

LAW ENFORCEMENTS AGAINST ACTS OF TERRORISM ACCORDING TO ARTICLE 6 OF LAW NUMBER 5 OF 2018

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Article's Information	Abstract
<p>Keywords: Law enforcement, Terrorism.</p> <p>DOI: https://doi.org/10.31599/7yvqwp10</p>	<p><i>This research departs from the high crime rate caused by terrorism in the territory of the Republic of Indonesia. Meanwhile, Indonesia is a rule of law which aims to create a just and prosperous society. This research aims to: (1) Find out the elements regulated in Article 6 of Law Number 5 of 2018. (2) Find out the forms of accountability or sanctions for perpetrators of criminal acts of terrorism according to Article 6 of Law Number 5 of 2018. This research using Normative research type. The collection of legal materials is carried out using the Statute Approach and Case Approach techniques. The data sources used are primary, secondary and tertiary data. The results of research and discussions show that ratification of the Terrorism Bill (RUU) is an urgent need, especially considering the increasing threat of terror in the country. The existence of the law can be used by the authorities, one of which is that the police can take direct action against individuals who are proven to be affiliated with the ideology of certain terrorist groups.</i></p>

I. INTRODUCTION

"The Republic of Indonesia is a state based on law (Rechtsstaat), not merely a state based on power (Machtsstaat). A state under the rule of law is a concept where law plays the primary role in governing society and controlling government actions. In this sense, the law serves as the foundation for creating a just, safe, and orderly society, ensuring that every citizen has the right to be protected and respected. One of the humanitarian crimes



that has captured international attention over the past two decades is the crime of terrorism. Terrorism in the 21st century has become a global security agenda, leading countries around the world to collaborate in combating terrorist activities. The phenomenon of global terrorism has impacted terrorist actions in Indonesia.

In Indonesia, since the 2000s until now, terrorism activities have been prevalent. Initially, the Jamaah Islamiyah (JI) group was the main actor in terrorism crimes in Indonesia. This group used Islamic symbols in its actions, discourse, and movements. In its development, the emergence of ISIS in 2013 brought about a new group in Indonesia actively advocating for terrorist activities since 2014. This group operated under the name Jamaah Ansharut Daulah (JAD), which was affiliated with the global terrorist movement, ISIS. Therefore, terrorism in Indonesia continues to be a continuing saga under each period of government regime.

The terrorism that has developed so massively in the 21st century has prompted countries around the world to respond, including Indonesia. Since the Bali Bombings in 2002, the Indonesian government has made legal efforts to criminalize terrorism and implement counterterrorism policies in Indonesia. In this sense, the legal politics of counterterrorism in Indonesia follow the evolving anti-terrorism discourse at the global level. In the context of understanding terrorism, numerous definitions have been proposed by experts. Paul Wilkinson in "The Strategic Implications of Terrorism" states that terrorism is the use of violence to achieve political goals and is not a political philosophy but a method or weapon to achieve political goals. Meanwhile, Bruce Hoffman defines terrorism as the creation and exploitation of fear intentionally through violence or the threat of violence in order to achieve political change. Hendropriyono states that terrorism is the idea of violent actions or threats of violence. Therefore, according to Muladi, terrorism is an extraordinary crime that also requires handling in extraordinary ways.

According to the UN Convention of 1937, terrorism is any form of criminal activity directly aimed at a state with the intention of creating terror against specific individuals or groups of people or the general public. While according to the US Department of Defense in 1990, terrorism is unlawful acts or actions involving threats of violence or coercion against individuals or property to force or intimidate governments or societies for political, religious, or ideological purposes. In Indonesia, the definition of terrorism is established according to Law Number 5 of 2018, Article 1 (2), which states that terrorism is an act that uses violence or the threat of violence that creates widespread terror or fear,

which can cause mass casualties and/or damage or destruction to vital strategic objects, the environment, public facilities, or international facilities for ideological, political, or security disturbance motives.

