

# Prevention of Radicalism and Terrorism in Indonesia Through Law Enforcement in Terrorism Law

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## **Abstract**

To protect its citizens from terrorism, the Indonesian government formulated a law to eradicate the act of terrorism. One of the reasons behind the birth of the Act was the bombing tragedy at Sari Club and Paddy's Club, Kuta Legian, Bali on October 12, 2002. This research aims to analyze the prevention of radicalism and terrorism in Indonesia through law enforcement in terrorism law. This research used a qualitative method where primary data were gained from observation, and secondary data were gained from various documents and media. In addition, this study also analyzes the legal perspective, namely the newly enacted terrorism law in 2018. This research found that terrorism crime is the result of the accumulation of several factors, not only by a psychological factor, but also economic, political, religious, sociological, and many others. The main problem in combating terrorism is about the duration of arrest and detention in the Bill on the Eradication of Criminal Acts of Terrorism. There is a difference in the duration of arrest and detention from the Criminal Code, Law no. 15 of 2013 on Combating Terrorism Crime and the Bill on the Eradication of Criminal Acts of Terrorism. The longer period increases the likelihood of human rights violation.

*Keywords: terrorism, radicalism, crime, law, Indonesia*



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## Introduction

Terrorism is an extraordinary crime that concerns the world today, especially in Indonesia. The recent terrorism in Indonesia has an ideological, historical, and political linkage and is part of the strategic environmental dynamic at the global and regional level. Although the act of terrorism that have occurred in various regions in recent years are mostly done by Indonesians and only a few outside actors, it cannot be denied, however, that the current act of terrorism is a combination of domestic actors and those who have transnational network<sup>1,2,3</sup>.

In order to prevent and combat terrorism, since long before the events that have been categorized as terrorism occurred in the world, the international and regional communities and various countries have tried to conduct criminal policy with criminalization systematically and comprehensively of the deed that categorized as terrorism<sup>4,5,6</sup>.

It is not merely an act of terror, but the criminal act of terrorism also violates human rights as a basic right which is inherent in human nature, namely the right to live and the right to feel safe and comfortable. Recognition of human rights is one of the manifestations of the concept of a legal state regulated in the provision of Article 1 Paragraph (3) of the 1945 Constitution. Prior to the amendment to the 1945 Constitution, the recognition of human rights is regulated in the provision of Article 28 of the 1945 Constitution. Whereas on post-amendment to the 1945 Constitution, the regulation on human rights is increasingly clarified and detailed as provided for in Article 28 and Article 28A-28J of the 1945 Constitution.

In seeking the fulfillment and protection of citizens' human rights from terrorism crime, the Indonesian government felt the need to form a Law on the Eradication of Criminal Act of Terrorism by preparing Government Regulation No. 1 of 2002 which on April 4, 2003, passed into Law of the Republic of Indonesia with No. 15 of 2003 on Combating Terrorism Crime<sup>7,8,9</sup>.

One of the reasons behind the birth of the Act was the bombing tragedy at Sari Club and Paddy's Club Kuta Legian Bali, October 12, 2002, which should be classified as the biggest crime in Indonesia from a series of terror. The tragedy is clear proof that terror is a very cruel act that does not take into account, disregard and genuinely ignore human values. Humans who do not know anything about the intent, mission, or purpose of the terrorists have been innocent victims. The innocent people only become the cost of human savagery that is not

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won and is not superseded by acts of terror that occurred in Legian Bali. It reminds the public of the Black Tuesday incident, a bombing that destroyed the symbol of US superpower capitalism in the form of World Trade Center Tower (WTC) and US defense symbol, the Pentagon. The global public draws a common thread that the Bali tragedy and the US WTC case are the product of a terrorist movement that intends to undermine global peace, destroying the values of civilization, and the degrading of Human Rights.

## Literature Review

### *Radicalism and terrorism*

The term of radicalism is not rarely interpreted differently among interest group. Within the sphere of religious groups, radicalism is a religious movement that attempts to completely overhaul the existing social and political order by using the path of violence<sup>10,11</sup>. Religious radicalism departs from a political movement based on the most fundamental and fully literary doctrine free from compromise, taming, and reinterpretation<sup>12</sup>. While in the study of social science, radicalism is defined as a view that wants to make a fundamental change in accordance with its interpretation of social reality or ideology it embraces. Based on the study of the meaning of radicalism, radicalism is a neutral concept and not *pejorative* (harassing). Because radical change can be achieved through peaceful and persuasive ways, it can also be violent<sup>13</sup>.

