

CRIMINAL PROVISIONS FOR PERPETRATORS OF TERRORISM FROM THE PERSPECTIVE OF INDONESIAN CRIMINAL LAW

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Abstract

Terrorism is an extraordinary crime that requires extraordinary measures. Terrorism has become a global phenomenon that has spread to almost every country in the world, including Indonesia. As in other regions, terrorism in Indonesia also has a theological and ideological basis and networks that make it strong resistance. To date, the crime of terrorism is one of the serious threats to national security. Terrorism is a theme that attracts the attention of many groups, especially academics, to study it from various aspects. Acts of terrorism often occur in Indonesia. The incident that occurred domestically, which made the image of Indonesia as a country that is unsafe for foreign citizens was the case of the Bali Bombing. Indonesian society generally condemned the act. The crime of terrorism resulted in the death of many victims, is very contrary to the Qur'an and Law Number 5 of 2018, so that the perpetrators must be subject to criminal sanctions or punishment as a result of their actions, namely the death penalty. This study uses a normative juridical approach method, with analytical descriptive research specifications. The data used in this study are secondary data obtained through literature studies, then analyzed qualitatively using law enforcement theory and Islamic justice theory. The results of this study are that the Government has made a new law in an effort to prevent acts of terrorism, namely Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law. Article 6 explains that: "Any person who intentionally uses violence or threats of violence that create an atmosphere of terror or fear in people on a widespread basis, causes mass casualties by depriving others of their freedom or loss of life and property, or causes damage or destruction to strategic vital objects, the environment or public facilities or international facilities shall be punished with imprisonment of at least 5 (five) years and a maximum of 20 (twenty) years, life imprisonment, or the death penalty."

Keywords: *Terrorism, Criminal Acts, Criminalization*

A. Introduction

A crime is an act or series of human acts that are contrary to the law or other statutory regulations, which are carried out with an intention, and the act must be carried out by a person who can be held responsible, the term crime comes from a term known in Dutch criminal law, namely strafbaar feit. Although this term is found in the Dutch WvS, as well as the Dutch Indies WvS (KUHP), there is no official explanation of what is meant by Strafbbaar feit.¹. Strafbbaarfeit can be interpreted as behavior that is punishable by law, which is against the law, which is related to mistakes and which is carried out by people who are capable of being responsible: Terrorism is a coordinated attack aimed at instilling terror in a group of people. Unlike war, terrorist acts do not follow war procedures, so their execution time is always sudden and the victims are random and often civilians. Recently, terrorism has been associated with the concept of military and extremism popularized by Western media, associated with regions such as the Middle East, Northern Ireland, and Colombia that are not popular in the West. According to J. Bowyer Bell, terrorism is a weapon of the weak, but it is a powerful weapon to influence other strong parties, while David Fromkin sees it more from the perspective of goals and means, Terrorism is an attempt to influence other parties by relying on changes in the psychology of other parties. Terrorism is trapped in acts of violence and brutality. This trap turns actions into universal crimes, so that noble goals

are destroyed due to a lack of transparency. According to researchers, terrorism is highly organized and international in nature, requiring the Indonesian government to take a more serious approach to addressing these threats. This terrorism does not always arise from religious grounds, as religion does not teach terrorism. Fundamentalism or liberalism will not be effective in eliminating radicalism. Terrorism is not Islam, and Islam is not terrorism. The rise of terrorism by Muslims stems from a misunderstanding of the essence of the religion's teachings. Therefore, they do not see the wholeness of Islam comprehensively, but rather a fragmented understanding. This misunderstanding then develops into an abuse of religion.² The continuing threat of terrorism in Indonesia was also caused by the fact that at that time there was no strong legal framework for intelligence activities.

