

Corporate Responsibility for the Crime of Terrorism Financing in Indonesia

by Yossri Mantaw Sihombing

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Corporate Responsibility for the Crime of Terrorism Financing in Indonesia

Yossri Mantaw Sihombing¹, Yasmirah Mandasari Saragih², Mhd. Azhali Siregar³

Abdur Rahman Sirait⁴, Teguh Hidayat Siregar⁵

^{1,2,3,4,5} Program Studi Magister Ilmu Hukum Universitas Pembangunan
Panca Budi Medan, Indonesia

Email : yossri.labanku@gmail.com¹, yasmirahmandasari@gmail.com²

, azhalisiregar@dosen.pancabudi.ac.id³, siraitrahman@gmail.com⁴

, teguh.siregar@gmail.com⁵

Abstract Criminal act Terrorism is a form of crime or serious violation human rights at the international level because it seriously endangers security and peace world. The crime of terrorism which occurred in the territory of the unitary state of the Republic of Indonesia has resulted in loss of property and property and causing fear in society at large, thus having an impact on social life, economics, politics and international relations. One of the main factors supporting acts of terrorism is the existence of funding, meaning that terrorist activities will not take place if there are no funds. Therefore, it is very important to eradicate criminal acts of terrorist financing in order to minimize the occurrence of acts of terrorism. The research method used is normative legal research, namely legal research that uses secondary data by using a statutory approach and a conceptual approach. The data processing and analysis technique used in this research is a qualitative technique using deductive logic in order to draw conclusions from the problem formulation that has been described. The aim of this research is to determine the methods of collecting funds carried out by corporations for terrorism financing in Indonesia and to determine corporate responsibility for criminal acts of terrorism financing in Indonesia.

Keywords : Corporate Accountability, Funding, Crime, Terrorism.

1. INTRODUCTION

Background

Terrorists are individuals or groups of people who commit crimes systematically without regard to humanitarian norms with criminal and political motives. Meanwhile, terrorism is a crime against state security in the form of violence or threats of violence that creates an atmosphere of terror or fear which in general can cause mass casualties, cause damage or destruction to vital strategic objects, the environment, public facilities and international facilities by ideological and political motives. (Ratama Santoso, 2020)

The definition of human rights is regulated in Article 1 paragraph (1) of Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, namely a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gift that must be respected and upheld, high and protected by the legal state, government and every person for the sake of honor and protection of human dignity. Based on Article 28A of the 1945 Constitution of the Republic of Indonesia, it is determined that every person has the right to live and the right to defend his or her life and life. The legal basis is in Article

9 paragraph (2) of Law Number 39 of 1999 concerning Human Rights. Therefore, the state is obliged to ensure that its people are far from the threat of terrorism and radicalism.

Basically, terrorism has a very wide and hidden network. Terrorism will also continue if funding continues to flow to perpetrators of terrorism and they are responsible for planning the next terrorist activity. Because every act of terrorism definitely requires funds to promote ideology, finance terrorist members and their families, fund travel and accommodation, recruit and train new members, falsify identities and documents, purchase weapons and to design and carry out operations. This is what proves that funding plays an important role in carrying out acts of terrorism. (Yuliana Putri,2015)

Article 1 Paragraph (1) of Law of the Republic of Indonesia Number 9 of 2013 concerning Prevention and Eradication of Criminal Acts of Terrorism Financing defines terrorism financing as all actions to provide, collect, give and/or lend funds carried out directly or indirectly for the continuation of terrorist activities . The funds in question are all assets, whether movable or not, tangible or not, which are obtained in any way, including in digital format, not limited to credit, checks, orders to send money, shares, securities, bonds, to debt acknowledgment letters. And the terrorism financing law recognizes 2 (two) legal subjects, namely humans and corporations.