Afdal, *et.al.*<sup>14</sup> state that fundamentalism is seen as an understanding of the need to return to the foundation of religion and use these basics as community life guidance. Therefore, the meaning of radicalism is not single but depends on the context. In the context of terrorism, radicalism is violence. But in the context of thought or ideas radicalism is not violence, so it does not matter so far as not followed by an act of violence. Theoretically, it explains how the shift from radicalism to terrorism moves from the concept of fanaticism and radicalism. In expressing, fanaticism and radicalization can appear in various forms, but generally, it is directly proportional to the reaction and the attitude of the opposing group. The action and reaction between the two opposite groups may be different but are generally close to the same degree and pattern. Violence will be fought with violence, and one of its forms can be a form of terrorism movement.

Meanwhile, the term of terror and terrorism have existed for a long time, namely during the Roman Empire in the first half of the first

century AD which at that time was ruled by Tiberius and Caligula. In addition, in the seventeenth century, the kingdoms of Europe, especially Spain suppressed Islamic organizations with the threat of violence, to follow the will of the kingdom or out of the land of Andalusia. Nevertheless, although conventional, the term of terror and terrorism became popular in the eighteenth century. In connection with that, Afdal, *et.al.*<sup>14</sup> states that terrorism is not new. Terrorism occurs all the time, which is nurtured and bred by injustice and oppression, and is associated with racial, sex, political or religious extremism, and sometimes a combination of more than extremism. However, the recent form of terrorism is more likely to be something related to religious fundamentalism<sup>15</sup>.

The word “terrorist” and “terrorism” come from the Latin word “*terrere*” which more or less means to shake or vibrate. The word “terror” can also cause horror<sup>16</sup>. Terrorism is a crime that cannot be classified as a common crime; academically, terrorism is categorized as an extraordinary crime and is also categorized as a crime against humanity. Considering the category, the eradication certainly cannot use ordinary ways. <sup>17</sup> Terrorism as a social phenomenon has evolved along with the development of human civilization. Ways used to do violence and fear are also increasingly sophisticated along with the development of modern technology. The process of globalization and mass culture becomes a fertile ground for the development of terrorism. The ease of creating fear with high technology and the development of information through extensive media, making network and act of terror more easily achieve its goals. According to Muladi<sup>4</sup>, based on its development, the forms of terrorism can be detailed as follows:

- a. Before World War II, almost all acts of terrorism consisted of political assassination against government officials;
- b. Terrorism in the 1950s that began in Algeria was carried out by the FLN that popularized “random attack” against innocent civilians. This was done to counter what they call Algerian Nationalist as “state terrorism”. According to them, murder with the aim of getting justice is not a matter of concern; even the target is innocent; and
- c. Terrorism that emerged in the 1960s and was famous for the term “media terrorism”, in the form of random attack against anyone for the purpose of publicity.

Garner<sup>18</sup> gives the definition of terrorism as: “The use or threat of violence to intimidate or cause panic, esp. as a means of affecting political conduct.” Terrorism is a notion that the use of violent and fearful means is legitimate to achieve the goal. Associated with terrorism, known as the so-called terror process, which, according to Syafaat<sup>19</sup> has three elements, namely:

- a. Act or violent threat;
- b. The emotional reaction to the terrible fear of the victim or potential victim; and
- c. Social impacts that follow violence or the threat of violence and fear that comes later.

Terrorism is a notion that using violent ways and causing fear are a legitimate way to achieve a goal<sup>19</sup>. Thus, according to Nasir Abas<sup>20</sup>, terror is an evil reaction that is considered “eviler” by the perpetrator, so it is not interactionism and can be grouped into hate crimes. Terrorism can be interpreted as the use or threat of using planned, prepared and launched physical violence unexpectedly against a direct target, which is usually noncombatant to achieve a political goal. The definition of terrorism in the long formulation is proposed by James Adams<sup>21</sup>, namely:

“Terrorism is the use or threat of physical violence by individuals or groups for political purposes, either for the sake of or against the existing powers, if the acts of terrorism are intended to shock, paralyze or intimidate a bigger target group than its immediate victims. Terrorism involves groups seeking to overthrow certain regimes to correct group/national grievances, or to undermine the existing international political order “.

