

# Criminal Liability Of Actors Who Participate In Terrorism Criminal Acts in Indonesia

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## Criminal Liability Of Actors Who Participate In Terrorism Criminal Acts in Indonesia

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**Abstract** The crime of terrorism is a form of crime with an international dimension that is very frightening to the public. Terrorism is a crime against humanity which is classified as an extraordinary crime because it has succeeded in creating chaos based on religion, sect or organization. This crime against humanity is regulated in Law of the Republic of Indonesia Number 5 of 2018 concerning Terrorism Crimes. Terrorist networks that are difficult to trace and have wide access make the problem of terrorism difficult to eradicate. Easy access between countries is one of the reasons why it is difficult to break the chain of terrorist networks. So efforts are needed through bilateral, regional and international cooperation to eradicate terrorism. The research method used in this paper uses qualitative legal research based on legal theories. By taking a legislative approach through literature study. This research aims to find out what causes perpetrators to commit criminal acts of terrorism and to find out what form of criminal law accountability exists for perpetrators who participate in criminal acts of terrorism in Indonesia.

**Keywords:** Criminal Law Accountability, Perpetrators, Crimes, Terrorism.

## INTRODUCTION

### Background

Terrorism is the enemy of the Indonesian nation, the enemy of the world. Academically terrorism is categorized as Extraordinary crimes against humanity whose eradication requires very serious handling because they relate to the human soul. In the preamble to the 1945 Constitution of the Republic of Indonesia, the Indonesian state aims to protect the entire Indonesian nation and all of Indonesia's blood and to promote general welfare, educate the life of the nation and participate in implementing world order based on independence, eternal peace and social justice.

After the 2000s, various acts of terrorism occurred which resulted in damage to infrastructure, the emergence of a sense of anxiety among society and increased suspicion between religious communities. Various negative influences from terrorism result in disruption of national and state life because they have a wide network. Their acts of terror are also violations in the field of human rights because humans actually have the right to live and the right to feel safe and comfortable. Human rights themselves are regulated in the provisions of Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia. After being amended, they are regulated in Article 28 and Article 28A-28J of the 1945 Constitution of the Republic of Indonesia.

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In an effort to protect human rights from crimes of terrorism, the Indonesian government established a law related to the eradication of criminal acts of terrorism, namely Government Regulation in Lieu of Law (Perpu) Number 1 of 2002. Which finally on April 4 2003 was passed into law. Law of the Republic of Indonesia Number 15 of 2003 concerning Eradication of Criminal Acts of Terrorism. Based on Article 1 paragraph 1 of Law of the Republic of Indonesia Number 5 of 2018 concerning Terrorism and its Amendments, what is meant by a criminal act of terrorism is any act that fulfills the elements of a criminal act in accordance with the provisions of this law. The crime of terrorism is a crime committed by a person or group using violent means whose main targets are civilians, society and property for political interests with different motivations.

Amin Rais is of the opinion that criminal acts of terrorism are a form of direct or indirect violence, namely violent treatment that is unreasonable and inappropriate because violence is carried out only to frighten the public. Meanwhile, according to Brian Jenkin, what is meant by criminal acts of terrorism is a strategy of violence designed to frighten the general public in the hope of political change. Various acts of terror that occur in Indonesia tend to be carried out by perpetrators who have a radical understanding of religion and are adapted to the goals set by the group of perpetrators. Radicalism is caused by a feeling of dissatisfaction and feeling excluded, resulting in despair. Even though recently there has been less and less news about terrorism, Indonesia must remain alert, remembering that at any time this terror threat could occur. Accountability is a disgraceful act for which the perpetrator must be held accountable. According to Roeslan Saleh, what is meant by criminal responsibility is someone who is held accountable for having committed a criminal act or criminal act. A person who is proven to have committed a criminal act needs to be given firm action so as not to disturb the sovereignty and sense of security of every citizen.