The definition of a corporation according to the Indonesian dictionary is a legal and legal business entity. (Rudi Prasetya,1989) Corporations are usually used in civil law as corporate legal entities, namely rehtperson, legal entities and corporation . A corporation is called a legal entity if it has the elements of having its own separate assets, there is an organization that is determined by a purpose where the separate assets are allocated and there are administrators who control and manage it.

According to Sajipto Rahardjo, what is meant by a corporation is an entity created by law that is structured with a personality within it. So as creatures created by law, corporations can be killed in accordance with legal decisions. (Sajipto Rahardjo,1986) Based on the characteristics mentioned, corporations as legal entities are part of the legal subject. Meanwhile, according to Sudikno Mertokusumo, what is meant by a legal subject is something that has legal rights and obligations, namely humans. (Sudikno Mortokusumo ,1999) The Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP) also recognize humans as subjects of criminal law. For this reason, by establishing corporations as the subject of criminal law, it will not be separated from the principle of no crime without fault which is a fundamental principle. The existence of principles is a reflection of criminal law doctrine. (Aulia Ali Reza,2015)

The relationship between principles and corporations as legal subjects is that the element of error is always seen as closely related to natural attitudes in the form of intentionality or negligence in humans. The elements of intentionality or negligence arise from psychological and psychological elements which of course can only be found in humans as natural creatures. This was one of the previous reasons for rejecting the concept of corporations as legal subjects. (Dwidja Priyatno Muladi,2011)

The elements of corporate crime are crimes committed by respected or respected people, with high social status, in connection with their work and often violating public trust. A corporation cannot be held criminally liable. So, if a corporation is proven to have committed a criminal act, then those who can be held responsible are the administrators or administrators of the corporation who are proven to have given the order to commit the criminal act themselves.

Eradicating criminal acts of terrorism can be carried out with repressive and preventive efforts. With the aim of preventing or breaking the chain of terrorist networks, especially breaking or stopping the funding of criminal ⁶acts of terrorism. Because by cutting off the source of funds , acts of terrorism will not be able to develop. Based on the descriptions above, it is very clear that acts of terrorism are so terrible that they require extra care to eradicate them. And this is what makes the author feel interested in discussing further in the scientific work entitled "**Corporate Responsibility for Criminal Acts of Terrorism Financing in Indonesia**".

Formulation of the problem

Based on the descriptions above, the author will discuss further legal issues as follows:

1. What are the fund collection methods used by corporations to finance terrorism in Indonesia?
2. What is the responsibility of corporations for criminal acts of financing terrorism in Indonesia?

⁸2. **RESEARCH METHODS**

Research method is a way of doing something by using the mind carefully to achieve a goal by searching, recording, formulating and analyzing to compile a report. (Cholid Narbuko and Abu Achmadi,2003) The term methodology comes from the word method which means path. Usually methods are ⁸formulated with the possibilities of a type used in research and ¹²assessment. (Soerjono Soekanto ,2012) The type of research used in this research is normative

legal research, namely research that is focused on examining the application of positive legal rules or norms. (Johnny Ibrahim ,2006) Legal research that uses secondary data consists of legal materials which include primary legal materials, secondary legal materials and legal materials. tertiary law. The approach methods used in analyzing legal materials are the statutory approach (*statue approach*) and the conceptual approach (*conceptual approach*). (Marzuki,2014) And the analysis technique in processing data in this research uses qualitative techniques, namely discussing and describing the legal material used based on legal norms, theories, legal material, legal doctrine using deductive logic to draw conclusions from problem formulations.

3. DISCUSSION

Fund Collection Methods Used by Corporations to Fund Terrorism in Indonesia

The emergence of terrorism was initially triggered by political interests until finally criminal acts of terrorism developed beyond national borders. Because the attack patterns and strategies of terrorist groups are supported by organized funding to finance various terrorist acts. (Max Fredrik Leatemala,2019) Terrorist financing is generally carried out to finance acts of terrorism. This can be seen from the realization of the principle *money is the life blood of crime* , which means that money is like blood which gives life to the body of a living creature so that crime can continue as long as there are funds . With the ongoing flow of funds , crime, especially acts of terrorism, continues to occur and even increases.

