

The Role Of The New Criminal Code As An Effort To Eradicate Criminal Acts Of Terrorism In Indonesia

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Abstract

Terrorism is a serious threat faced by countries and nations, including Indonesia. Terrorism is considered a crime against humanity, an international crime that endangers world security and peace, and harms the welfare of society. One of the efforts to overcome the threat of terrorism is through the implementation of the new Criminal Code (KUHP) which was formalized through Law Number 1 Year 2023. This new Criminal Code replaces the old Criminal Code that has been in effect since the Dutch East Indies colonial period. This study aims to analyze the role of the new Criminal Code in efforts to eradicate criminal acts of terrorism in Indonesia. The research method used is legal research with a normative juridical approach, with data collection techniques through literature studies. Data analysis is conducted qualitatively, involving the stages of data reduction, data presentation, and conclusion drawing. The result shows that the new Criminal Code has an important role in the effort to eradicate terrorism in Indonesia. The replacement of the old Criminal Code with the new one includes a more comprehensive regulation of the crime of terrorism and in accordance with the demands of modern times, such as providing clearer and more complete definitions, more severe criminal penalties, and firmer and clearer provisions on the prevention of criminal acts. Therefore, the New Criminal Code can be an effective instrument in the effort to eradicate terrorism in Indonesia.

Keywords: *New Criminal Code; Eradication; Criminal Offences*

INTRODUCTION

The State of the Republic of Indonesia in accordance with the Law of the Republic of Indonesia in 1945 article 1 paragraph 3, is declared a State of law, which means that all aspects of life in the territory of the Unitary State of the Republic of Indonesia must be based on law. This principle asserts that actions carried out by citizens and governments must be in accordance with the provisions of the law. Law, in this context, refers to a set of rules and rules governing behavior in common life that are reflected in rights and obligations, and their violation may be subject to punitive sanctions (Lubis & Fahmi, 2021).

Law in Indonesia is divided into two main categories, namely civil and criminal law. Civil law deals with disputes between individuals or legal entities involving violations of certain rights. Meanwhile, criminal law deals with violations of the norms established by the state, with the aim of sanctioning perpetrators of acts that violate criminal law. This criminal law aims to protect the interests of society and the state from harmful acts. The fundamental difference between criminal law and civil law lies in its focus, civil law is aimed at resolving disputes between two parties, while criminal law is aimed at punishing perpetrators of criminal acts (Sari, 2021).

One of the acts included in the criminal act is terrorism. The criminal act of terrorism cannot be considered an ordinary crime or an ordinary criminal act, on the contrary, terrorism can be identified as an extraordinary crime. According to Sulaiman's thoughts in Taskarina (2018) emphasized that terrorism deserves to be categorized as an extraordinary crime because it meets certain criteria. Such actions include endangering absolute human rights values, as well as terrorist attacks that are random, do not selectively select targets, and can befall innocent people. These crimes also always involve elements of violence, often associated with organized crime, and even open up the possibility of the use of advanced technologies such as chemical,

biological, and even nuclear weapons. Therefore, the understanding that terrorism is an extraordinary crime emphasizes the seriousness of the threat faced by states and nations. Since 2000, Indonesia has experienced a series of bombings, including the first Bali bombing on Christmas Eve 2000 that involved 13 cities and killed 16 people and injured 96.

The attacks continued with bomb blasts at the JW Marriott and Ritz Carlton hotels in Jakarta on July 17, 2009, killing nine people and wounding more than 40, including suicide bombers. Armed robberies in Medan in 2010 were linked to Aceh-Banten-West Java terrorist networks, including the JI group. On April 15, 2011, a suicide bombing occurred at the Cirebon City Police Mosque, leaving more than 20 people injured, including Cirebon City Police Chief AKBP Herukoco. The last series of attacks on religious figures occurred in 2018, including the persecution of Umar Basri in January and the murder of Persis, Prawoto, in West Java (Karuniawan, 2023). Considering the fact, terrorist criminal acts can occur without notice and can threaten at any time. Therefore, it is considered a serious threat that must be faced by the state and nation, including Indonesia.