Historically, in Indonesia, the criminalization of terrorism was done by issuing Government Regulation in Lieu of Law No. 1 of 2002, which later became Law No. 15 of 2003. This legislation was complemented by the establishment of the National Counterterrorism Agency (BNPT) in 2010. This institution was formed as a body specifically responsible for counterterrorism policy in Indonesia. Since then, Indonesia has actively prosecuted terrorist activities. In its development, in 2018, the Indonesian government revised the anti-terrorism law. The revision of the anti-terrorism law was enacted through the enactment of Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law. The reason for the change or revision is based on the fact that existing legislation is not sufficient to keep up with the dynamics of terrorism development. Therefore, the terrorism law in Indonesia has undergone changes since its first appearance after the Bali Bombings I (2002).

In Indonesia, the definition of terrorist acts refers to the provisions in Law No. 5 of 2018, in Article 1 (1), which is "any act that meets the elements of criminal acts in accordance with the provisions of this Law." In general, provisions regarding terrorist acts in Law No. 5 of 2018 are regulated in Chapter III, from Article 6 to Article 16. Article 6 specifically establishes penalties for terrorism. In this regard, Article 6 states that "any person who intentionally uses violence or the threat of violence that creates a climate of terror or fear among people, causing mass casualties by seizing the freedom or loss of life and property of others, or causing damage or destruction to vital strategic 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 death penalty." According to Mahrus Ali, the provision of Article 6 is a general offense (genus) of terrorism.

A general offense in law is a criminal act that can be committed by anyone without requiring specific qualities or characteristics. General offenses are also often referred to as *Gemene Delicten* or *Algemene Delicten*. Examples of general offenses are theft, murder, assault, and so on. General offenses differ from specific offenses, which are criminal acts that can only be committed by certain individuals or those with specific

qualities or characteristics. Examples of specific offenses are corruption, abuse of authority, embezzlement, and so on. Article 6 of Law Number 5 of 2018 regulates acts of terrorism that use violence or the threat of violence that creates a climate of terror or fear among people, causing mass casualties, and/or causing damage or destruction to vital strategic objects, the environment, public facilities, or international facilities. This article imposes a penalty of imprisonment for a minimum of 5 years and a maximum of 20 years, life imprisonment, or death penalty.

Therefore, specifically, this thesis research aims to further examine the provisions of Article 6 of Law Number 5 of 2018, which regulate penalty provisions. In other words, whether the provisions of Article 6 of Law Number 5 of 2018 have been able to deter, prevent, and rehabilitate perpetrators of terrorist acts. Because, in practice, terrorist activities in Indonesia continue to evolve over time. In fact, data from the Indonesian National Police's Special Detachment 88 Antiterror, from 2009-2022, recorded that the number of ex-terrorist convicts (*napiter*) who returned to carry out terrorist attacks or recidivists reached 87 people. This means that the legal objectives set forth in Article 6 of Law Number 5 of 2018 have not yet deterred terrorist recidivists.

II. METHODS

In this thesis writing, the author employs normative research or literature review research, which examines document studies, utilizing various secondary data such as legislation, legal theories, and scholarly opinions.¹ Statutory Approach is the statutory approach is conducted to examine laws and regulations relevant to the legal issue being addressed.² Case Approach, is the case approach is a type of approach in normative legal research where the researcher attempts to construct legal arguments from the perspective of specific cases that occur in the field. These cases are closely related to legal cases or events that occur in practice. Primary legal sources, which provide direct and clear information, are Undang-undang Dasar Negara Republik Indonesia 1945, Undang-undang No. 5 Tahun 2018 Tentang Tindak Pidana Terorisme, Kitab Undang-undang Hukum Pidana

¹ Ika Dewi Sartika Saimima, *et al*, "Pedoman Penulisan Skripsi Fakultas Hukum Universitas Bhayang manakara Jakarta Raya", Bekasi: Fakultas Hukum Universitas Bhayang manakara Jakarta Raya, 2020, hlm. 9.

² Amiruddin, Z., A, "Penelitian Hukum", Jakarta: Kencana Prenada Media Grup, 2013, hlm.133.