According to Hafid Abbas<sup>22</sup>, terrorism is the use of force or unlawful violence against a person or property to intimidate or suppress a government, civil society, or part thereof, to impose a social or political purpose.

Indonesia and various countries in the world have been willing to criminalize terrorism long before the event of September 11, 2001, which destroyed the World Trade Center in New York, USA and bomb explosion in Kuta, Bali, on October 12, 2002. Both events were conducted by using violence or violent threat against the safety of the human souls indiscriminately against the victims. Terrorism is an extraordinary crime that requires also handling by utilizing extraordinary measure.

## **Security**

Security, according to Suryohadiprojo<sup>23</sup>, is to protect from threat originating from within the country. Likewise, Born<sup>24</sup> defines security as an action to combat an offensive from society. According to Born<sup>24</sup>, pursuant to articles 41 and 42 of the UN charter, the security measure is directed against the pressure of the riot (peace breaker).

The occurrence of terrorism has broadened the perspective in viewing the complexity of existing threat and influenced the development of the conception of security. The threat to security is no longer merely a military threat but also include political threat, social threat, economic threat, and ecological threat. These problems and threats are then classified as part of non-traditional security issues<sup>25</sup>.

The concept of security itself is derived from the word safe, where simply the term security can be interpreted as an atmosphere free of all forms of threat or danger that cause anxiety and fear. In the traditional study, security is more often interpreted in the context of physical threats. Perwita<sup>26</sup> sums up this tendency with his famous statement, “a nation is in a safe state as long as the nation can’t be forced to sacrifice the values, it deems essential (vital), and if it can avoid war or, if forced to do so, can come out as the winner.”

## **Research Method**

This research uses the qualitative method. This method is chosen based on the purpose of this study that wants to examine and analyze in depth the research phenomenon, namely the prevention of radicalism and terrorism in Indonesia through law enforcement in terrorism law. We consider that the issues concerning radicalism and terrorism, as a form of threat to state security, need to be analyzed through in-depth observation and proper documentation study.

This study consists of primary data which is the result of observation, and secondary data which is a study of various documents and media about the event of radicalism and terrorism that occurred in Indonesia. In addition, this study also analyzes the legal perspective, namely the newly enacted terrorism law in 2018.

For the technique of data validity, we use the source triangulation technique, where the various obtained sources are then compared and checked for validity. Unrelated or non-credible data are then removed or not used as an analysis material.

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## Discussion

### *The crime of terrorism*

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Terrorism is a disaster that made by man (man-made disaster). Generally, terrorism is in the form of organized crime committed by a group of people to pursue political objectives. As a political tool, in its history, terror has been used by both oppressed and oppressive parties. One party has used to mention its allies who commit terror as a freedom fighter and call the other party as a terrorist or saboteur. Philosophically, Hardiman<sup>27</sup> says that terror comes from death. In all objectivity, the causes or consequences, terror is a subjective experience because everyone has their fear threshold. Everyone is afraid of death, but the fear is different, not only by subject but also by the situation. The fear of death cannot only be eliminated but can also be enlarged. This technique is called terrorism and terrorism is the politics of death.

Bomb bombing is one mode of terrorism that has become a common phenomenon in some countries. Terrorism is a transnational crime, organized and even an international crime that has a wide network that threatens national and international peace and security. The Indonesian government is in line with the mandate as stipulated in the Preamble of the 1945 Constitution. It protects the whole Indonesian nation and the entire Indonesian blood sphere, promotes prosperity public, enlightens life of the nation, and participates in maintaining a world order based on freedom and perpetual peace and social justice, is obliged to protect its citizen from any criminal threats whether national or international. The government is also obliged to defend the sovereignty and maintain the integrity and national integrity of any form of threat from both inside and outside. Therefore, it is necessary to uphold law and order consistently and continuously.