In Indonesia, acts that are considered criminal, including terrorism, are regulated in the Criminal Code (KUHP). The Criminal Code is a legal regulation in Indonesia, first established in 1918 during the Dutch colonial period. At the beginning of the 20th century, the Dutch East Indies government felt the need to have consistent and systematic legal regulations related to criminal acts (Malau, 2023). Over time, the Criminal Code underwent several revisions and changes.

On January 2, 2023, the President together with the House of Representatives of the Republic of Indonesia passed a new Criminal Code through Law Number 1 of 2023. This new Criminal Code replaces the old Criminal Code that has been in effect since the Dutch East Indies colonial era. Although some articles of the new Criminal Code still pose a critical note, these changes reflect important efforts in updating the criminal law enforcement space in Indonesia (Magala, 2023). Articles related to terrorism in the new Criminal Code are regulated in Articles 600, 601, and 602. Nevertheless, the implementation of the new Criminal Code is still the subject of evaluation to ensure its effectiveness in dealing with criminal acts, including terrorism.

Previous research by Muntafa (2023) which examined the application of conditional death penalty law in the new Criminal Code in connection with the principle of legal certainty, the results of the study showed the urgency of the death penalty can be implemented according to Law of the Republic of Indonesia number 1 of 2023 concerning the criminal code, after behaving well with probation for 10 (ten) years, obtaining approval from the President after obtaining judgment of the Supreme Court, then the sentence can be changed to life imprisonment. The granting of the conditional death penalty as in Article 100 paragraph (4), there is a phrase "may", this will actually provide an uncertainty when it can be replaced or not the death penalty becomes a life sentence. This is too long the time limit for criminal probation, then the judicial process does not have certainty about the verdict obtained and has not been clearly regulated regarding the deadline for the issuance of the presidential decree.

Another study by Muhamad (2023) on the transformation of the death penalty in the new Criminal Code (KUHP) shows that the death penalty still exists in the Criminal Code, as well as outside the Criminal Code, due to the support of the Indonesian government through legal political policies. Although Law No.1 of 2023 on the Criminal Code lists the death penalty as an alternative punishment with a special nature, the drafters of the Criminal Code consider this as an effort to protect the community. Its application is directed selectively to protect the interests of individuals, namely perpetrators of criminal acts. This research raises the need for counseling and informing the public regarding the death penalty in the new Criminal Code. The novelty of this research lies in the analysis of the role of the new Criminal Code in efforts to eradicate criminal acts of terrorism in Indonesia. The results of the study are expected to present a

comprehensive picture of the contribution of the new Criminal Code in tackling terrorism in Indonesia. This research is expected to provide valuable input for the government in developing strategies to eradicate criminal acts of terrorism in Indonesia. In addition, the results of this study can also be used as an important reference for future studies related to efforts to eradicate criminal acts of terrorism.

RESEARCH METHODS

This research uses legal research methods with a normative juridical approach. The normative juridical legal approach or normative legal research is basically an activity that aims to examine various internal aspects of positive law in order to solve the problems in it. This view arises as a result of the belief that law is an autonomous institution that has no connection with other social institutions (Benuf & Azhar, 2020).

This research was conducted by analyzing laws and regulations, legal literature, and the results of previous research. The data collection technique used in this study is a literature study, where researchers collect various materials relevant to research from books, journals, scientific articles, literature, mass media reports, and laws and regulations. The data collection process is carried out by describing and describing the information found. Furthermore, the collected data is analyzed in three stages, namely data reduction, data presentation, and conclusions.

RESULT AND DISCUSSION

Terrorism is a crime against humanity (*Crime Against Humanity*), and is a serious threat to the sovereignty of every country because terrorism is an international crime that poses a danger to security, world peace and is detrimental to the welfare of society. It needs to be eradicated in a planned and sustainable manner so that people's human rights many can be protected and upheld (Wardana & Ali, 2019). Terrorism is all forms of crime in the form of violence to create fear against civilian interests and is aimed directly at the state, or against certain people, and/or against the wider community to achieve certain political goals (Aji, 2013).