The important position of funds in criminal acts of terrorism causes law enforcement to be directed at perpetrators of funding and criminal acts. So there is an urgency to form a legal rule that regulates the criminal act of financing terrorism which is accommodated through Law of the Republic of Indonesia Number 9 of 2013 concerning the Prevention and Eradication of Criminal Acts of Terrorist Financing.

The supervisory and regulatory institutions in the regime for preventing and eradicating criminal acts of terrorist financing include:

- a. Bank Indonesia (BI) which acts as supervisor of the banking industry (Commercial Banks, Rural Banks, Foreign Exchange Dealers and Money Transfer Business Activities);
- b. Capital Markets and Financial Institutions Supervisory Agency (Bapepam LK) which functions as supervisor in the field of Capital Markets and Non-Bank Financial Institutions. Financial Services Providers in the Capital Markets sector, namely Securities Companies, Mutual Fund Managers and Custodians;

- c. Ministry of Communication and Information of the Republic of Indonesia (Kominfo RI) which functions as a regulator or supervisor of postal operations;
- d. Commodity Futures Trading Supervisory Agency (Bapebbti) which functions as a regulator or supervisor of commodity futures trading;
- e. Directorate of Auctions, Directorate General of State Assets, Ministry of Finance of the Republic of Indonesia;
- f. The Directorate General of Customs and Excise (Dirjen Customs and Excise) which functions as part of the eradication, prevention and reporting of *Cross Border Cash Carrying* (CBCC) accurately detects traces of transactions such as the subject who wants to make the delivery as well as the exact address and address of the recipient considering peer to peer transactions. This lending uses cloud data capacity.

The definition of terrorism funding is strictly regulated in Article 1 paragraph (1) of Law of the Republic of Indonesia ³ Number 9 of 2013 concerning Prevention and Eradication of Criminal Acts of Terrorism Funding, which states "terrorism financing is all actions carried out in the context of providing, collecting, giving or lending funds, either directly or indirectly, with the intention of using them and/or knowing that they will be used to carry out terrorist activities, terrorist organizations or the terrorist perpetrators themselves. Currently, terrorists and terrorist organizations require enormous funds to maintain their position so that terrorist financing activities have become complex and diverse through both traditional and digital funding areas.

Corporate crime or *criminal corporations* are corporations that are deliberately formed and controlled to commit crimes. In this case, the position of the corporation is as a means or forum for committing crimes. (Muladi, 2002) Expert Mardjono Reksodiputro is of the opinion that organized crime must be differentiated from organizational crime. What is meant by organizational crime is crime that usually hides behind corporations or legal entities that carry out their business legally. Meanwhile, organized crime is a crime that uses violence in which there are layers of respectable people with high social status as funders who take advantage of the layers below them.

Based on these reasons, as an institution whose products and services are related to finance, fintech is considered vulnerable to becoming a means of committing criminal acts of terrorist financing (TPPT). Apart from that, the various conveniences and weaknesses of fintech will increasingly become an incentive for TPPT perpetrators to obtain funds to finance acts of terrorism. In general, the fund collection methods used by corporations to finance terrorism in Indonesia are:

a. Funding methods originating from legal sources are carried out by:

- Selling personal assets or those owned by terrorist families. Both personal property ownership and through marriage, such as property owned by wives and other families that support terrorist movements;
- Through fundraising carried out by someone working abroad;
- Collection of legal funds carried out by a terrorist who works as a trader or business owner in a small form or with an official legal entity. And to avoid suspicion from various parties, usually terrorist groups also carry out legal fundraising activities through the establishment of small and medium businesses or home industries by trading food; And
- Utilize charity donation boxes placed in shops and minimarkets in several regions in Indonesia. This terrorist group exploits social feelings of humanity and religion accompanied by propaganda with the aim of collecting funds and public sympathy even though the funds they obtain are used to fund terrorist activities.