The crime of terrorism is a criminal offense which in Dutch criminal law uses the term *strafbaar feit*, sometimes *delict* also derived from the Latin *delictum*. The criminal law of *Anglo-Saxon* countries uses *offense* or *criminal act* for the same purpose. Therefore, the Indonesian Criminal Code is based on Dutch WvS, so the original term is the same as *strafbaar feit*. Nowadays, all laws have used the term of a crime<sup>28</sup>. Attempts to combat terrorism require the hard work of the Indonesian Government through its law enforcement agencies and the participation of the community to prevent and combat terrorism. According to Sudarto<sup>29</sup>, a criminal offense is a basic definition in criminal law and is also a juridical sense. The term criminal offense is used as a substitute

for “*strafbaar feit*” and until now the lawmakers have always used the term criminal offenses in legislation. Dogmatically, the principal issue relating to criminal law is three things:

- a. Prohibited conduct;
- b. The person doing the forbidden act; and
- c. Criminal penalty against the offender.<sup>28</sup>

A criminal act is an act that is prohibited by the rule of law, a prohibition which is accompanied by a threat (sanction) in the form of a specific penalty, for whoever violates the prohibition. It may also be said that a criminal act is an act which is prohibited and threatened by criminal law. It should be remembered that the prohibition is directed to the act (i.e., a circumstance or incident caused by the behavior of the person), while the criminal threat is directed to the person who causes the incident<sup>30</sup>. According to Simons, *strafbaar feit* (literal translation: criminal event) is an act against the law related to someone’s error (*Schuld*) who is capable of being responsible. The error is meant by Simons as a widespread error that includes *dolus* (intentional) and *culpa late* (careless and negligent). From this formula, Simons mixes elements of a criminal act that include act and unlawful nature, act and criminal liability that includes intentional act, negligence, and accountability<sup>31</sup>. According to C.S.T. Kansil and Cristine S.T. Kansil<sup>32</sup>, crime or offense is an act that contains five elements, namely:

- a. There must be a behavior (*gedraging*);
- b. The behavior must be in accordance with the description of the law (*wettelijke omschrijving*);
- c. The behavior is unlawful behavior;
- d. The behavior can be attributed to the perpetrator; and
- e. The behavior is threatened with punishment.

The crime of terrorism is an act that fulfills the elements of a criminal act in Law no. 15 of 2003. The elements of the crime of terrorism contained in Law no. 15 The year 2003 will be discussed in two parts: first, elements of terrorism crime, and second, a criminal act related to terrorism crime.

- a. Any person who deliberately uses violence or threat of violence creates an atmosphere of terror or fear of a widespread or massive victim by expropriating the liberty or loss of life and property of another person, or resulting in damage or destruction of vital objects a strategic or environmental or public facility or an international facility, shall be subject to death penalty or life im-



prisonment or imprisonment of a minimum 4 (four) years and a maximum of 20 (twenty) years. The elements are:

1. Deliberately;
2. Using violence or threat of violence;
3. Creates an atmosphere of terror or fear of people in wide-spread or causing mass casualties by seizing independence or loss of life and property of others; or
4. Causes damage or destruction of a strategic vital object or living environment or public facilities or international facilities.

(Article 6 of Law no. 15 of 2003)

- b. Any person who deliberately uses violence or threat of violence intends or creates an atmosphere of terror or fear of a widespread or massive victim by depriving the liberty or loss of life or property of another person, or to cause damage or destruction of the objects, vital strategic objects, or the environment, or public facilities, or international facilities, are punishable with the maximum imprisonment of a lifetime. The elements are:

*Deliberately*

- Uses violence or threat of violence;
- Intends to:
  - I. Causes an atmosphere of terror or fear of people in wide-spread or
  - II. Causes increase mass casualties by seizing independence or loss of life and property of others or
  - III. Causes damage or destruction of vital strategic objects or living environment or public facilities or international facilities.

(Article 7 of Law no. 15 of 2003)

Article 6 of Law no. 15 The year 2003 above, includes in the “material offense” which is emphasized on the forbidden consequences of loss of life, loss of property, or damage and destruction. As for the damage or destruction of the living environment is the contamination or destruction of the unity of all space with all things, power, circumstances, and living things, including humans and their behaviors, affecting the viability of human’s life and welfare and other creatures. Terrorism has some fundamental features, and among other things is terrorist activity carried out by means of violence (e.g. bombing, hostage, etc.) to impose its will, and it is a means (not an end); the target of attack is

public places or vital objects, such as shopping centers, airports, or stations. The victim is not picky, and their activities are very professional to trace their track. According to Muladi<sup>4</sup>, in the typology of terrorism there are several kinds, among others:

