



## BUILDING A POLICY FOR COMBATING CRIMINAL ACTS OF TERRORISM THROUGH THE DEATH PENALTY

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**Abstract:** *Terrorism is an extraordinary crime that can cause an atmosphere of terror, widespread fear, and mass casualties for the community. The government makes policies to counter terrorism through Law no. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, amended by Law no. 5 of 2018. The law provides for the death penalty for perpetrators of terrorism crimes. Nevertheless, the reality is that acts of terror in Indonesia are still happening and are increasing. The problem raised in this study is how to reconstruct the policy of countering terrorism through the death penalty. This legal research is normative juridical research with an empirical juridical approach. The types of data used include primary data and secondary data. Data collection techniques using documentary studies as secondary data and supported by primary data using the interview method. The analysis used is qualitative normative data analysis. Based on this research, the results show that terrorism crimes are committed by groups that are generally political victims; injustice, inequality, poverty, discrimination. The goal is to fight a mighty force that is impossible to fight openly. Implementing the death penalty for terrorism crimes does not provide a deterrent effect for perpetrators of terror acts in Indonesia. This happens because the lack of understanding of the characteristics of terrorism crimes and harsh actions actually lead to new, greater violence. The solution to this problem is to change the legal approach towards a sociological, persuasive and deradicalization approach*

**Keywords:** *Implementation; Death Penalty; Terrorism Crime*

**Abstrak:** *Terorisme termasuk extra ordinary crime yang dapat mengakibatkan timbulnya suasana teror, rasa takut yang luas dan korban yang masal bagi masyarakat. Pemerintah membuat kebijakan penanggulangan terorisme melalui Undang-Undang No. 15 Tahun 2003 tentang Pemberantasan Tindak Pidana Terorisme, yang dirubah dengan Undang-Undang No. 5 Tahun 2018. Dalam Undang-Undang tersebut memberikan ancaman pidana mati bagi pelaku tindak pidana terorisme. Tetapi kenyataannya aksi teror di Indonesia masih saja terus terjadi dan semakin meningkat. Permasalahan yang diangkat dalam penelitian ini adalah bagaimana rekonstruksi kebijakan penanggulangantindak pidana terorisme melalui hukuman mati. Penelitian Hukum ini merupakan penelitian yang bersifat yuridis normatif dengan pendekatan yuridis empiris. Jenis data yang dipergunakan meliputi data primer dan data skunder. Tehnik pengumpulan data menggunakan studi dokumenter sebagai data sekunder dan didukung data primer dengan menggunakan metode wawancara. Analisis yang digunakan adalah analisis data normatif kualitatif. Berdasarkan penelitian ini diperoleh hasil bahwa kejahatan terorisme merupakan yang dilakukan oleh kelompok yang pada umumnya merupakan korban politik; ketidakadilan, kesenjangan, kemiskinan, diskriminasi. Tujuannya adalah untuk melawan kekuatan yang besar yang tidak mungkin dilawan secara terbuka. Implementasi pidana mati pada tindak pidana terorisme tidak memberikan efek jera bagi pelaku aksi teror di Indonesia. Hal ini terjadi karena kurangnya pemahaman terhadap karakteristik kejahatan terorisme dan adanya tindakan yang keras justru menimbulkan*

*kekerasan baru yang lebih besar. Solusi dari permasalahan tersebut adalah dengan melakukan perubahan pendekatan hukum kearah yang bersifat sosiologis, persuasif dan deradikalisasi.*

**Kata Kunci:** Implementasi; Pidana Mati; Tindak Pidana Terorisme

## **A. Introduction**

In the last ten years, Indonesia has often been rocked by large-scale forms of communal violence, one of which is terrorism. This violent terrorism attracted worldwide attention after September 11, 2001, and it has also occurred in Indonesia. However, the violence was carried out by small groups acting in a very secretive manner, so it cannot be considered collective violence. Compared to other types of violence, this violence also demands a smaller death toll, although the shocking impact of the victims killed is certainly not proportional to the number. (Klinken, 2007) The emergence of the term terrorism, which has become the most popular discourse discussed by the public since the collapse of the WTC (World Trade Center) and the Pentagon in America, has implications for the world political order. Almost all countries around the world are busy improving their own security and preventing similar incidents. Indonesia also did not escape the impact that was a consequence of the incident with the Bali I bombing in Kuta Legian Bali on October 12, 2002. (Fauzan Al-Anshari, 2005)

The Bali Bombing I has prompted the government to issue a Government Regulation in Lieu of Act (Perpu) to fill the legal vacuum (Rechtsvacuum) regarding the prosecution of terrorism crimes. The government, through President Megawati, even immediately issued two Government Regulation in Lieu of Acts, namely Government Regulation in Lieu of Act No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism and Government Regulation in Lieu of Act No. 2 of 2002 concerning Investigation, Investigation and Prosecution of the Bali Bombing Case. A year later, Government Regulation in Lieu of Act No. 1 of 2002 was passed into Law no. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism. Later amendments were made to Law no. 5 of 2018. Law no. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism finally ensnared the acts of terrorism committed by Amrozi and his friends until finally, they were executed on November 9, 2008. (Supena, 2012)

After the execution of the three Bali bombers, the interesting thing was that many people were debating and criticizing Law no. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, particularly the provisions relating to the threat of the death penalty. Some groups, both outside and inside the country, have a terrible view of implementing the death penalty for various reasons. Among them, the policy of implementing the death penalty is considered an inhumane policy. Opponents of the death penalty use argumentation bases, including the possibility of the execution of an innocent person, the lack of a deterrent effect on violent crimes, and their arguments on morals and religion (based on a moral or religious basis). The historical and theoretical approach to the death penalty is developing the theory of revenge (an eye for an eye), which some people consider outdated in criminal law. (J.E. Sahetapy, 2009) Based on the above background, the writing of this study will try to provide a discussion that will analyze how the implementation of counter-terrorism crimes in Indonesia is currently being carried out and how the reconstruction of counter-terrorism crimes is carried out through the death penalty.