III. DISCUSSION

Elements of Terrorism Crimes Regulated in Article 6 of Law Number 5 of 2018 Concerning the Eradication of Terrorism

From Article 6 of Law Number 5 of 2018 concerning the Eradication of Terrorism Crimes, it can be stated that an action or deed can be classified as a terrorism crime if it contains the following elements:

1) Intentionally Conducted:

Regarding the issue of "intent" in the discourse of criminal law science (doctrine), there are two theories about intent, namely:

- a) Will Theory, according to this theory, someone is considered "intentionally" committing a criminal act, including terrorism crimes. In this regard, someone is considered to intentionally commit a criminal act with the "will" to fulfill the elements of the offense as stipulated by the law.
- b) Knowledge Imagining Theory, according to this theory, "intentionally" means imagining the consequences of one's actions. Therefore, intent means "willens en watens," which means "desiring and knowing," or someone who commits an act intentionally must desire the act or be aware of the consequences that may occur due to the act. In Terrorism Crimes, intent is generally involved, where perpetrators intentionally plan and carry out violent actions to create fear in society or the government. Motivations can vary, including political ideology, religion, or extreme views that drive individuals or groups to commit such actions with clear intentions. This intent distinguishes terrorism from acts of violence that may occur without strong ideological or political motives.

2) Use of Violence or Threats of Violence:

Violence has different meanings according to experts. In terms of violent acts, as described by Sue Titus Reid as cited by Topo Santoso and Eva Achjani Zulfa, it includes:

- a) An action or deed defined by law, unless the elements stipulated by criminal or penal law have been presented and proven beyond a reasonable doubt that someone cannot be charged with committing an act that can be classified as violence.

- b) Violence is an intentional act or a form of action or deed that is negligent, all of which constitute violations of criminal law, committed without defense or justification and sanctioned by the State as a serious crime or a minor legal offense.

Therefore, the element of using violence or threats of violence is characteristic of terrorism crimes. Perpetrators of terrorism intentionally choose this method to achieve their goals, intending to cause mass fear or compel the government or society to respond according to their demands. Violence or threats of violence in terrorism acts aim to create significant psychological impacts, extending beyond direct victims, and often intended to trigger social or political instability.

3) Creating a Climate of Terror or Widespread Fear:

Terrorism is usually carried out randomly and indiscriminately, often victimizing innocent people including women and children, and is often organized and transnational in nature. Therefore, terrorism usually aims to create a climate of terror or widespread fear as its primary goal. Perpetrators intentionally create situations where society or the government collectively feels threatened. This can be achieved through dramatic acts of violence or threat of attacks designed to create deep psychological impacts. A widespread climate of terror creates emotional and psychological instability among citizens, forcing society and the government to respond or change their policies in an effort to address the threat.

4) Causing Mass Casualties, Either by Depriving Others of Their Freedom or by Taking Lives or Property:

Mass casualties are victims of an incident with a relatively large number of people due to the same cause. Causing mass casualties, whether by depriving others of their freedom or by taking lives or property, is a terrorism strategy to achieve maximum impact. Perpetrators of terrorism often aim to create widespread fear and force changes in social or political order. By causing mass casualties, including loss of life or deprivation of individual freedoms, terrorism creates extraordinary emotional and psychological impacts, surpassing the direct losses incurred. Achieving mass casualties can also be a tool to gain greater media attention, increase pressure on the government, or reinforce their ideological

propaganda. Therefore, terrorism acts are often designed to be shocking and create noticeable impacts on society.

5) Causing Damage to Vital Objects:

Terrorism acts often involve causing damage to vital objects as part of their strategy. These vital objects may include critical infrastructure such as government buildings, power installations, transportation systems, or communication facilities. By targeting these objects, terrorists aim to create instability, damage the economy, and have significant impacts on society. Causing damage to vital objects can also contribute to creating a widespread climate of terror and fear, as it can cause serious disruptions in daily functions and social life.

Legal accountability for perpetrators of terrorist acts according to Article 6 of Law Number 5 of 2018

In Article 6 of Law No. 5 of 2018, the legal basis for holding perpetrators of terrorism accountable is established. This article regulates criminal penalties for perpetrators of terrorism acts. Details regarding the elements of the crime, the applicable punishments, and specific legal considerations are essential in understanding how the law responds to acts of terrorism. The legal accountability of perpetrators of terrorism according to Article 6 of Law No. 5 of 2018 can be analyzed through the prism of relevant theories. Concepts of justice, legal effectiveness, and human rights serve as benchmarks in evaluating whether the regulations meet their objectives. A thorough analysis of each element and provision in Article 6 provides a comprehensive overview of how the law interacts with the reality of terrorism crimes.