¹ Adami Chazawi, *Criminal Law Lessons* (Jakarta: Rajawali Pers, 2010) page 67

² Yasmirah Mandasari Saragih, *Implementation of Deradicalization of Terrorism Convicts in Indonesia*, *International Journal of Law, Crime and Justice* Vol.1, No.3 September 2024

Supporting efforts to prevent and eradicate terrorism. Another obstacle to preventing and eradicating terrorism is the lack of guidelines that guarantee that radical thinking can become moderate.³ At the same time, the monitoring system for the distribution of bomb-making materials is still weak, so terrorists still have the freedom to make bombs, which if undetected can cause chaos in various locations. Also related to differences in ideology and understanding of different religions, social and educational gaps make society more vulnerable to infiltration by terrorist networks. With the ratification of Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism, it is hoped that this will be an important step in efforts to create security and emphasize preventive efforts, hopefully terrorist acts will not happen again.⁴

According to Neil J. Smeler, various political factors such as economic, political, religious and other conditions can actually give rise to organized terrorist movements. However, these conditions do not guarantee the occurrence of violent acts carried out by terrorists, unless accompanied by other factors, for example, the religious ideological doctrine adopted by religious leaders, with the ideological doctrine instilled by their supporters, so that it can lead to terrorists committing violent acts that threaten the entire community and are considered to hinder their goals, and anyone they consider to violate religion becomes the target of terrorists. Based on the violence carried out by terrorist groups, it is one way to teach deviant behavior and the view that violence is an innovative, retreatist or rebellious behavior.⁵ In Indonesian positive law, punishment for terrorist perpetrators is not only applied to the main perpetrators such as perpetrators of bombings or murders, but also to people associated with the perpetrators, for example people who intentionally kill people, provide support, or create conditions that are advantageous for the perpetrator, or provide money or financial support to the perpetrator⁴, to people who hide terrorist perpetrators or people who hide information about a terrorist crime, as regulated in Article 13 of Law Number 15 of 2003 concerning the eradication of crime. Terrorist Crimes. The large number of terrorist perpetrators who received prison sentences does not seem to dampen their enthusiasm to continue carrying out terrorist activities in order to take revenge against the punished group.⁶

³ Indriyanto Seno Adji, *Revision of the Terrorism Law, Law Enforcement and Human Rights Protection*, Kompas, Jakarta, 2016, p.6.

⁴ Ali Masyar, *Indonesia's Style of Countering Terrorism: A Critique of Criminal Law Policy on Terrorism in Indonesia*, CV. Mandar Maju, Bandung, 2009, p. 1. 5 Abdul Wahid et al., *Terrorism Crimes: Perspectives of Religion, Human Rights, and Law*, PT Refika Aditama, Bandung, 2004, p. 4.

⁶ Randy Pradityo, "Criminal Law Policy in Efforts to Combat Criminal Acts of Terrorism Financing" in *Rechtsvinding Journal*, Volume 5, Number 1, April 2016, pp. 28-30.

From a subjective perspective, perpetrators who are subject to criminal sanctions after serving their sentences (recidivists) appear unable to provide a corrective effect on themselves or their groups. The extreme beliefs and thinking of perpetrators remain embedded in their culture even after serving their sentences. It turns out that imprisonment has no subjective impact on the rehabilitation and resocialization

of perpetrators after release. In fact, imprisonment is used as a turning point to encourage convicted terrorists to act more recklessly. Since the second Marriott Hotel bombing in 2009, terrorist acts in Indonesia have all involved individuals convicted of terrorism. Participating a second time is due to increased roles and actions. Take Urwah, one of the perpetrators of the 2009 Marriott Hotel bombing. When first arrested, Urwah played a role in concealing information about the whereabouts of Noorder M. Tinggi. In the second round, Urwah became one of the architects of the deadly attack. Similarly, Afif alias Sunakim, the perpetrator of the Sarinah attack in 2016. Initially, Afif had only participated in military training in Aceh in 2010. After his release, Afif became the main perpetrator of the attack earlier this year. With the development of crime and punishment, in the modern school, the criminal system has begun to emphasize the perpetrator and his actions (daad-dader strafrecht), especially the type of punishment applied is not only criminal punishment but also actions. penalties. The criminal aspect is one aspect that attracts public attention to efforts to eradicate terrorist crimes. The growth of terrorist networks and the phenomenon of recidivism, as well as law enforcement, raises serious questions about whether current criminal policies are still appropriate or whether significant criminal law reform is needed, as also expressed by the Chairman of Huda. law, anti-terrorism laws have become a necessity. In Law Number 15 of 2003 concerning the Determination of Regulations in Lieu of Law Number 1 of 2002, hereinafter referred to as the Law on the Eradication of Criminal Acts of Terrorism, Article 13 stipulates: "Any person who intentionally provides assistance or convenience to perpetrators of criminal acts of terrorism, by:

1. giving or lending money or goods or other assets to perpetrators of terrorist crimes;
2. hiding perpetrators of terrorist crimes; or
3. hiding information about acts of terrorism, shall be punished with a minimum prison sentence of 3 (three) years and a maximum of 15 (fifteen) years".