On the other hand, criminal responsibility also emphasizes the importance of measuring an error as a measure for the imposition of sanctions, not as an attempt to impose blame on the perpetrator. This initial understanding is very important considering that many legal scholars still hold opinions about criminal responsibility as a legal theory only. A perspective that is synergized with the ability to analyze the law to produce an understanding of what should be done.

Based on the description above, the author feels interested in studying it in more depth through a legal journal paper entitled "**Criminal Legal Accountability of Actors Who Participate in Terrorism Crimes in Indonesia**".

#### **Formulation of the problem**

From the background description above, the problem formulation that will be studied in this paper is:

1. What are the factors that cause perpetrators to commit <sup>8</sup> criminal acts of terrorism in Indonesia?
2. What is <sup>8</sup> the form of criminal legal accountability for perpetrators who participate in criminal acts of terrorism in Indonesia?

## RESEARCH METHODS

According to expert Sugiyono's opinion, what is meant by research is business scientific to search for data with a specific aim to solve a problem. Meanwhile, the research method itself is defined as a systematic description of the stages of a legal object. Both science, dogmatic rules, and the implementation and response of society to the existence of law. This scientific work <sup>40</sup> uses a type of normative legal research which is also known as doctrinal <sup>26</sup> legal research which uses a statutory approach and a conceptual approach . In this research, the researcher used library data collection techniques ( *library research* ), namely by reviewing information related to the focus of the problem sourced from various writings required by the researcher. Next, it is described in a qualitative descriptive manner in order to obtain a picture that can be understood clearly and answer the problem formulations in this research.

## DISCUSSION

### Factors that cause perpetrators to commit criminal acts of terrorism in Indonesia

Indonesia is an archipelagic country formed from various ethnicities, ethnic groups that have different languages, religions and cultures. This difference makes Indonesia known as <sup>2</sup> the unitary state of the Republic of Indonesia (NKRI). As a nation that has a national basis of 4 (four) national pillars, Indonesia must continue to uphold <sup>21</sup> Pancasila, the 1945 Constitution, the Republic of Indonesia and Bhinneka Tunggal Ika. Pancasila is the identity and identity of the Indonesian nation. Experience shows that Pancasila often experiences various threats and betrayals carried out by groups of people. However, the fact is that until now Pancasila still stands firmly <sup>41</sup> as the basis of the state and state ideology. Serious threats and terror that often arise come from several mass organizations that are anti-Pancasila. They want Pancasila to be replaced with another ideology and the Republic of Indonesia to be replaced by a caliphate state. This happens because they consider Pancasila to be infidel.

Terrorism is defined as political violence carried out by individuals, groups, or countries to create feelings of terror and helplessness in a population, with the aim of

influencing a decision-making process or changing behavior. Terror or terrorism is very synonymous with violence. Terror is a threat that must be destroyed because it is very dangerous and threatens the safety of humanity. It is appropriate for the perpetrators of this inhumane act of terrorism to be given appropriate punishment so that it can provide a deterrent effect.

<sup>6</sup> Pancasila as the ideology of the Indonesian nation is of course expected to be able to solve the problem of terrorism in Indonesia. Because Pancasila is a guide, <sup>38</sup> a way of life for the Indonesian people in acting and doing <sup>13</sup> in the life of the nation and state. The emergence of terrorists is of course triggered by various factors, including:

- 1) Abuse of religion by exploiting the masses. In this case, terrorist groups usually take advantage of mass ignorance about religion as a tool to achieve their personal, misleading goals;
- 2) Feelings of hopelessness due to poverty . Someone with a psychological condition like this <sup>3</sup> is very vulnerable to being provoked. Because people who feel neglected in society <sup>3</sup> will easily be given suggestions to express their anger in violent ways to gain attention from the surrounding community and the government in power;
- 3) Wrong association. Terrorists can develop if they have many members. They always influence and take advantage of people to get into the wrong company. The method is to provide understandings that are wrong but according to them are correct;
- 4) There is a nature that wants to form a new country by liberating its own country;
- 5) State problems are usually triggered by feelings of injustice and inequality felt by a country that has similarities, thus triggering feelings of hatred within the perpetrators;
- 6) Unemployment. To expand their terrorist network, they usually target the unemployed by promising or luring large gifts or rewards. And we need to know that the most dominant and most frequently expressed promise is martyrdom. Because they believe that martyrdom is a very noble death and is blessed by God; And
- 7) There is a violation of human dignity. This arises if there is discrimination between ethnicities or groups in society. Groups are treated unequally because their skin color and religion are different.