Terrorism in all its manifestations is a serious crime and threatens human values, disrupts the public safety of people and goods and is often directed at state or military/security defense installations, as well as at personifications who run state institutions such as heads of state and government in general. , vital and strategic objects as well as other public centers (Zaidan, 2017). Acts of terrorism always begin with the spread of radical terrorist ideology. The radical ideology of terrorism is an understanding that allows the use of violent methods or threats of violence to achieve goals related to politics, economics or other matters which result in the creation of widespread fear in society or mass casualties or material casualties Rahanar (2023), acts of terror usually have the following characteristics:

1. Terrorists are motivated by a strong ideology.
2. The perpetrator carried out coercive intimidation.
3. Carrying out systematic killing and destruction as a means to a certain end.
4. Terror targets are selected, even though determining the targets is done in secret, the aim of the implementation is to gain publicity.
5. Victims are not a goal but a means to create fear for many people.
6. Even though it is explicit, the message of terror is quite clear.

Several causes of the emergence of acts of terrorism, according to Yulia in Sumardewi (2012), include:

1. Economic factors, this factor is the reason for the emergence of terrorism because of the influence of poverty in society which can cause people to commit violence which then leads to acts of terrorism.
2. Legal Factors. The lack of maximum law enforcement in a country due to the impartiality of law enforcement officials and the government towards lower class people rather than upper class society has led to the emergence of groups that carry out acts of resistance and protest.
3. Political Factors. The influence and belief in political ideology sometimes causes a group of people to take actions that can violate a country's rules or regulations. In carrying out their actions, they usually carry out violence and acts of terror against civilians and the government, with the aim of changing the ideology of the country concerned (Lindawaty, 2018).
4. Social Factors. The existence of a sense of injustice in society has led to the emergence of ideas from several groups who believe that the government cannot improve the welfare of society and has led to acts of violence as part of conveying people's aspirations.
5. Religious Factors. One of the causes of the emergence of terrorism in Indonesia is due to the existence of Jemaah Islamiyah (JI), which is a terrorist network in Southeast Asia. This terrorist network emerged because of the organization's radical and extreme religious thinking. Jemaah Islamiyah is trying to develop radical religious thought by teaching people that jihad is important and making these people followers of the terrorist network itself.

Efforts to prevent criminal acts of terrorism must involve various parties who have the potential to assist efforts to overcome criminal acts of terrorism. The involvement of various parties outside State institutions is also an important concern to consider, such as involving religious community organizations or society in general (Mafazi & Bahroni, 2021). Thus, legal supremacy means optimizing the role of law in development, providing guarantees that the national development agenda runs in an orderly manner, the consequences of the steps taken can be predicted (*predictability*), which is based on legal certainty (*rechtszekerheid*), expediency, and justice (*gerechtigheid*) (Suparji, 2021). In Indonesia, law is one of the preventive and repressive efforts in preventing terrorism. According to Saputra (2022), preventive and repressive law enforcement efforts are carried out in the form of:

1. Non-Penal Non-penal efforts are a form of crime prevention, which is carried out before the crime occurs, so this effort is better known as preventive or preventative efforts. This should take priority over repressive efforts. It is held to prevent violations of the law by the public and this task is generally given to the executive body and the police.
2. Penalty is carried out if preventive efforts have been carried out but there is still a violation of the law. In this case, the efforts made were repressive by law enforcement officials who were given judicial duties. Repressive law enforcement at the operational level is supported by and through various institutions that are organizationally separate from one another, but remain within the framework of law enforcement.