b. Funding methods using social media are carried out by:

- Taking advantage of developments in internet technology. With the ease of developing websites and creating social media, raising funds is easier and wider. The method of hacking or hijacking certain private accounts belonging to people is one of their mainstay techniques;
- Utilizing the collection of funds from the general public through activities carried out by mass organizations, both legal and non-legal entities. They do not hesitate to display the perpetrator's personal account on social media owned by mass organizations to receive donations from the general public by exploiting humanitarian events either through managing fictitious social media accounts or by abusing legitimate or legal institutional social media domains; And
- Utilizing social media to collect funds through other people's or *anonymous accounts* to spread messages about collecting funds or spreading radical ideas.

Seeing the increasing number of crimes occurring on social media means that we must always remain vigilant. In a situation like this, it is really necessary to implement public policies in the hope that they can play a big role in the development of the Indonesian internet so that it can be realized as well as possible. One form of government policy is *Ius Konstituendum*, which is defined as a legal instrument that accommodates the demands of technological developments and anticipates the problems that can arise, including the

negative impact of internet misuse for various reasons that can cause victims, both material and non-material losses. (Yasmirah Mandasari Saragih, 2021)

Meanwhile, the mode for transferring terrorism funds is carried out by :

- Transferring Funds Through Banks;
- Transfer of Funds Through Non-Bank Foreign Exchange Business Activities (KUPVA BB);
- Transfer of Funds Through Non-Bank Fund Transfer Providers (PTD BB); And
- Carrying Cash Across National Borders.

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Terrorist financing is more dangerous than other forms of crime due to the strategy of using charitable or non-profit organizations as a source of funding and its ability to infiltrate the financial systems of poor and developing countries. Apart from that, the source of terrorism funds originating from halal or legal sources also makes it increasingly difficult to trace and prove the flow of funds for criminal acts of terrorism. The rise of identity fraud makes it easier for them to commit crimes. The proliferation of *e-business* and the ease of carrying out financial transactions via the internet in the era of globalization is increasingly opening up access for them to take action.

The principle of error or ¹³the principle of no crime without fault is a principle that applies in criminal liability. This principle shows that someone who commits a criminal act cannot necessarily be punished. In a person's sentence, a person is determined by the mistake they have committed. Because according to Moeljatno, criminal acts in a criminal act only prosecute those who are prohibited and threaten the act with a crime. Meanwhile, criminal penalties depend on what mistakes have been made.

The crime of financing terrorism has been very detrimental to society and the state because it has an impact on the stability of the national economy or state finances. Accountability for perpetrators of criminal acts of financing terrorism should focus on imposing heavy criminal sanctions on perpetrators who carry out terrorist financing in order to provide a deterrent effect on perpetrators.

Law enforcement efforts are also part of the implementation of the law which should be able to run in harmony with the community's legal awareness. Public legal awareness is strongly influenced by a sense of justice. One of the most important aspects in law enforcement is how to introduce the law to the public and promote their legal awareness. Law enforcers should not only consider the community as mere objects in law enforcement. But it must involve the community as subjects in law enforcement. Then in Indonesia there are still

many who think that law is dogmatic legislation without taking into account the turmoil that arises in society. (Yasmirah Mandasari Saragih,2022)

The Terrorism Financing Law concerns 2 (two) legal subjects, namely individuals and corporations. The establishment ¹³ of corporations as subjects of criminal law cannot be separated from the principle of no crime without fault which is a fundamental principle. The existence of the principle has been reflected in criminal law doctrine because if a crime is committed, the corporation has criminal responsibility.(Yudhianto,2018) The threat of punishment given to corporations for acts of financing terrorism must be in accordance with what is stated in the law. If this is not fulfilled then it can be replaced by confiscating assets from the corporation and/or corporate management related to the criminal act .