- a. *Epiphenomenal* terrorism (terror from below) with unplanned features neatly, occurs in the context of a fierce struggle;
- b. *Revolutionary* terrorism (terror from below), aimed at revolution or a radical change of the existing system with characteristics are always a group phenomenon, leadership structure, ideology program, conspiracy, paramilitary element;
- c. *Subversive* terrorism (terror from below). politically motivated, pressuring the government to change policy or law, political war with a rival group, removing certain officials who have characteristics done by the small group, can also be individual, unpredictable, sometimes difficult to distinguish whether psychopathologist or criminal; and
- d. *Repressive* terrorism (terror from above or state terrorism), motivated to suppress an individual or a group (opposition) unwanted by oppressors (authoritarian or totalitarian regimes) by means of liquidation with traits evolved into period terror, terror apparatus, secret police, persecution techniques, the spreading of suspicion among the people, and the rides for paranoid leader.

The crime of terrorism as a special crime as a special law means Law No. 15 of 2003 regulates materially and formally all at once so that there are exceptions to the principle generally set forth in the Criminal Code or the Criminal Procedure Cod *lex specialis derogat lex generalis*. The enforcement of *lex specialis derogat lex generalis*, according to Mertokusumo<sup>33</sup>, must meet the criteria:

- a. That the exception to the law is general nature, is carried out by the same rules with itself, namely the law; and
- b. That the exemption is set forth in the special law, so the exclusion applies only to the exclusion declared, and the non-excluded part remains in force as long as it is not incompatible with the enforcement of the special law.

While criminalization of the Criminal Act of Terrorism as part of the development of criminal law can be done in many ways, such as:

- a. Through the evolutionary system in the form of amendments to the articles of the Criminal Code;

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- b. Through the global system through complete arrangement outside the Criminal Code including the specialties of its procedural law; and
- c. The compromise system in the form of incorporating a new chapter in the Criminal Code on the crime of terrorism.

It does not mean that the presence of a special case in crimes against state security means that law enforcement has more or no authority solely to facilitate the proof that a person has committed a crime against state security, but such deviations are due to the much greater is the security of the country that must be protected. Similarly, the arrangement of chapters present in the special rules must be a complete order. In addition to these provisions, Article 103 of the Criminal Code states that all rules including the principles contained in Book I of the Criminal Code also apply to criminal regulation outside the Criminal Code as long as the regulation outside the Criminal Code does not regulate otherwise<sup>34</sup>.

#### *Terrorism as an extraordinary crime*

The terrorist view clearly illustrates how the relationship between terrorism and radicalism is evident, among other things, from the fact that a number of terrorism cases involving individual, group or even organization that is perceived as having a radical ideology. In the case of terrorist attacks that took place in the twin towers of the World Trade Center (WTC) of the United States on September 11, 2001, for example, the United States made Osama bin Laden with his Al Qaeda group who had a radical ideology as the accused perpetrators behind the attack. Similarly, terrorist attack in Indonesia from the Bali Bomb case, there are actors, such as Abdul Aziz alias Imam Samudra alias Qudama who is considered to have a radical ideology.

Terrorism crime is one form of international dimension crime that scares the society. In many countries around the world, there has been a terrorist crime in both developed, and developing countries, the act of terror committed have taken its toll indiscriminately. This led to the United Nations (UN) at its congress in Vienna in Austria in 2000 with the theme of The Prevention of Crime and The Treatment of Offenders, among others, mentioning terrorism as a development of act by violence that needs attention. According to Muladi<sup>4</sup>, terrorism is an extraordinary crime that requires also handling by utilizing extraordinary measures for various reasons:

- a. Terrorism is the act that creates the greatest danger to human rights. In this case the right to live and the rights to be free from fear;
- b. The target of terrorism is random or indiscriminate that tends to sacrifice innocent people;
- c. The possibility of using weapons of mass destruction by utilizing modern technology;
- d. The tendency of negative synergy between the national terrorist organization and international organization;
- e. The possibility of cooperation between the terrorist organization and organized crime both national and transnational;
- f. May compromise international peace and security. Terrorism as a crime has evolved into a cross-country.