## **B. Research Method**

The research approach method used is a normative juridical approach. Normative juridical is normative legal research carried out by examining library materials that are secondary data and is also called library law research. As the focus of the normative juridical approach, research is carried out on legal principles. (Soemitro, 1990) While the empirical juridical approach is carried out to complete secondary data to find out legal symptoms in society related to implementing the death penalty in terrorism crimes against the existence of terror acts in Indonesia. In this study, the specifications used are descriptive analysis, namely research intended to describe humans, circumstances or other symptoms. (Bambang Sunggono, 1997) Descriptive means describing legal phenomena, systematically describing factually and accurately regarding implementing the death penalty for terrorism crimes against the existence of terror acts in Indonesia. In contrast, analysis means providing an assessment of the results of the description without intending to give general conclusions. This research is normative legal research, so a source of data can be obtained from secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials and primary data that occurs in the field.

## **C. Discussion**

### **1. Definition of the Death Penalty**

According to Article 10 of the Criminal Code, the main criminal penalties consist of the death penalty, imprisonment, imprisonment and a fine. Meanwhile, additional punishment is in the form of revocation of certain rights, confiscating certain goods, and announcing the judge's decision. The death penalty is a sentence or sentence handed down by the court as the heaviest punishment imposed on a person due to his actions. (Andi Hamzah dan Sumagelipu, 1983) In Indonesia, the implementation of the death penalty is following Law no. 5 of 1969 concerning the procedure for implementing the death penalty imposed by the court in the general and military courts is by execution before a shooting squad.

The debate about the death penalty has been around for a long time in criminal law worldwide. In responding to this, it is necessary to understand the schools in the philosophy of punishment, namely the first emergence of a classic action-oriented school (*daadstrafrecht*); this concept emphasizes that punishment must be following the crime (proportional). Second, the modern flow (positive flow) oriented actors and individuals (*daderstrafrecht*), resisting the flow definition of criminal offenses, should be tailored to the offender. In addition, there are three existing and developing theories to justify sentencing; retributive theory (absolute) justifies punishment as a means of retaliation for crimes committed by someone. Retributive theory (relative), this theory provides a basis for punishment for social order and crime prevention in the form of general and special prevention. The third theory is a combined theory which asserts that punishment should be based on the purpose of retaliation and maintaining public order, applied by combining the two theories by focusing on one of them without eliminating the other elements. (Suhariyono AR, 2009)

Parties against the death penalty at least use argumentation bases, including the possibility of the execution of an innocent person, the lack of a deterrent effect on violent crimes (the lack of deterrence of violent crime), and they base it on moral and religious arguments (based on moral or religious basis). On the other hand, supporters of the death penalty view that the death penalty can have a deterrent effect (the

deterrence of violent crime), is fair to the friends and family of the victim (closure to the families and friends of the victim). This group believes that other forms of punishment will not be effective. (Agustinus & Soponyono, 2016)

Cesare Beccaria argued that the severity of the punishment should be in line with the nation's state. Among a society that has not yet come out of its savagery, the punishment must be the most severe because a strong influence is required; but as its relation to society softens the human mind, the weight of the punishment must be reduced if it is intended that the relationship between object and feeling is to be preserved. Punishment must not be an act of violence by one or more persons against a private member of society; punishment must be social, direct and necessary, as small as possible in a given case, adapted to the crime and determined by law. (Sambas, 2007)

J.E. Sahetapy discusses specifically the position of the death penalty for premeditated murder in the context of article 340 W.v.S (Wetboek Van Strafrecht) colonial heritage. The threat of the death penalty in Article 340 W.v.S is currently in practice a de facto abolition provision. According to him, the threat will not reach its target as long as there are several factors: the institution of appeal, cassation, clemency, freedom of judges, and shame culture. Moreover, according to him, from a criminological point of view, the benefits of the death penalty are highly doubtful. In this case, it appears that J.E. Sahetapy strongly disagrees with the implementation of the death penalty. In conclusion, he says that the death penalty in premeditated murder should be abolished. (Listiyanto, 2017)

Satjipto Rahardjo believes that the Sociology of Law is related to the issue of the death penalty; *If we use sociological optics, we will be tempted to question the possibilities of death that is physical and social...a person can be called physically alive but at the same time experiencing social death. This happens when a person is in such a social condition that his freedom to carry out social activities is deprived of... The portrait of the implementation of legislation in society is not black and white but colorful, depending on the politics of law enforcement and ideology in the community behind him. Not only that but also determined by the sociology of law enforcement carried out by law enforcement officers....* For people sentenced to death and executions have been carried out, nothing can fix them if it turns out that something went wrong later on. No one can guarantee that law enforcers in imposing their sentences can always be free from the possibility of wrongdoing and cleanliness in imposing the punishment. (Ma'u & Nur, 2016)

