studies in the field of terrorism less in the context of countering terrorism crimes. This aspect is very important because to counter the crime of terrorism, studies of terrorism criminal law are needed which are the embodiment of the "legal cultural values" system which can include legal philosophy, legal principles, legal theories, legal sciences and legal awareness/attitude of legal behavior.

In relation to the above, a series of binding cooperation is needed between the Regional Government and the National Police and community leaders in the prevention and eradication of terrorism. The strategic value obtained will pave the way for the National Police to eradicate terrorism crimes. Therefore, it is necessary to build a triangular relationship between the National Police, the Regional Government and the Community Council. This relationship is conceived as a close relationship that links between the National Police, Regional Governments, and Community Leaders. This close training is intended to strengthen the cooperative relationship between the National Police, Regional Governments, and community leaders as the front line in preventing and eradicating terrorism.

In addition, the theory of non-penal policies, in this case the policy of preventing and eradicating terrorism through early detection by strengthening all elements of society, must be immediately included in the concept of laws and regulations on terrorism so that terrorism crimes can be immediately overcome and not develop in the Unitary State of the Republic of Indonesia.

## **CONCLUSION**

Terrorism is a complex series of actions, so basically efforts to prevent and eradicate the crime of terrorism will not be adequate if it is only carried out in one law. The existence of laws and regulations related to terrorism is directed to answer public anxiety over acts of terror that occur, but until now terrorism crimes continue to occur. So an ideal concept is needed, in this case the involvement of all components of society by being outlined in laws and regulations in the context of preventing and overcoming terrorism. Penal and non-penal approaches in law enforcement of terrorism crimes need to be considered. This concept is a more effective means of

preventing and eradicating terrorism crimes in addition to criminal law. Therefore, by making community leaders effective and educating them well and directed in the prevention and eradication of terrorism is a concrete step, especially immediately outlined in the laws and regulations related to the involvement of these figures so that early detection in the surrounding environment runs well.

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