Although Article 6 of Law No. 5 of 2018 provides a strong legal foundation, criticisms and challenges to the legal accountability of perpetrators of terrorism still exist. Issues regarding human rights, the potential for abuse of power, and implications for society need to be carefully addressed. Critical evaluations of the effectiveness of the law in preventing terrorism crimes can provide input for improvement and enhancement. Because terrorism is not only a challenge in Indonesia but also a global issue, the legal accountability of perpetrators of terrorism in Indonesia has international implications. International cooperation, extradition, and joint efforts in responding to terrorism threats are crucial aspects. These legal implications require a solid legal framework to ensure harmonization and effective cooperation at the international level.

The legal accountability of perpetrators of terrorism according to Article 6 of Law No. 5 of 2018 can be explained by referring to criminal law theories. There are several key points outlined in Article 6 of Law No. 5 of 2018, including:

- a) Terrorism crimes are regulated in Article 6 of Law No. 5 of 2018, encompassing acts that meet the elements of criminal offenses as stipulated by the law. Terrorism offenses always involve violence or threats of violence that create a widespread atmosphere of terror or fear, with the potential for mass casualties and/or damage to vital objects.
- b) Anyone who intentionally uses violence or threats of violence to cause terror or fear is punishable under Article 6. The punishment depends on the severity of the terrorism act committed.

Law No. 5 of 2018 provides a strong legal basis for combating terrorism crimes. Through detailed articles, this law provides various legal accountabilities for perpetrators of terrorism with punishments commensurate with the severity of their actions. Additionally, this law also provides protection and compensation for victims of terrorism crimes. Terrorism poses a serious threat to national security and public order. The government plays a crucial role in combating and holding perpetrators of terrorism accountable. In this framework, Law No. 5 of 2018 concerning the Eradication of Terrorism Crimes becomes the primary legal instrument regulating government accountability. This article will discuss in detail how the government is responsible for combating terrorism, involving various aspects such as prevention, enforcement, punishment, victim protection, and deradicalization efforts.

IV. CONCLUSION

From Article 6 of Law No. 5 of 2018 concerning the Eradication of Terrorism Crimes, it can be articulated that an action or conduct can be classified as a terrorism crime if it contains the following elements: (1) committed intentionally, using violence or threats of violence, causing a widespread atmosphere of terror or fear, (2) either by depriving others of their liberty or by taking away their lives or property, (3) resulting in damage to vital objects. Legal accountability explores aspects of wrongdoing involving consciousness and intentionality. Criminal sanctions, as legal consequences of terrorism acts, are defined in the context of imprisonment with varying time frames depending on the severity of the offense. Law No. 5 of 2018 provides more specific classifications related to terrorism crimes in Indonesia. Terrorism actions, terrorism acts, terrorism

involvement, terrorism preparation, and involvement in terrorist groups are categories that delineate the types of crimes that may be encompassed within them. Detailed explanations of each classification are important for understanding the legal scope of accountability for perpetrators of terrorism crimes. Compared to previous Terrorism Laws, Law No. 5 of 2018 provides an overview of legal developments in addressing terrorism threats in Indonesia. Article 6 of Law No. 5 of 2018 forms the legal basis for holding perpetrators of terrorism crimes accountable.

V. SUGGESTIONS

Law enforcement against terrorism crimes should not only be regulated by Law No. 5 of 2018 concerning Terrorism Crimes but also needs to be strengthened by the Domestic Security Law. The judicial process for terrorism crimes still uses the Criminal Procedure Code (KUHAP), which contradicts the nature of terrorism itself as an "extraordinary crime." Therefore, it is advisable to have a specific or separate Criminal Procedure Code for terrorism cases so that terrorists can be tried through specialized courts for crimes classified as "extraordinary."

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