#### **Forms of Criminal Law Accountability for Actors Who Participate in Terrorism Crimes in Indonesia**

<sup>7</sup> In the preamble to the 1945 Constitution of the Republic of Indonesia, the ideals of the Indonesian nation are stated, <sup>5</sup> namely protecting the entire Indonesian nation and all of Indonesia's blood, promoting general welfare, making the life of the nation intelligent and

participating in implementing world order based on freedom, eternal peace and justice. social. To achieve these goals and maintain the continuity of national development, it is very necessary to increase prevention of things that disturb national stability. One of them is preventing acts of terror that insult human values and religious norms. This is done so that terrorist activities do not enter the life of the nation and state of the Republic of Indonesia. Because terrorist activities have a very negative impact on politics, economics, social affairs, public order and security. By implementing this strategy to prevent and eradicate terrorism, it is hoped that our social and cultural order will remain harmonious without any changes

Crime is a tool that functions to prevent the occurrence of a crime with the aim of maintaining social order. Criminal or punishment is a form of suffering that is deliberately given by a judge to someone who has made a mistake because he is proven to have committed a violation related to the public interest as regulated in the criminal law. The definition of crime according to expert Sudarto is suffering that is intentionally imposed on a person who commits an act that meets certain conditions. Meanwhile, according to expert Roeslan, what is meant by crime is a form of reaction to an offense that the state deliberately inflicts on the perpetrator of the offense .

A criminal act is an act where the perpetrator can be subject to criminal punishment. According to Simons, what is meant by a criminal act is an act ( *handeling* ) which is punishable by law, is contrary to the law ( *onrechtmatig* ) and is carried out with a mistake ( *schuld* ) by someone who can be held responsible. The elements of criminal liability include:

- The existence of a criminal act;
- Done based on one's own will;
- The perpetrator is aware of the actions he has committed and the consequences of his actions.

Criminal liability is closely related to criminal acts that have been committed by someone. In criminal law, there is a distinction between the elements of a criminal act and the person who commits the criminal act. People who have committed criminal acts cannot necessarily be held responsible for what they have done. However, a person who has been given a criminal sanction has been confirmed that he has committed a criminal act and can be held accountable. So to ask for criminal responsibility for what someone has done, the element of fault is the key to the coverage itself . Responsibility for actions refers to a person's responsibility for the actions he or she commits. Criminal liability in the common law system is always associated with *menstruation* and *punishment* . Accountability has a relationship with

society. The relationship is accountability which functions as social control in society so that criminal acts do not occur. . Basically, the ability to take responsibility is one part of the elements of error. Meanwhile, errors consist of several elements, including:

- Able to be responsible;
- Intentional or negligent;
- There is no excuse for forgiveness; And
- Is against the law

Settlement of cases <sup>25</sup> related to criminal acts of terrorism is always guided by Article <sup>36</sup> 25 of Law of the Republic of Indonesia Number <sup>4</sup> Law of the Republic of Indonesia Number 5 of 2018 concerning Amendments to Law Number 15 of 2002 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 Regarding the Eradication of Criminal Acts of Terrorism. <sup>43</sup> Eradication of Criminal Acts of Terrorism. And <sup>14</sup> the procedural law currently in force in Indonesia is Law of the Republic of Indonesia Number 8 of 1981 concerning the Criminal Procedure Code (KUHP). In fact, the implementation of special laws must not be contrary to the <sup>34</sup> principles of criminal law and procedural law. However, in fact, in the law there are several articles that deviate. An example is the article that discusses human rights for <sup>18</sup> perpetrators of criminal acts of terrorism. If a perpetrator of a special crime wants to be given a reduced sentence, he should first look for a basis that can be used as a reference in granting a reduced sentence related to human rights. The presence of law is a system. For this reason, when discussing a law, it is best to start by discussing the legal system itself. Because no matter how the presence of law constitutes a system, it will be subject to the limitations and characteristics of that system.