## **2. Definition of the Terrorism Crime**

According to Government Regulation in Lieu of Act No. 1 of 2002, which was passed into Law no. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, and later amendments were made to Law no. 5 of 2018 Article 6 states that a criminal act of terrorism is any person who intentionally uses violence or threats of violence to create an atmosphere of terror or fear of people widely or causes or causes mass casualties, by depriving liberty or loss of life and property of other people, or causing damage or destruction to vital strategic objects or the environment or public facilities or international facilities, shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years, life imprisonment, or the death penalty. Meanwhile, according to Sukawarsini Djelantik, terrorism is defined as acts of violence for coercion of will and political publications that take victims of innocent civilians, showing a very close relationship with politics. (Sukawarsini Djelantik, 1999)

Acts of terror and violence are often carried out by groups who are often disadvantaged politically. Terrorism grows and develops because it is supported by society's situation, experiencing political pressure, social injustice, and a deep gap between rich and poor. Terrorism is believed to be a form of a political strategy of a weak group facing a strong and powerful government. Terrorism is carried out by groups that have reached collective decisions based on shared beliefs, even though everyone's commitment to the group and their beliefs are not the same. Terror organizations themselves are always elitist with systematic recruitment of members and long monitoring. They are always closed and move "under the ground" (secret, more of an intelligence operation except for the results).

Many theories reveal the causes of violent terrorism, but the researcher chooses one broader theory: Paul Wilkinson's theory; *Revolution and political violence are generally the cause of terrorism. These include ethnic conflicts, religious and ideological conflicts, poverty, modernization pressures, political injustice, lack of peaceful communication channels, the enactment of violent traditions in one area, the existence of revolutionary groups, weak governments, waning trust in the ruling regime, and the occurrence of divisions within the ruling elite with other leading groups.* (Sukawarsini Djelantik, 2010)

Terrorist groups are divided into 4 (four) groups; nationalist-separatists, religious fundamentalists, new religious groups and actors of social revolution. There are several opinions about how a person becomes a terrorist, including psychologists Jerrold M. Post, John W. Crayton and Richard M. Pearlstein, who argue that; *Terrorists experience a mental breakdown; the narcissistic rage hypothesis is linked to development at an early age. The big ideas of terrorist groups are to protect the group from shame.* (Natalia, 2016)

### **3. Government Policy in Handling Criminal Acts of Terrorism**

The acts of terror at the WTC and the American Pentagon on September 11, 2001, were a new chapter for countries worldwide to build security systems. The Government of the Republic of Indonesia also experienced and did the same thing after the Bali Bombings on October 12, 2002. In fact, it has taken steps since early 1999 by drafting a Bill on the Eradication of Criminal Acts of Terrorism as an anticipatory step to prevent and overcome. (Milia, 2015)

In Indonesia itself, at first, the issue of terrorism was still a political debate. Some people think that terrorism does not exist, while others think that terrorism already exists in Indonesia and is a serious threat. Since 1999 there have been bombings in various areas. Even the Christmas bombings in 2000 that occurred in various cities are still only politically debated and do not raise awareness of the importance of paying attention to terrorism. In 2001, a worrying thing happened in the House of Representatives, where twice members of the House of Representatives of the Republic of Indonesia refused to form a Special Committee to discuss the magnitude of the threat of various forms of terror that had taken place in Indonesia. (Munir, 2003) It is even possible that some of the political elite gained political benefits to strengthen the importance of political power.

The Bali Bombing incident finally denied all political debates about the existence of terrorism in Indonesia. The death toll of hundreds of foreign nationals puts Indonesia in a situation to take immediate and serious steps to tackle terrorism. The Government of the Republic of Indonesia is burdened with the mandate as contained in the Preamble to

the 1945 Constitution, namely, that the state protects the entire Indonesian nation and the entire homeland of Indonesia. The state is obliged to protect every citizen from every threat of crime, whether national, trans-national or even international. For that, we need a policy that relies on the provisions of the Constitution of the Republic of Indonesia, which is formulated in a law that can be used as a basis in overcoming criminal acts of terrorism.

Terrorism is a great crime or an extraordinary crime that requires a pattern of handling by utilizing extraordinary measures. Because of such a category, its eradication cannot use the usual methods of dealing with criminal acts in general. Victims of criminal acts of terrorism are also not limited to casualties and destruction and even destruction and destruction of property, the environment, and economic resources, besides being able to cause significant social shocks in the political, social, and economic fields. Human victims of criminal acts of terrorism whose targets are random and indiscriminate often sacrifice innocent people, including women, children, the elderly and the possibility of using weapons of mass destruction. (Iqbal & Subardan, 2019)

On the one hand, analyzing human rights from the victim's perspective will convince anyone that terrorism is an extraordinary crime that must be condemned regardless of the reason or motive. From the side of victims of terrorism, related human rights include individual matters such as the right to life, freedom from fear, and fundamental freedom. In addition, it is also related to collective rights such as widespread fear, danger to democratic life, territorial integrity, national security, stability of a legitimate government, socio-economic development, pluralistic community peace, harmony in international peace and so on. On the other hand, a review of human rights from the perspective of the perpetrators will provide a basis for how far the character of terrorism as an extraordinary crime must be faced with extraordinary measures and actions that are not infrequently considered to violate human rights.