Efforts to eradicate and prevent criminal acts of terrorism that are important to pay attention to are by observing the legal umbrella for efforts to eradicate criminal acts of terrorism as contained in Law Number 15 of 2003 in conjunction with Law Number 5 of 2018. In the provisions of Law Number 15 In 2003 in conjunction with Law Number 5 of 2018, several articles were formulated regulating criminal threats (criminal sanctions) against anyone who commits a criminal act of terrorism within the territory of the Unitary State of the Republic of Indonesia (Abdullah, 2021). Law Number 15 of 2003 is a regulatory and statutory policy that stipulates the stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law. Law Number 15 of 2003 is a legal product in Indonesia which specifically regulates provisions regarding countering terrorism in Indonesia. Therefore, the legal framework for eradicating terrorism in Indonesia is included in the criminal law framework (Kurniawan, 2023).

The crime of terrorism is a pure criminal act (*mala perse*) which is distinguished from administrative criminal law (*mala prohibita*). With this statement, it is absolutely necessary to enforce law and order consistently and continuously (Komariah, 2017). Criminal provisions for perpetrators of terrorism as contained in Article 6 of Law no. 5 of 2018 emphasizes that the criminal threat for perpetrators of terrorism is 5 to 20 years in prison, life imprisonment, up to the death penalty. Meanwhile, article 10A regulates in more detail regarding crimes that are related to acts of terrorism, such as crimes for people who carry, store, transport or trade weapons that will be used to carry out acts of terrorism. The punishment varies, from 2 years, 3 years, 7 years, to the death penalty. It all depends on the person's level of involvement in the criminal act of terrorism (Miski, n.d.).

Thus, the new KHUP has an important role as an effort to eradicate terrorism in Indonesia. Terrorism is a crime against humanity that has a serious threat that is large in scope. Indonesia as a legal state has a law regarding terrorism which is contained in Number 15 of 2003, which is a regulatory and legislative policy that stipulates the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law.

CONCLUSION

Terrorism is considered a crime against humanity and is a serious threat to the sovereignty of countries, as well as detrimental to the welfare of society globally. Therefore, eradicating terrorism is an urgent need to protect the human rights of many people and maintain world peace. Indonesia, which has been the target of terrorist attacks in recent years, is aware that acts of terrorism can occur without notice and at any time, so it is considered a serious threat that must be addressed. In Indonesia, terrorist crimes are regulated in the Criminal Code (KUHP). In 2023, the Criminal Code will be updated through Law Number 1 of 2023, which provides an important role in efforts to eradicate terrorism.

The new role of the Criminal Code is considered a significant step because it includes more comprehensive regulation of criminal acts of terrorism, in line with modern-day demands. This update includes clearer and more complete definitions, heavier criminal penalties, as well as stricter and clearer provisions regarding the prevention of criminal acts of terrorism. As a legal state, Indonesia has laws related to terrorism, which are stipulated in Number 15 of 2003. This law is a regulatory and legislative policy that stipulates government regulations in lieu of Law Number 1 of 2002 concerning the eradication of criminal acts of terrorism as law. Replacing the old Criminal Code with a new one is a proactive step to face the challenges of terrorism by providing a legal framework that is more effective and in line with current conditions.

REFERENCES

- Abdullah, M. Zen. (2021). Analisis Yuridis Terhadap Undang-Undang Nomor 15 Tahun 2003 jo Undang-Undang Nomor 5 Tahun 2018 Tentang Pemberantasan Tindak Pidana Terorisme Dalam Hubungan Dengan Hak Azasi Manusia. *Legalitas: Jurnal Hukum*, 13(1), 26–35.
- Aji, Ahmad Mukri. (2013). Pemberantasan Tindak Pidana Terorisme di Indonesia (Analisis Terhadap Undang-Undang Nomor 15 dan 16 Tahun 2003 Berdasarkan Teori Hukum). *Jurnal Cita Hukum*, 1(1).
- Benuf, Kornelius, & Azhar, Muhamad. (2020). Metodologi penelitian hukum sebagai instrumen