Based on Article 13, anyone who intentionally gives or lends money or goods or other assets to perpetrators or acts of terrorism can be punished, further providing assistance or Facilitating the concealment of terrorist perpetrators is also punishable by law. Furthermore, concealing information about terrorist acts is also punishable by law. Anyone who intentionally provides assistance or facilitation to perpetrators of such crimes is subject to a minimum prison sentence of three years.

B. Formulation of the problem

From the description above, we can draw out problems that can be used as problem formulations for analysis, namely:

1. How are Terrorism Crimes Regulated in Indonesian Legislation?
2. What are the provisions for criminal sanctions for perpetrators of terrorism crimes in Indonesia?

C. Research methods

The type of research used is juridical-normative research, because it prioritizes the conception of law as law in doctrine, which is entirely covered by the conceptual approach of the research.⁷ This research uses 2 (two) approaches, namely: a. The juridical-normative approach, namely the approach to understanding the law from the philosophical principles of the legal rules along with the justification for the implementation of a legal rule.⁸ The thinking method used is the deductive thinking method, namely a way of thinking by drawing conclusions from something that is general in nature and the conclusion is aimed at something that is specific in nature;⁹ b. Policy approach, namely an approach to decision making that is oriented towards the goals to be achieved.¹⁰ A policy approach is needed regarding the implementation of sanctions against perpetrators of terrorism in Indonesia. This policy approach encompasses the interrelated concepts of goal-oriented, rational, and value-oriented approaches.¹¹ The data used in this study is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal materials are the 1945 Constitution of the Republic of Indonesia, the Criminal Code (KUHP), and Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism. Secondary legal materials include books, journals, research results related to criminal law and sentencing, criminal sanctions and sanctions, and other materials related to criminal law.

⁷ Soerjono Soekanto, Introduction to Legal Research, Third Edition, UI Press, Jakarta, 2010, p. 51

⁸ M. Solly Lubis, Philosophy of Science and Research, Mandar Maju, Bandung, 2004, p.23

⁹ Sedarmayanti & Syarifudin Hidayat, *Research Methodology*, CV. Mandar Maju, Bandung, 2002, p. 23

¹⁰ Sulisty Basuki, *Introduction to Documentation Scientific*, Kesaint Balance, Jakarta, 1989, p. 4.

¹¹ Barda Nawawi Arief, *Legislative Policy in Combating Crime with Imprisonment*, Diponegoro University, Semarang, 1994, p. 61.

This study examines criminal law reform. Tertiary legal materials include the Great Indonesian Dictionary, legal dictionaries, encyclopedias, and other supporting materials. The data collection technique used in this research is a literature study.¹² The processing, analysis and construction of normative legal research data can be done by analyzing legal rules and then constructing them into categories based on the basic understanding of the legal system.

D. Discussion Analysis

1. Regulation of Criminal Acts of Terrorism in Legislation

The state is the highest legal institution in a region which, with all its powers, has the ability to enforce regulations and force all residents living in it not to violate any regulations that have been enacted.¹³ The state has a supreme philosophy and law that serve as its foundation. Every applicable regulation and law must be in harmony with and imbue this supreme legal principle. Terrorism in Indonesia falls under the category of criminal sanctions. Criminal sanctions are the imposition of suffering on a person found guilty of a crime or criminal act through a series of judicial processes by a specifically authorized authority or law. By imposing these criminal sanctions, it is hoped that the person will not commit further crimes. Criminal sanctions contain the following elements and characteristics:¹⁴

1. In essence, punishment is the imposition of suffering or misery or other unpleasant consequences;
2. Criminal That given with on purpose by person or body Which have power (authority);
3. The punishment is imposed on a person Which has committed a crime according to the law;
4. Criminal punishment is a statement of condemnation by the state against a person for breaking the law.

Examination of terrorist suspects is expected to provide information without neglecting the essence of democracy within laws that guarantee constitutional rights of individuals. A difficulty in dealing with terrorists because of unresolved different standing points between a terrorist group and the state

¹² Soerjono Soekanto, *Introduction to Legal Research*, Grafindo, Jakarta, 2006, p. 225

¹³ Abdul Gani Abdullah, "The Terrorism Law and Its Implementation in Indonesia," in the Law and Terrorism Discussion Forum, (Bogor, 2005).