Law of the Republic of Indonesia ³ Number 9 of 2013 concerning Prevention and Eradication of Criminal Acts of Terrorism Financing states that terrorism financing is all acts in the context of providing, collecting, giving, lending funds either directly or indirectly with the intention of being used and/or known to be used. to carry out terrorist activities, terrorist organizations or terrorists. It can be seen together that this law does not regulate clearly and firmly regarding the source of funds from legal or illegal activities.

² Even though they are not humans (persons), legal entities (rechtpersons) are legal subjects that have their own rights and obligations, in this case in the form of a legal entity or organization consisting of a group of people who join together for a certain purpose and have certain assets. Therefore, in legal traffic, the legal entity is represented by an administrator who acts for and on behalf of and in the interests of the legal entity (representing it). Regarding corporations as legal subjects, corporations which have rights and obligations are capable of committing criminal acts for which they can be held accountable. (Yasmirah Mandasari Saragih and Alwan,2024)

Corporate responsibility for criminal acts of financing terrorism in Indonesia can be charged under Article 8 ⁴ of Law of the Republic of Indonesia Number 9 of 2013 concerning Prevention and Eradication of Criminal Acts of Terrorism Financing, including :

- ¹¹ 1) In the event that the criminal act of financing terrorism as intended in Article 4, Article 5 and Article 6 is committed by a Corporation, then the criminal offense shall be imposed on the Corporation and/or the Corporation's Control Personnel;
- 2) Penalties are imposed on corporations if the criminal act of financing terrorism:
 - ¹⁵ a. carried out or ordered by Corporate Control Personnel;
 - b. carried out in order to fulfill the aims and objectives of the Corporation;

- c. carried out in accordance with the duties and functions of the actor or giver of orders in the Corporation; or
 - d. carried out by Corporate Control Personnel with the intention of providing benefits to the Corporation.
- 14) In the event that criminal charges are brought against the Corporation, the summons to appear and the submission of the summons letter shall be delivered to the management and/or Controlling Personnel of the Corporation at the management's place of residence or where the management has an office;
- 1) 4) The principal punishment imposed on the Corporation is in the form of a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah);
- 5) In addition to the fine as intended in paragraph (4), Corporations may also be subject to additional penalties in the form of:
- a. freezing of part or all of the Corporation's activities;
 - b. revocation of business license and declared as a prohibited corporation;
 - c. dissolution of the Corporation;
 - d. confiscation of Corporation assets for the state;
 - e. takeover of corporations by the state; and/or
 - f. announcement of the court decision.
- 6) In the event that the Corporation is unable to pay the criminal fine as intended in paragraph (4), the criminal fine is replaced by confiscation of assets belonging to the Corporation and/or Corporate Control Personnel related to the crime of financing terrorism with the value equal to the criminal fine imposed;
- 9) 7) In the event that the sale of confiscated assets belonging to the Corporation as intended in paragraph (6) is insufficient, imprisonment in lieu of a fine is imposed on the Corporation Control Personnel taking into account the fine that has been paid.

4. CONCLUSION

From the descriptions above, the author draws the following conclusions:

1. There are 2 methods of collecting funds used by corporations to finance terrorism in Indonesia, namely funding methods originating from legal sources carried out by selling personal assets or those owned by the terrorist's family, through collecting funds carried out by someone working abroad, collecting funds legally carried out by a terrorist who works as a trader or owner of a small business or has an official legal entity and uses a charity donation box. Meanwhile, the funding method using social media is carried out

by taking advantage of developments in internet technology, utilizing the collection of funds from the general public through activities carried out by mass organizations, both legal and non-legal entities, and utilizing social media to collect funds through other people's or *anonymous accounts* to spread the word. messages to raise funds or spread radical ideas.

2. Corporate responsibility for criminal acts of financing terrorism in Indonesia can be charged under Article 8 of Law of the Republic of Indonesia Number 9 of 2013 concerning Prevention and Eradication of Criminal Acts of Terrorism Financing.

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