- mengurai permasalahan hukum kontemporer. *Gema Keadilan*, 7(1), 20–33.
- Karuniawan, Fathony. (2023). Politik Hukum Dalam Penanganan Dan Pemberantasan Tindak Pidana Terorisme Di Indonesia. *JURNAL DARUSSALAM: Pemikiran Hukum Tata Negara Dan Perbandingan Mazhab*, 3(1), 20–49.
- Komariah, Mamay. (2017). Kajian tindak pidana terorisme dalam perspektif hukum pidana internasional. *Jurnal Ilmiah Galuh Justisi*, 5(1), 97–112.
- Lindawaty, Debora Sanur. (2018). Upaya Penanggulangan Terorisme ISIS di Indonesia. *Jurnal Politica Dinamika Masalah Politik Dalam Negeri Dan Hubungan Internasional*, 7(1).
- Lubis, Asifah Elsa Nurahma, & Fahmi, Farhan Dwi. (2021). Pengenalan dan Definisi Hukum Secara Umum (Literature Review Etika). *Jurnal Ilmu Manajemen Terapan*, 2(6), 768–789.
- Mafazi, Agung, & Bahroni, Achmad. (2021). Pencegahan tindak pidana terorisme di Indonesia. *Jurnal Cakrawala Hukum*, 12(2), 121–128.
- Magala, Anugrah Sahtia. (2023). Akomodasi Hukum Yang Hidup Dalam Kuhp Baru Indonesia Menurut Perspektif Hukum Progresif. *Spektrum Hukum*, 20(2), 115–127.
- Malau, Parningotan. (2023). Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) Baru 2023. *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 5(1), 837–844.
- Miski, Miski. (n.d.). Tindak Pidana Terorisme Dalam Perspektif Hukum Pidana Islam Dan Hukum Positif. *Al-Mazaahib: Jurnal Perbandingan Hukum*, 9(1), 83–110.
- Muhamad, Marchell Nabil. (2023). Transformasi Pidana Mati Dalam Kitab Undang-Undang Hukum Pidana Baru. *Jurnal Mahasiswa Indonesia*, 1(01).
- Muntafa, Parhan, & Mahmud, Ade. (2023). Penerapan Hukum Pidana Mati Bersyarat Dalam KUHP Baru Di Hubungkan Dengan Asas Kepastian Hukum. *Jurnal Preferensi Hukum*, 4(2), 130–136.
- Rahanar, Abdul Karim, & Gultom, Elfrida Ratnawati. (2023). Penanggulangan Tindak Pidana Terorisme Di Indonesia Dengan Pendekatan Penal Dan Non Penal. *PALAR (Pakuan Law Review)*, 9(1), 14–25.
- Saputra, Sulung Bayu, & Amsori, Amsori. (2022). Upaya Preventif Dan Represif Terhadap Tindak Pidana Terorisme Di Indonesia. *Jurnal Ilmiah Publika*, 10(2), 249–261.
- Sari, Indah. (2021). Perbuatan Melawan Hukum (PMH) Dalam Hukum Pidana Dan Hukum Perdata. *Jurnal Ilmiah Hukum Dirgantara*, 11(1).
- Sumardewi, Luh Ashari. (2012). Upaya Indonesia dalam Memberantas Terorisme di Era Susilo Bambang Yudhoyono. *Denpasar Bali: Universitas Udayana*.
- Suparji, Suparji. (2021). Mewujudkan Pembaharuan Kuhp. *Jurnal Magister Ilmu Hukum*, 1(1), 34–41.
- Taskarina, Leebarty. (2018). *Perempuan dan terorisme-kisah perempuan dalam kejahatan terorisme*. Elex Media Komputindo.
- Wardana, Riad Tia, & Ali, Dahlan. (2019). Upaya Pencegahan Tindak Pidana Terorisme oleh Direktorat Intelijen Keamanan (Suatu Penelitian di Kepolisian Daerah Aceh). *Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana*, 3(3), 487–497.
- Zaidan, Muhammad Ali. (2017). Pemberantasan Tindak Pidana Terorisme (Pendekatan Kebijakan Kriminal). *Law Research Review Quarterly*, 3(2), 149–180.