¹⁴ Mahrus Ali, *Basics of Criminal Law*, Sinar Grafika, Jakarta, 2015, p. 37

*government.*¹⁵ (The examination of terrorist suspects is expected to provide information without ignoring the essence of democracy in the law which guarantees the constitutional rights of individuals. The difficulty in dealing with terrorists is due to unresolved differences of opinion between terrorist groups and the state government). In an effort to prevent terrorist attacks in various tragedies, the government issued Regulation No. 1 of 2002, which was later enacted as Law No. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism. International terrorism is an organized crime, so the Indonesian government is increasing its vigilance in maintaining the integrity of the Unitary State of the Republic of Indonesia.¹⁶

There are many things that cause the emergence of terrorism and they are very close to people's daily lives that the State does not understand. Terrorism does not always arise on the basis of religion. Terrorism is not Islam and Islam is not terrorism. The emergence of terrorism among Muslims is a misunderstanding of the essence of religious teachings themselves. So we don't see the whole of Islam comprehensively, but understand it in pieces. This misunderstanding develops into misuse of religion. In Law No. 5 of 2018 concerning Criminal Acts of Terrorism, Chapter III Article 6, it is written: Any person who intentionally uses violence or the threat of violence that creates an atmosphere of terror or fear among people on a widespread basis, causes mass casualties by depriving others of their freedom or the loss of life and property, or causes damage or destruction to strategic vital objects, 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.¹⁷ By using the sentence "creating an atmosphere of terror or fear in people on a widespread basis or causing mass casualties" and the sentence "causing damage or destruction to vital strategic objects or the environment or public facilities or international facilities" in the formulation of Article 6, it is clear that the criminal act of terrorism as referred to in Article 6 is a material crime, namely a crime which is considered to be completed by causing consequences which are prohibited and are subject to criminal penalties by law. So, to state that the criminal act of terrorism as referred to in Article 6 has been completed, it must have truly occurred.

¹⁵Juanrico. AS Titahelu, The Use Of Torture While Investigation Suspected Terrorist, International Journal Of Research And Development Organization, Vol. 1 Issue 9 September 2015, Page 56

¹⁶Muladi. "Countering Terrorism as a Special Crime." in the Seminar on Countering Terrorism as a Criminal Act. Jakarta.

¹⁷ Lawrence, Friedman M. Legal Systems, Social Science Perspective. (Translation) M. Khozim. Bandung: Nusamedia. 2009. there are consequences in the form of a widespread atmosphere of terror or fear among people or causing mass casualties or there are consequences in the form of damage or destruction to vital strategic objects or the environment or public facilities or international facilities.

Article 7 of Law No. 8 of 2018 regulates the crime of terrorism as a formal crime, Article 7 states: Any person who intentionally uses violence or the threat of violence with the intention of creating a widespread atmosphere of terror or fear among people or causing mass casualties by depriving others of their liberty or loss of life or property, or causing damage and destruction to vital strategic objects, or the environment or public facilities, or international facilities, shall be punished with a maximum imprisonment of life.¹⁸ The meaning of the sentence "to cause terror" above is a sentence that indicates that acts of terrorism are formal crimes, namely crimes that are considered to have been completed with the commission of prohibited and punishable acts by law, without having to wait for the occurrence of prohibited and punishable consequences by law. Furthermore, the Law on the Eradication of Criminal Acts of Terrorism also contains provisions regarding the concept of inclusion. This is evident in Article 13, which states:¹⁹

Any person who intentionally provides assistance or convenience to perpetrators of acts of terrorism, by: a. giving or lending money or goods, or other assets to perpetrators of acts of terrorism; b. hiding perpetrators of acts of terrorism; or c. hiding information about acts of terrorism shall be punished with a minimum of 3 (three) years and a maximum of 15 (fifteen) years imprisonment. Article 13 regulates the punishment for acts of terrorism in the event of participation in the form of assistance in committing acts of terrorism.

In Law No. 5 of 2018, the criminal act of terrorism is qualified as follows:

1. Material offenses contained in Article 6.
2. Formal crimes are contained in Articles 7 to 12.
3. The offense of assistance contained in Article 6 letter g.
4. The offense of participation in Article 13 and Article 15.