<sup>20</sup> The law on eradicating criminal acts of terrorism is a special law. In Article 6 of <sup>1</sup> Law of the Republic of Indonesia Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism, it states that "Any person who deliberately uses violence or threats of violence which creates an atmosphere of terror or widespread fear of people, causing mass victims by means of depriving someone else of their freedom or loss of life and property or causing damage or destruction to vital strategic objects, the environment or public facilities or international facilities, they will be punished with imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years. , life imprisonment or death penalty".

Acts of terrorism are also one of the causes of environmental damage. The penalties for which are regulated in Article 7 of <sup>1</sup> Law of the Republic of Indonesia Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism, states that: "Every person who

deliberately uses violence or threats of violence with the intention of creating an atmosphere of terror or widespread fear of people or causing mass casualties by depriving others of their freedom or loss of their lives or property or causing damage or destruction to vital strategic objects or the environment or public facilities or international facilities, they will be punished with a maximum imprisonment of life." .

In Article 8 of Law of the Republic of Indonesia Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism, it states that "A person who illegally imports or controls into Indonesia explosives or firearms without permission from the relevant party is intended for the purposes of criminal acts of terrorism. then it is punishable by the death penalty or life imprisonment or imprisonment for a minimum of 3 (three) years and a maximum of 20 (twenty) years.

In Article 9 of the Law of the Republic of Indonesia Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism, it states that "For those or people who deliberately and unlawfully trade in key materials which have the potential to be used as explosives and then used in criminal acts of terrorism then is threatened with imprisonment for a minimum of 2 (two) years and a maximum of 7 (seven) years."

In Article 10A paragraph (2) and paragraph (3) it is explained that if it is proven that the sale of potential materials or components as intended in paragraph (2) is proven to be used in a criminal act of terrorism then the prisoner will be sentenced to a minimum of 4 (four) years and a maximum of 15 (five) years. fifteen) years in accordance with Law of the Republic of Indonesia Number 5 of 2018 concerning Eradication of Criminal Acts of Terrorism.

For people who deliberately provide assistance or convenience to perpetrators of criminal acts of terrorism by giving or borrowing money or goods or assets to perpetrators of criminal acts of terrorism, harboring perpetrators of criminal acts of terrorism and concealing information including criminal acts of terrorism, they will be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years. Because providing assistance is an effort to provide assistance both before and during a criminal act of terrorism. Meanwhile, convenience is the act of providing assistance after a crime has been committed.

## CONCLUSION

From the descriptions of the results of the discussion of the problem formulation above, the author draws the following conclusions:

1. The factors that cause perpetrators to commit criminal acts of terrorism in Indonesia are the abuse of religion by exploiting the masses, the factor of despair due to poverty, the

factor of wrong relationships, the factor of wanting to form a new country, the factor of unemployment and the factor of violation of dignity.

2. The form of criminal law responsibility for perpetrators who participate in criminal acts of terrorism in Indonesia is subject to Article 6 of the Law of the Republic of Indonesia Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism, namely "Every person who deliberately uses violence or threats of violence which creates an atmosphere of terror or widespread fear of people, causing mass casualties by taking away freedom or loss of life and property of other people or causing damage or destruction to vital strategic objects, the environment or public facilities or international facilities, then be punished with a minimum imprisonment 5 (five) years and a maximum of 20 (twenty) years, life imprisonment or the death penalty."

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