Crime occurring within a country is no longer merely seen as the jurisdiction of one country but can be claimed to include jurisdiction over more than one country. According to Atmasasmita<sup>35</sup>, in its later development may lead to a conflict of jurisdiction which may disrupt international relations between interested countries in handling cases of criminal acts that are cross-border territorial. Terrorism crime uses one form of transnational crime that is very threatening to tranquility and peace of the world. Indonesia as a constitutional state, in law enforcement of certain criminal act especially terrorism crime strongly prioritizes the basis of legislation that is characterized by legal certainty and justice. Enactment of Law no. 15 The year 2003, increasingly exposes its weaknesses when applied in field practice.

The meaning of terrorism is shifting and expanding the paradigm that is as an act originally categorized as a crime against state now includes against the acts called a crime against humanity where the victims are innocent people, all done with the violent offense (violence as a goal), violence and threat of violence. The existence of a feeling for fear or intimidating to public and governmental whose ultimate goal is related to the political offense, namely to make a change to the political system prevailing in a country. Such an impact is widespread due to the act of terrorism, it is necessary to make efforts to protect the citizens and the interests of the state by making the signs of national law, one way to ratify the development of international law on countering an act of terrorism<sup>7</sup>.

The crime of terrorism is an extraordinary crime. This “extraordinary” degree is also one of the reasons for the issuance of a Govern-

ment Regulation of anti-terrorism law and its application retroactively for the Bali bombing case. The definition of extraordinary crime is a gross violation of human rights which includes crime against humanity and genocide (in accordance with the Rome Statute). The crime of terrorism is included in an extraordinary crime by reason of the difficulty of disclosure because it is a trans-boundary crime and involves an international network. The development of international crime into the twenty-first century seems to be on the rise and is already a discussion among the international community and has also been made the UN agenda. These developments prove that any local or national crime that has international aspect will always be of concern to the international community, either through the UN or non-UN international agencies<sup>7</sup>.

Terrorism is an act of crime against humanity and civilization that poses a serious threat to the sovereignty of the country, the danger to security, world peace and harms the welfare of society. Terrorism is a well-organized, transnational form of crime and is classified as an extraordinary crime that is indiscriminate<sup>36</sup>. According to Cesare Baccharia in his book *On Crimes and Punishment*, “the true measure of crime is the harm done to society”, applying the criminal law is like slicing its own meat. The meaning of this short sentence, of course, needs to be remembered in the determination of criminal law policy against the eradication of a certain crime, which is considered very harmful to society (extraordinary crime)<sup>37</sup>. However, according to Rummelink<sup>38</sup>, every ruler should be alert and aware that criminal law can only be utilized if existing tools are no worse than deviations from behavior to be overcome.

### *Criminal Law Policy in Countering Criminal Act of Terrorism*

The legal system according to Friedman<sup>39</sup> in the theory of “*Legal System*”, the component of the legal system includes three elements:

- a. The Substance rule of law, encompassing all written and unwritten rules, both material and formal laws;
- b. The structure of the law, encompassing legal institution, legal apparatus, and law enforcement system. The legal structure is closely related to the judicial system implemented by a law enforcement officer, in the criminal justice system, law enforcement application carried out by the investigator, prosecutor, judge and advocate; and

- c. The legal culture is the emphasis of the culture generally, the habits, opinions, a way of acting and thinking that direct the social forces in society.

Regular change through the good legal procedure in the form of legislation or judicial decisions is better than irregular change by violence alone. Since both change and order (regularity) are the twin goals of a developing society, the law becomes a tool that cannot be ignored in the development process.

Law is a tool for maintaining order in society. Given its function, the nature of the law is conservative, meaning the law is preserving and sustaining that has been achieved. Such a function is necessary for every society, including a developing society, because here too there are results that must be nurtured, protected, and secured. However, developing a society that in our definition means a fast-changing society, the law does not have enough function to do so, must also be able to help the process of changing society. An old-fashioned view of the law that emphasizes the function of maintaining order in a static sense, and emphasizing the conservative nature of the law, assumes that the law cannot play a significant role in the process of renewal.

Crime is a universal phenomenon, meaning it is not only a national problem but also a problem that is everywhere. Because crime is harmful in the life of the community, it is necessary for a criminal offense to be sanctioned or punished accordingly, and therefore a process is necessary to establish that an act is a crime by an authorized institution by imposing a criminal sanction. Renewal of criminal law in the concept of criminal politics according to Sudarto<sup>29</sup>, has three meanings, namely:

- a. In a narrow sense, the meaning is the whole principle and method which is the basis of reaction to a criminal offense in the form of a criminal;
- b. In a broad sense, the meaning is the overall function of the law enforcement apparatus, including the working of the court and the police;
- c. In the broadest sense, the meaning is the whole policy, which is done through legislation and official bodies, which aims to enforce the central norms of society “.