Terrorism is the result of a combination of factors, not just psychological but also economic, political, religious, sociological, and many others. Therefore, it is overly simplistic to explain an act of terrorism based solely on a single cause, such as psychological factors. These include ethnic, religious, and ideological conflict, poverty, the pressures of modernization, political injustice, lack of financial channels, traditions of cruelty, and the emergence of groups.

¹⁸ Atmasasmita, Romli. The Problem of Regulating Terrorism and an Indonesian Perspective. Jakarta: National Legal Development Agency, Ministry of Justice and Human Rights, Republic of Indonesia. 2002

¹⁹ Wibowo, Ari. Criminal Law on Terrorism: Formulative Criminal Law Policies in Combating Criminal Acts of Terrorism in Indonesia. Yogyakarta: Graha Ilmu. 2012 Revolutionary groups, the weakness and incompetence of the government, the erosion of trust in the regime, and deep divisions between the government and political elites are also causes of the birth of terrorism.²⁰ Regarding the Elements of the Crime of Terrorism, according to Pompe, quoted by Poernomo, there are three elements of a crime, namely:

a. The element of breaking the law, b. The element of error, and c. The element of danger, disturbance, and harm to other people, other parties or society in general. An act is categorized as a crime if it meets the following elements:

1. There must be human action;
2. These human actions must be in accordance with the formulation of the articles of the relevant law;
3. The act is against the law (there is no excuse);
4. Can be accounted for²¹

Meanwhile, according to Moeljatno, he stated that:

1. Behavior and consequences
2. The circumstances or conditions that accompany an action.
3. Additional circumstances aggravating the crime
4. Elements of being against the law are objective
5. Subjective unlawful elements

Furthermore, according to Satochid Kartanegara, the elements of a crime consist of objective and subjective elements. Objective elements are elements that exist outside of the human self, namely:
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1. An action;
2. A consequence and;
3. State of affairs (*omstandigheid*)

All of this is prohibited and punishable by law. Subjective elements are elements of the action which can be in the form of:

1. Ability (*toerekeningsvatbaarheid*);
2. Error (*schuld*).

Meanwhile, it explains that the elements of a crime consist of two types, namely:

1. Objective elements, namely elements that exist outside the perpetrator (*dader*) which can be in the form of:
 - a. Actions, both in the sense of doing and in the sense of not doing. Examples of objective elements in the form of "actions" are actions that are prohibited and threatened by law. These actions can be referred to, among others, actions formulated in Article 242, Article 263 and Article 362 of the Criminal Code. In the provisions of Article 362 of the Criminal Code, for example, the objective element in the form of "actions" and at the same time is an action that is prohibited and threatened by law.

²⁰ Romli Atasasmita and Team, *Analysis and Evaluation of Legislation on the Eradication of Criminal Acts of Terrorism (Law Number 15 of 2003)*, (Jakarta: National Legal Development Agency, Ministry of Law and Human Rights, 2012), page 73

²¹ Djoko Prakoso, 1998, *Penitentiary Law in Indonesia*. Liberty, Jakarta, p. 104

law is the act of taking.

- b. Consequences, which are an absolute requirement in material crimes. Examples of objective elements in the form of "consequences" are consequences that are prohibited and threatened by law and are absolute requirements in crimes, including consequences as referred to in the provisions of Article 351 and Article 338 of the Criminal Code. In the provisions of Article 338 of the Criminal Code, for example, the objective element in the form of "consequences" that are prohibited and threatened by law is the result in the form of death.
- c. Certain circumstances or problems that are prohibited and threatened by law. Examples of objective elements in the form of "circumstances" that are prohibited and threatened by law are the circumstances referred to in the provisions of Articles 160, 281, and 282 of the Criminal Code. In the provisions of Article 282 of the Criminal Code, for example, the objective element in the form of "circumstances" is in a public place.