Based on the facts that occur in society as mentioned above, the Government of the Republic of Indonesia, as the party responsible for the nation's safety and state, deems it necessary to have a solid and comprehensive legal basis as soon as possible to eradicate criminal acts of terrorism. The government realizes that the current legal norms as enshrined in Law No. 12 of 1951 concerning Firearms that only contain ordinary crimes are not sufficient to eradicate terrorism which is an extraordinary crime. The provisions of Law Number 8 of 1981 concerning the Criminal Procedure Code are also deemed inadequate. The process of investigation, investigation, and prosecution of criminal acts of terrorism requires special provisions that are regulated separately and the general provisions that apply in the Criminal Procedure Code.

To anticipate the occurrence of all possibilities with terrorist activities, the Government of Indonesia believes that the conditions for "a matter of compelling urgency" as stipulated in Article 22 Paragraph (1) of the 1945 Constitution have been fulfilled. The government is determined to act immediately to uncover the bombing in Bali and anticipate all possibilities that will occur. For this reason, the Government issued a policy by stipulating Government Regulation in Lieu of Act (Perpu) Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism and Number 2 of 2002 concerning the Enforcement of Government Regulation in Lieu of Act Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism in the Bali Bombing Incident on October 12, 2002, by giving the death penalty. Regarding the threat of the

death penalty, it is intended to have a deterrent effect for the perpetrators of terrorism so that acts of terror in Indonesia do not happen again.

These concerns are also valid because it is not impossible in the fight against terrorism. It is also carried out using terror in people's lives. It is no longer a question of whether or not there is terrorism in Indonesia. However, it must be acknowledged that terrorism is a real threat and has already occurred in Indonesia. For this reason, the government issues and stipulates counter-terrorism policies through a Government Regulation in Lieu of Act (Perpu).

The Indonesian government must seriously deal with terrorism in Indonesia's territory and its neighboring countries in the Southeast Asian region in general. The government and the Indonesian people must demonstrate and take proactive, firm and reasonable steps in dealing with terrorism activities, both international and domestic. International cooperation is also deemed necessary considering that the United Nations (UN) sees that acts of terrorism are still occurring and increasing both in quantity and quality and are increasingly becoming a serious threat to the principles of world peace as enshrined in the United Nations Charter.

At this time, the Indonesian state already has a legal instrument regarding the eradication of criminal acts of terrorism in the form of a law, namely Law Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism into Law, which then made changes to Law no. 5 of 2018. Efforts to tackle criminal acts of terrorism require hard work from the Government of Indonesia through its law enforcement officers and the participation of the community to prevent and tackle criminal acts of terrorism. According to Sudarto, crime is a basic understanding of criminal law and is also a juridical understanding. The term criminal act is used as a substitute for "strafbaar feit" Until now, the legislators have always used the term criminal act in the legislation.

The definition of the crime of terrorism according to Article 1 point 1 of Law Number 15 of 2003, which was later amended by Law no. 5 of 2018, are: The Crime of Terrorism is an act that fulfills the elements of a criminal act following the provisions of the law. Article 5 of Law Number 15 of 2003 stipulates interesting and particular matters: Criminal Acts of Terrorism as regulated in this Law must be deemed not to be political crimes and can be extradited or requested for mutual assistance as stipulated in the provisions of laws and regulations.

The provisions in Article 5 are intended so that criminal acts of terrorism cannot hide behind political backgrounds, motivations, and goals to avoid being investigated, prosecuted, examined in court and punished by the perpetrators. This provision is also to improve the efficiency and effectiveness of extradition agreements and mutual legal assistance in criminal matters between the Government of the Republic of Indonesia and the governments of other countries. Exceptions for criminal acts of terrorism from political crimes in Indonesia are different from those in other countries.

#### **4. Application of Law no. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, with the amendment of Law No. 5 of 2018**

In Indonesia, the government's 'serious' reaction to terrorism emerged after the Bali Bombings on October 12, 2002, which killed 202 people and injured 209. On October 18, 2002, the government immediately issued Government Regulation in Lieu of Act (Perpu) No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism and Government Regulation in Lieu of Act No. 2 of 2002 concerning the Enforcement of

Government Regulation in Lieu of Act No. 1 of 2002 concerning Eradication of Criminal Acts of Terrorism in the Bomb Blast Incident in Bali October 12, 2002. One year later, the Government Regulation in Lieu of Act was enacted into Law no. 15 of 2003 concerning Eradication of Criminal Acts of Terrorism. This determination is based on the view that the existing legal framework is inadequate and fails to address similar problems that have occurred before. The Bali bombing tragedy is the worst act of terrorism in Indonesia's history and cannot be overcome with the existing legal framework.

Government Regulation in Lieu of Act no. 1 of 2002 has drawn criticism from various parties because it is seen as giving excessive power to the state so that it tends to threaten civil society and does not provide a corrective effect on the weakness of legal instruments and institutions so far. The government is seen as overreacting to avoid political repercussions at the international level because most victims in the tragedy are foreign nationals. Government Regulation in Lieu of Act No. 1 of 2002 was finally enacted into Law No. 15 of 2003 concerning the stipulation of Government Regulation in Lieu of Act No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law. Like Government Regulation in Lieu of Act No. 1, the government also enacted Law No. 16 of 2003 concerning the stipulation of Government Regulation in Lieu of Act No. 2 of 2002 concerning the enactment of Government Regulation in Lieu of Act No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism in the Bali Bombing Incident on October 12, 2002. The two illustrations above show that the currently prominent policies towards combating terrorism are reactionary-subjective and partial-repressive.