The eradication of terrorism in Indonesia is not a matter of law and just law enforcement because it is also related to the social problem of the state, culture, economy, and its relation to the defense of the

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country, there are many ways or efforts that can be done by society and the state to eradicate terrorism and crime prevention others. However, such efforts cannot completely eradicate the crime; it may only reduce its quantity. The policy of combating terrorism according to Hardiman<sup>27</sup> must always be based on several principles, namely:

- a. Protection of civil liberty and the respect and protection of individual rights. Restriction on such democratic rights can only be made against rights that are not included in the *non-derogable rights*, temporarily and in the public interest; and
- b. Limitation and prevention of abuse of power by the state. This can be done by fully applying the principles of checks and balances in the process of formulation and decision-making, the specialization of the functions of the implementing agency and the availability of public accountability mechanisms for policy implementer.

The regulation of terrorism crime includes 2 (two) aspects, namely prevention (*anti*) and eradication (*contra*). In the case of prevention, terrorist activities cannot be done only through legal approach, but they cover all aspects of society. Actions of terror are (usually) motivated by feeling unfair treatment, oppression, and certain belief, so the prevention should be able to eliminate it by realizing justice and liberation from poverty which at the operational level can be done with early detection (*early warning system*). Meanwhile, the counter-terrorism regulation aims to eradicate, expose, and handle cases of terror act and perpetrators in the form of determining the actions included in terror act, handling procedure, from investigation to the judiciary, as well as sanction, threatened to the perpetrators of terror<sup>27</sup>.

Several bombing incidents that occurred in some parts of Indonesia, especially the Bali Bombing, became the background or momentum determining the formation of a legal umbrella that regulates the eradication of act of terrorism. The presence of hundreds of victims, both Indonesian citizens and foreign nationals put Indonesia in a situation of no choice but to seriously cope with terrorism. At the urging of various parties, finally, the government issued Government Regulation no. 1 and Government Regulation No. 2 the Year 2002 on Combating Terrorism Crime<sup>40</sup>. Actually, at that time the House of Representatives has had the Anti-terrorism Bill which is in the discussion phase. Because the discussion took a long time and in order to avoid a legal vacuum, Government Regulation No.1 Year 2002 was passed by the gov-

ernment together with the House of Representatives into law through Act No. 15 In 2003. Apart from being a special law on the criminal material, Law no. 15 The year 2003 is also formal criminal law.

Crime prevention effort is essentially an attempt to secure the community (*social defenses*) so that people can avoid crime or at least control crime that occurs to be within the limits of community tolerance. With regard to the humanitarian and social problem, many efforts have been made to cope. One of the efforts to overcome the crime committed is to use the penal tool as criminal law with a sanction in the form of criminal. Crime prevention using criminal law is the oldest way, as old as human civilization itself<sup>41</sup>. However, this does not mean that the use of criminal as a way to combat crime.

Policy to make good penal code is essentially inseparable from crime prevention objective. So the policy or politics of criminal law is also part of criminal politics, then criminal law politics is synonymous with the meaning of “crime prevention policy with criminal law.” The crime prevention effort with criminal law is essentially also part of law enforcement (especially criminal law enforcement). Therefore, it is often said that politics or criminal law policy is also a part of law enforcement policy. One way to deal with terrorism is by using criminal law (*penal policy*).

### **Conclusion**

Terrorism crime is the result of the accumulation of several factors, not only by a psychological factor, but also economic, political, religious, sociological, and many others. The main problem in combating terrorism is about the duration of arrest and detention in the Bill on the Eradication of Criminal Acts of Terrorism. There is a difference in the duration of arrest and detention from the Criminal Code, Law no. 15 of 2013 on Combating Terrorism Crime and the Bill on the Eradication of Criminal Acts of Terrorism. The longer period increases the likelihood of human rights violation.

In addition, the authority of investigator in arresting, detaining, intercepting phones contained in the Draft Law on Combating Criminal Acts of Terrorism need to be restricted and tightened again in order to avoid abuse of authority and violation of human rights committed by the investigator.



## Notes

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