2. Criminal Sanctions for Perpetrators of Terrorism Crimes in Indonesia

The large number of terrorists who have been sentenced to prison has apparently not deterred them from continuing to commit terror as a form of revenge for their groups that have been punished. Subjectively, perpetrators who have been sentenced to criminal sanctions after serving their sentences (recidivists) have been unable to bring about a positive change for themselves or their groups. The radical traits inherent in the perpetrators' beliefs and thinking remain firmly entrenched, even after serving their sentences. Prison sentences have been found to have no subjective rehabilitation and resocialization effect on perpetrators after serving their sentences. In practice, prison serves as a turning point for convicted terrorists to act more recklessly. Since the second Marriott Hotel bombing in 2009, terrorist acts in Indonesia have involved former terrorist convicts. The second involvement is due to increased roles and actions. For example, Urwah, one of the perpetrators of the 2009 Marriott Hotel bombing. When first arrested, Urwah played a role in hiding information about Noordin M. Top's whereabouts. In his second act, Urwah became one of the planners of the deadly attack. Likewise, Afif alias Sunakim, the perpetrator of the 2016 Sarinah bombing. Initially, Afif was only involved in military training in Aceh in 2010. After his release, Afif became the main perpetrator of the attack earlier this year.

Examining the causal relationship between terrorism crimes, often committed by recidivists or by individuals closely related to previous perpetrators, raises questions and debates about whether the goals of punishment, which have been discussed over time and become a central issue in criminal law, have been achieved in practice. This is because punishment always relates to actions taken by the state based on law, which can certainly serve as a means of preventing and addressing crime itself. The development of criminal law and punishment in the modern legal school, the punishment system is starting to be oriented towards the perpetrator and the act (*daad-dader strafrecht*), namely the type of sanctions applied are not only criminal sanctions but also It also includes sanctions. The criminal aspect is one of the aspects that has attracted public attention in efforts to eradicate terrorism.

Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism lists individuals and corporations as subjects of criminal acts that can be held accountable in a terrorist act. The provisions of the offense in Law Number 15 of 2003 begin with the words "every person." In criminal law, the concept of "responsibility" is a central concept known as the doctrine of fault. In Latin, the doctrine of fault is known as *mens rea*, which is based on an act that does not result in a problem for a person, unless the person's thoughts are evil. In English, this doctrine is formulated as an act does not make a person guilty, unless the mind is legally blameworthy. Based on this principle, there are two conditions that must be met to be able to convict a terrorist, namely there is a prohibited external act/criminal act (*actus reus*) and there is an evil/reprehensible internal attitude (*mens rea*).

Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism almost always includes the element of intent or negligence in its formulation of the crime of terrorism. Three forms of criminal sanctions imposed on perpetrators of terrorism are the death penalty, imprisonment, and fines for corporate perpetrators. The pattern of criminal law threats is a highly trusted reflection of a civilization that reflects the fundamental values of the present. In the history of criminal law, especially regarding its sanctions, it is difficult to believe that humans are truly cruel creatures. Indeed, the types of punishment known from the eastern to the western ends and from the northern to the southern ends of this planet all rely on retribution, and the methods of its implementation are extremely inhumane.

The Indonesian government has established 3 (three) paradigms that are considered appropriate in the context of the developing political culture, namely: first, is the protection of the territorial sovereignty of the unitary state of the Republic of Indonesia; second, is the protection of the human rights of citizens of the Republic of Indonesia, both those living in the country and abroad; and third, is the protection of the human rights of suspects/defendants of acts of terrorism which are already universal rights and therefore must not be ignored.²² JE Sahetapy has warned that "The imposition of criminal penalties (*een strafpleggen*), must be attempted to be in accordance with and balanced with the values of legal awareness, values which move according to the development of space, time and circumstances which require the imposition of a special kind of suffering, as a reaction to actions which violate the (legal) system which is imposing the penalty."²³ In other words, to measure the extent to which a type of criminal sanction can fulfill the objectives of punishment determined by the legal system.

22 Andi Hamzah, *Selected Chapters on Criminal Law in Memory of Oemar Seno Adji*, Ghalia Indonesia, Jakarta, 1995, p. 221

23 JE Sahetapy, *Death Penalty in the Pancasila State*, Citra Aditya, Bandung, 2007, p. 37.

The criminal offense in question. This is because, in essence, punishment is only a "tool" to achieve a goal. Various theories of punishment that emerged at that time formulated different objectives of punishment.²² However, one thing worth noting is that the development of these theories of punishment indicates a shift in the philosophy of punishment from a philosophy of "punishment" to a philosophy of "development," including in Indonesia. Regarding sanctions, Roeslan Saleh stated that if criminal law achieves its goals not solely through imposing punishment, but also through other measures, then, in addition to punishment, sanctions also exist. This is aimed solely at specific prevention. The purpose of these measures is to maintain public safety from individuals who are more or less dangerous and are likely to commit criminal acts.²⁴