As a reactionary-subjective action, this effort is biased by national and international political motives rather than solving the real problem. By attacking and arresting several members of the Jama'ah Islamiyah (JI) network armed with Government Regulation in Lieu of Act No. 1 of 2002, which later became Law No. 15 of 2003 concerning the Stipulation of Government Regulation in Lieu of Act No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into law, the Indonesian government considers that it has sufficiently responded to public demands to overcome these acts of terror. In fact, in Indonesia, acts of terror continued with the explosion of a bomb at the JW Marriott Hotel in front of the Australian and Bali embassies.

Efforts to eradicate terrorism have justified all means, including taking non-derogable rights, carrying out torture and legalizing arbitrary arrests and detentions. While as a partial-repressive reaction, this effort gives excessive authority to certain institutions, tolerates the use of violent methods and ignores international law and human rights principles. The Indonesian government prefers to justify the active role of the State Intelligence Agency (BIN), which incidentally is non-judicial strategic intelligence. In this case, the Indonesian government has also given broad authority to the Police, Densus 88, to display repressive actions in arresting Islamic activists and targeting Islamic boarding schools suspected of being part and pockets of terrorist networks. So that many terrorists die outside or before the judicial process, namely during arrest attempts or in detention.

The facts above show that the war on terrorism contains a dilemma for him, between the interests of overcoming the problem of terrorism and the crush of new problems of human security, both arising from acts of terrorism and the war against terrorism. The above dilemma is solved by building a problematic strategy and generating the next dilemma for the public; supporting the state while they are potential victims of policies



or refuse, which means they will face the state directly. Based on the experience of effectively managing repressive authorities and tools of violence, the state chooses policy construction that is pro-interest for state stability rather than seeking breakthrough solutions in the context of a democratic state. Furthermore, such government efforts will threaten reforms in law enforcement, clean and authoritative governance, strengthening civil authorities, and the fulfillment, protection, and promotion of human rights.

In a United Nations report entitled *Protection of Human Rights and Fundamental Freedoms While Countering Terrorism*; The study of the United Nations High Commissioner for Human Rights stated that the efforts of various countries to overcome the problem of terrorism have caused human rights conditions in various parts of the world to be threatened, including in Indonesia. These threats are mainly related to fundamental rights and freedoms. The basic rights that are threatened include the right to life; the right to be free from torture and other cruel, inhuman or degrading treatment or punishment; the right to be free from arbitrary detention; and the right to fair trial assistance of a lawyer. Meanwhile, the threatened freedoms include freedom of thought, freedom of belief, religious freedom, freedom of expression and association, and free from all forms of discrimination. Including in Indonesia, cases of arrest and detention to eradicate criminal acts of terrorism have also ignored the principles of fairness as regulated in national criminal law procedures that adhere to a free and fair trial principle.

Government Regulation in Lieu of Act No. 1 of 2002 on the Eradication of Criminal Acts of Terrorism and Government Regulation in Lieu of Act No. 2 of 2002 concerning the enactment of Government Regulation in Lieu of Act Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism in the Bali Bombing Incident on October 12, 2002, was issued on the grounds of an emergency. It is impossible to overcome it with a law which takes a long time to enact. Government Regulation in Lieu of Act No. 1 of 2003 later became Law No. 15 of 2003. The DPR changed the Government Regulation in Lieu of Act into law without making any corrections and changes to its substance, even though since the Government Regulation in Lieu of Act and the Bill were in the form of a Government Regulation in Lieu of Act, many criticisms have been raised against the substance of the Government Regulation in Lieu of Act and its implementation. The law regulates actions considered reactionary-subjective and partially repressive as acts of terrorism and actions that support acts of terrorism. The state chooses to regulate logically easier things because once the state determines a person as a terrorist, the government only needs to trace the network and its supporting parties, the facilities used and the negligence that provides opportunities for acts of terrorism or events similar to acts of terrorism.

In terms of the definition of criminal acts of terrorism, especially by ignoring political motives, most criminal acts have provisions in the Criminal Code. Including regulating the parties involved in the arrest, investigation and examination.

Article 1, paragraph 1 of the Criminal Code states the principle of legality (principle of legality) of our national criminal law that "An act cannot be punished unless it is based on the strength of the provisions of existing criminal legislation." Once again, if what is regulated is what is reactionary-subjective and partially-repressive called terrorism, is the use of violence and threats of violence (killing, explosion, vandalism), negligence, use of dangerous goods and financing for acts of terrorism, as well as support for acts of terrorism (participation). Suppose the principle of determining

criminal law is to regulate the three things above, and it is almost certain that the Criminal Code is sufficient. In that case, it is necessary to strengthen it with a few amendments.

Second, the government has difficulty making a comprehensive definition of a criminal act of terrorism as seen in the law. The definitions of crimes ensnared by this law almost all contain acts that meet the elements of ordinary criminal acts regulated in the Criminal Code, such as crimes against state security, crimes against friendly countries and against friendly heads of states and their representatives, crimes that endanger public security for people or goods, crimes against life, maltreatment, causing death or injury due to negligence, extortion and threats, destroying or damaging goods, shipping crimes, aviation crimes, and crimes against aviation facilities/aviation infrastructure. With two laws that regulate the same form of crime, the probability of an error in determining the offence may be significant. It could conflict with the principal objectives of law enforcement, namely justice and accountability. (Ambarita, 2018)

The law shows that the definition of terrorism that is formulated is also extensive. Articles 6 to 19 regulate all forms that can be categorized as acts of terrorism. Meanwhile, articles 20 to 24 regulate other criminal acts related to terrorism crimes. Article 6 is a completed crime, so that the element that must be proven is the result of the act in the form of an atmosphere of terror or widespread fear or causing mass casualties. While Article 7 is an unfinished crime (trial), what must be proven is creating an atmosphere of terror or widespread fear or causing mass casualties. Then what is meant by an atmosphere of terror? If what is meant is fear and mass casualties, then the words "atmosphere of terror" do not need to be included because they invite a one-sided interpretation of the state.

Article 8 of the Law includes 18 (eighteen) types of acts as criminal acts of terrorism, which is the labelling of criminal acts of terrorism as ordinary crimes. With such a broad definition and categorization of criminal acts, this law can be paradigmatically misguided when it is unable to clearly define crimes in the terrorism category by also relying on 2 (two) important things, namely the use of violence and threats of violence, not merely emphasizing on the motive of the act to create an atmosphere of terror or widespread fear or mass casualties. This cannot be justified because no element of consequence is a characteristic of terror crimes in this article. For example, point e of this article states 'intentionally or against the law, destroys or renders unusable an aircraft that another person wholly or partly owns'. Based on this formula, anyone who damages an aircraft can be sentenced to death for committing a criminal act of terror without having to be caused by the emergence of an atmosphere of terror or widespread fear or causing mass casualties. The makers of this law assume that all forms of aircraft destruction can create an atmosphere of terror or widespread fear or cause mass casualties.

Third, with the unclear motive and urgency, this law can become a new tool of repression, given the broad scope of crimes and violations categorized as criminal acts of terrorism and the formulation of rubbery articles. The formulation of this law does not meet the principles of predictability and legal certainty because it is difficult for a person to guess whether an act or omission he has committed is a criminal act of terrorism or not. It can be seen from this law that it has the impression that it contains an interest in expanding the state's authority in controlling and limiting things that are unilaterally perceived as criminal acts of terrorism. Moreover, with the government's lack of seriousness in formulating a comprehensive agenda to overcome terrorism in

Indonesia, the issuance of this law is only an answer to international pressure for the interests of power politics in the domestic sphere.

So far, there are many interpretations of what is meant by acts of terrorism. The many definitions are closely related to the motives and interests behind the mention of 'who' and 'what' is meant by terrorism by the government, society and resistance groups (armed opposition or independence resistance). At the end of the 19th century, the beginning of the 20th century and before World War II, 'terrorism' became a revolutionary struggle technique, for example, the regime of Stalin's government (the 1930s), which was called the 'government of terror'. (Arifin, 2020)

In the cold war era, terror was associated with the threat of nuclear weapons. In the 1970s, the term terrorism was associated with various phenomena, ranging from bombs that exploded in public places to poverty and hunger. Some governments stigmatize their enemies as 'terrorists' and their actions as 'terrorism'. Several Indonesian politicians themselves had included the Free Aceh Movement (GAM) in the category of a terrorist group without clear arguments. In its Patterns Of Global Terrorism 2000 report, the US government lists 43 main international terrorist groups, where the labeling is closely related to the 'threats' that these groups pose or have the potential to pose to their interests.

Based on their area of operation, these international terrorist groups are divided into 6 (six) regions, namely 13 groups operating in the Middle East, 11 in Western Europe, 8 in Asia, 5 in Latin America, 4 in Africa, and 1 in the Euroasia region, and none a single group based in North America. Based on the fundamental character of the movement, these terrorist groups can be divided into 3 (three) sub-groups, namely 1). The fanatic religious mission sub-group consists of 27 groups, 18 of which are Muslim groups, 8 Christian/Catholic groups, and 1 group adheres to the Aum sect; 2). Sub-ideology (12 groups). The ideological basis found for this sub-group is only one, namely the ideology of Marxism with its various variations; and 3). Ethno-nationalism sub-group (4 groups). This subgroup is found in Sri Lanka, Rwanda and Columbia. (Wardoyo, 2018)

Apart from direct mention and stigma to particular groups, in general, acts of terrorism are understood as well-planned, politically motivated acts of violence, attacking civilian targets, carried out openly by organized groups or clandestine agents intending to influence the public or creating terror. These acts of terror are carried out to create a state of terror (an atmosphere of terror/fear) in society. The Propatria Working Group defines terrorism as a criminal act that meets all of the following elements: 1). Intentionally using violence and/or threats of violence, 2). Aimed at the civilian population and/or civilian objects in an indiscriminate manner, 3). Done in an organized manner; 4). It gives birth to widespread fear, and 5). It can have political motives and goals or not. The two meanings above try to explicitly emphasize the existence of a clear and limitative definition of terrorism so that it can be distinguished from other criminal acts and at the same time can prevent the use of articles to ensnare acts that are not included in the scope of the definition of terrorism. (Hermanto, 2009)

The two definitions above emphasize the meaning of the quality of actors (terrorists) and actors' actions (terrorism). With a clear and limitative definition, it can be easily ascertained whether the existing legal instruments are adequate or not and the need for new instruments. However, it should be noted that the above definition has not yet been able to provide certainty of a complete understanding of terrorism, including its criminal acts. So far, there is no universally recognized definition of the crime of terrorism. Even the United Nations does not issue a specific definition of what is meant by acts of

terrorism or criminal acts of terrorism. The notion of ‘terror’ is a subjective experience, depending on the ‘threshold of fear’ that exists in each person. Some people can survive even though they are persecuted for a long time, and some immediately panic in the face of ‘terror’. The existence of this subjective dimension causes the opportunity for stigmatization of someone as a ‘terrorist’ by the state.