This school of legal determinism considers that action against perpetrators requires consideration of the psychological factors of convicted terrorists, which are based on a psychological factor, namely belief in committing the crime. Therefore, a process of mental rehabilitation, known as deradicalization, is necessary. It is time for this policy to be considered in the implementation of criminal penalties for perpetrators of terrorism in Indonesia. This is because perpetrators of terrorism are almost always motivated by faith, which requires spiritual healing and resocialization of the faith perspective within society. A study of the values contained in Pancasila, the first principle, namely Belief in the One Almighty God, according to Notonagoro, is the primary cause, the recognition and belief in the One Almighty God is practiced by almost all Indonesians. Therefore, the threat and implementation of criminal penalties must be guided by the principle of Belief in the One Almighty God. To see how important the values derived from Pancasila are as a basis or foundation for national and state policies, including legislative policies on criminal sanctions against terrorism, the extent of the relationship will be examined.

24 Roeslan Saleh, *Indonesian Criminal System*, Aksara Baru, Jakarta, 1983, p. 9.

25 Herbert L. Packer, *The Limits of The Criminal Sanction*, Stanford University Press, California, n.d., p. 25. (position) of Pancasila in social, national and state life in Indonesia.

Noor MS Bakry further stated that Pancasila balances individual and social traits in community, national, and state life. Therefore, Pancasila is a balancing point that can reconcile individualism and collectivism to establish a modern state that follows a middle path with monodualism, often referred to as an integralist state.²⁶ The religious perspective is essentially a message conveyed by God to the prophet as guidance for humans and perfect laws to be used by humans in carrying out real life procedures and regulating relationships with and responsibilities to God, themselves as servants of God.²⁷ Terrorism is, in reality, interpreted at will by certain countries to target organizations or individuals suspected of being terrorists, regardless of their perspective. Prohibited terror is terror that threatens the security of the wider community. Killing innocent people as atonement for sins they didn't commit, shedding blood, destroying homes, and violating the honor of innocent people without the slightest sense of guilt.

E. Conclusion

1. Regulation of Criminal Acts of Terrorism in Legislation that In terms of efforts to prevent terrorist attacks in various tragedies that occurred, the government issued Regulation Number 1 of 2002 which was later enacted into Law No. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism. International terrorism is an organized crime, so the Indonesian government increases vigilance in maintaining the integrity of the Unitary State of the Republic of Indonesia. In Law No. 5 of 2018 concerning Criminal Acts of Terrorism Chapter III Article 6 it is written: Any person who intentionally uses violence or the threat of violence that creates an atmosphere of terror or fear in people on a widespread basis, causes mass casualties by depriving the freedom or loss of life and property of others, or causes damage or destruction to Strategic Vital Objects, the environment or Public Facilities or international facilities shall be punished with imprisonment of at least 5 (five) years and a maximum of 20 (twenty) years, life imprisonment, or the death penalty. And Article 7 of Law No. 8 of 2018

regulates the crime of terrorism as a formal crime, Article 7 states: Any person who intentionally uses violence or the threat of violence with the intention of creating an atmosphere of terror or fear among people on a widespread basis or causing mass casualties by means of robbing

26 Noor MS Bakry, *Pancasila Juridical State*, Liberty, Yogyakarta, 1994, p. 61.

27 Bustanudin Agus, *Religion in Human Life*, Rajawali Pers, Jakarta, 2006, p. 280.

freedom or loss of life or property of another person, or causing damage and destruction to vital strategic objects, or the environment or public facilities, or international facilities, shall be punished with a maximum imprisonment of life.

2. Criminal Sanctions for Perpetrators of Terrorism Crimes in Indonesia that the Subject and legal sanctions for terrorist actors in the perspective of Law Number 15 of 2003. According to sanctions in the terrorism law if the perpetrator does not intentionally commit a crime, in the sense that it automatically arises, then the sanctions are based on Article 6, namely being punished with the death penalty or life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years. However, if the perpetrator does intend and aims to commit this crime, the legal sanctions are based on Article 7, namely being punished with a maximum of life imprisonment, then the crime of terrorism committed by or on behalf of a corporation, in Article 17 and Article 18 it is explained that the main penalty that can be imposed is a maximum fine of IDR 1,000,000,000,000 (one trillion rupiah).

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