The interpretation of a criminal crime cannot be a political interpretation containing political dissent. However, it must also be an interpretation tied to the facts or material evidence of a crime to determine an indictment and offense. Suppose the interpretation of a criminal crime is political. In that case, criminal law enforcement is only a mere law of sanctions, not to enforce norms, rules, and order (prevention/aspect directing policy). As a political act, the US, for example, could name 43 international terrorist groups. However, to carry out the legal process, it is still necessary to prove whether a person has actually committed a crime or not or whether the act in question is a criminal act or not.

Moreover, to call it a criminal act of terrorism, if the definition used is very political (not clear and limited following the legal understanding), then the Terrorism Criminal Act is only an attributive symbol of the state’s formal success in overcoming terrorism, not a practical and concrete law enforcement tool.

## **5. Changes to the Terrorism Law**

As an effort to protect the entire Indonesian nation and the entire homeland of Indonesia, with the various problems regarding the application of Law no. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, the Government needs to issue a policy to revise the Law with Law no. 5 of 2018 concerning the Amendment of Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism into Law.

In the revision of the Law, there is the addition of new substances or norms to strengthen the regulations in the previous Law. There are at least eight points to add to the new substance or norm, namely: first, new criminalization of various new formulations of criminal acts of terrorism such as types of explosives, participating in the military or paramilitary training or other training both domestically and abroad to commit acts of terrorism. Kedua, pemberatan sanksi terhadap pelaku tindak pidana terorisme baik permufakatan jahat, persiapan, perobaan dan pembantuan untuk melakukan tindak pidana terorisme. Third, the expansion of criminal sanctions against corporations imposed on founders, leaders, management, or people who direct corporate activities. Fourth, the imposition of additional penalties in the form of revocation of the right to have a passport within a certain period of time. Fifth, decisions on criminal procedural law include increasing the time of arrest and detention and extending arrests and public prosecutors and research on terrorism case files by the public prosecutor. Sixth, protection of victims of criminal acts as a form of state responsibility. Seventh, relevant agencies’ prevention of criminal acts of terrorism is carried out following their respective functions and authorities coordinated by The National Counter-Terrorism Agency (BNPT). Eight, the BNPT institution and its supervision as well as the role of the army.

In addition, there are fundamental strategic formulations, namely: First, there is a definition of terrorism so that the scope of terrorism crimes can be identified so that terrorism crimes are not identified with sensitive matters in the form of sentiments against certain groups or groups but on aspects of their crimes. Second, removing the

criminal sanction of revocation of citizenship status. According to the Universal Declaration of Human Rights 1948, it is the right of everyone to citizenship. No one can be deprived of his citizenship arbitrarily or be denied the right to change his nationality. Third, removing the article known to the public as the Guantanamo article places a person as a terrorist suspect in a particular place or location that the public cannot know. Fourth, adding provisions regarding the protection of victims of criminal acts of terrorism comprehensively starting from the definition of victims, the scope of victims, the granting of victims' rights, which were initially in Law no. 15 of 2003 only regulates compensation and restitution.

Now the new Terrorism Criminal Act has regulated the granting of rights in the form of medical assistance for psychological rehabilitation, psychosocial rehabilitation, compensation for victims who died, providing restitution and providing compensation. Fifth, regulate the granting of rights for victims who experience suffering before this Terrorism Crime Bill is passed. This means for the victims from the first Bali Bombings to the Thamrin Bombings. Sixth, adding preventive provisions. In this context, prevention consists of national preparedness for counter-radicalization and deradicalization. Seventh, include the provision that victims of terrorism are the responsibility of the state. Eighth, strengthen the supervision formed and consists of members of the House of people's representatives (DPR). Ninth, adding that the involvement of the TNI in terms of its implementation will be regulated in a Presidential Regulation within a maximum period of 1 (one) year after this Law is enacted. Ten, amending the provisions of political crimes in Article 5, stipulates that criminal acts of terrorism are excluded from political crimes that cannot be extradited. This follows the provisions of Law No. 5 of 2016 concerning Ratification of the International Convention on Combating Terrorist Bombings. Eleven, adding articles that provide sanctions against state officials who abuse power.

## **6. Death Penalty Conflict**

Contrast has always expressed the rejection of the death penalty as an expression of the cruelest and inhumane punishment. The death penalty is the most critical type of violation of human rights, namely the right to life. Fundamental rights (non-derogable rights) are types of rights that cannot be violated, reduced, or restricted under any circumstances, be it in an emergency, war, including when someone becomes a prisoner. Indonesia itself has signed the Universal Declaration of Human Rights, and President SBY has ratified the International Covenant on Civil and Political Rights, both of which clearly state that the right to life is the right of every human being under any circumstances, and the state has to guarantee it. Unfortunately, the ratification of the Civil-Political Covenant was not followed by the ratification of the Second Additional Protocol to the International Covenant on Civil-Political Rights on the Abolition of the Death Penalty. (Kusumo, 2015)

The death penalty has derivatives of other serious human rights violations, namely violations in acts of torture (psychological), cruel and inhumane. This can happen because, generally, the span between the death penalty and its execution lasts quite a long time. Tragically, Indonesia itself has ratified the Anti-Torture Convention and adopted it into the Anti-Torture Law no. 5 of 1998. The abolition of the death penalty, either through legal or political mechanisms in Indonesia, will undoubtedly elevate Indonesia's dignity in the international community's eyes. Even for terrorism crimes, the death penalty is generally a factor that strengthens the repetition of actions in the

future. The death penalty has become ideological ammunition to increase the radicalism and militancy of the perpetrators. Until now, even the crime of terrorism is still a scourge, and the state has absolutely no adequate answer to this problem.

As with death row convicts for other criminal acts, the execution process is often hampered by the many opportunities for death row convicts to take legal action to avoid, change or commute sentences. The legal efforts are in the form of review (PK), amnesty and clemency. As happened in the case of the Bali bombing I, the perpetrators of Amrozi and others were sentenced to death by a Denpasar District Court judge on August 7, 2003, and made three PK legal efforts. Although the Supreme Court rejected the legal remedy in 2007, the convict decided not to use another legal remedy, namely clemency. Therefore the right to legal remedies for Amrozi and others can be declared fulfilled, and finally, it can only be executed on November 9, 2008. (Jacob, 2017)

In addition, technically, the defendant's legal efforts are often constrained by an overload of cases at the Supreme Court level. So with the limited number of personnel, it is forced to prioritize the settlement of some instances. Defendants or convicts of terrorism can still be questioned or can be used as witnesses in cases of other acts of terror because almost all terrorist groups in Indonesia have links.

So the government needs to make a new policy regarding the prevention of criminal acts of terrorism by changing the paradigm of the threat of the death penalty with a softer and more persuasive sentence. Namely, the government can consider implementing a life sentence. As stated by Satjipto Raharjo regarding the sociology of law and progressive law. (Satjipto Rahardjo, 2010) So it can be concluded that the death penalty is not only in a physical sense but can also be social. The impact of a lighter sentence but continues will have a more significant deterrent effect than a severe punishment but only for a moment. In the sense that a life sentence can actually be said as a death sentence in a sociological sense because it is no longer able to carry out its social activities but is still living in its physical condition. Convicts of terrorism may prefer to be sentenced to death because they immediately enter heaven in their thoughts and desires but will cry if they are sentenced to life because their jihad is not fulfilled and will even suffer longer in prison.

The perpetrators of terrorism have symptoms of mental damage due to past experiences, which are related to being victims of discrimination, inequality, poverty, injustice and a violent environment. Besides that, it is also the result of an intense doctrine. Thus, human beings need psychological healing and liberation from false radical doctrines. Penitentiary (LP) is not only a place to punish physically. However, according to the purpose of the sentence, apart from creating a deterrent effect, it also provides an opportunity for the defendant to correct himself from his mistakes. Furthermore, if possible can return to live in society well.

## **D. Closing**

### **1. Conclusions**

The current government policy in tackling criminal acts of terrorism is related to the application of the death penalty in Law no. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism with the renewal of Law No. 5 of 2018 has not yet achieved its goal of providing a deterrent effect for perpetrators of terrorism crimes. This happens because of the lack of understanding of the characteristics of terrorism crimes that are different from other crimes. Crimes of terrorism have political, religious or ideological motives that must be proven first. Motives are things that do not appear like the form of

the crime. The crime of terrorism is always related to other crimes. The perpetrator is very emotionally attached to the group. Terrorist groups always have a vast and closed network, with a system of recruiting new members. The war against terrorism will never end. Just as one dies grows a thousand. Dealing with terrorism harshly, be it with the threat of the death penalty, or being shot and killed during an ambush, is a trigger for even greater retaliation.

The perpetrators of terrorism crimes tend to have psychological problems due to past experiences or the result of indoctrination that creates a spirit of militancy. Belief in the truth of the crime committed causes a loss of fear of death. Even death is made as a goal to reach the reward and heaven. So, of course, the threat of capital punishment is useless, let alone a deterrent effect. In implementing the death penalty for the crime of terrorism, there are still many obstacles, especially concerning legal instruments and human resources for law enforcement. The absence of legal instruments when handling the Bali Bombing I in 2002 forced the government to apply the terrorism law, which was controversial retroactively. The readiness of the Human Resources of the Police and other law enforcers is also not sufficient to handle terrorism cases, so that this can hinder the legal process of resolving terrorism cases. The hasty making of the terrorism law and the influence of political impulses resulted in many substantial weaknesses that impacted its implementation. The lack of studying the characteristics of terrorism crimes and obstacles in the legal process causes the expected deterrent effect not to be achieved. As a reconstruction of efforts to protect the entire Indonesian nation and the entire homeland of Indonesia, then with the various problems regarding the application of Law no. 15 of 2003 concerning the Stipulation of Government Regulation in Lieu of Act No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law, the Government needs to issue a policy to revise the Law with the issuance of Law no. 5 of 2018.

## **2. Suggestions**

Suggestions that can be given in this paper's discussion are that to tackle criminal acts of terrorism. The government needs to reconstruct policies with a more sociological and deradicalization legal approach. Carefully consider giving death sentences to perpetrators of terrorism to provide opportunities for self-improvement through guidance in Correctional Institutions so that the purpose of the punishment can be achieved. In addition, the government also needs to immediately implement and implement Law No. 5 of 2018 so that the countermeasures against terrorism are even better and accelerate the process for convicts who have been sentenced to death so as not to result in a long waiting period for execution.

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