



BREAKING THE CIRCULATION OF HATE, IMPRISONING THE TERRORISTS

THE CONTAINMENT EFFORT FOR THE SPREAD OF ISIS RADICALISM IN INDONESIA

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Abstract

The Islamic State in Iraq and Syria (ISIS) spreads radical terror and invites people to commit violence to achieve their goals. ISIS also spreads hatred towards other groups contrary to their views based on their exclusive religious understanding. They consider their group to be the most righteous and others to be apostates or infidels, including the state or the government. Therefore, the Indonesian government must be wary of this group. Thus, the Indonesian government has banned ISIS radicalism in Indonesia because it is not by the values of Pancasila and the constitution. This research examines the imprisoning policy of the perpetrators of spreading ISIS radicalism and the form of policy formulation as a containment effort for terrorism crimes in the future. This normative juridical research method uses a statute approach and a conceptual approach. This research shows that the policy is that criminal responsibility for spreading radicalism can be imposed on individuals and groups, whether civilian, military, or police, who are responsible individually, or corporations. The corporation in question is an institution that is suspected and proven to have spread radicalism which leads to acts of terrorism. This crime originates from the regeneration of terrorist cells, which develop despite the different ways and modes of carrying out their actions. In addition, different perspectives on ideology also encourage the proliferation of terrorist cells that seek to incorporate Islamic law constitutionally and change Pancasila with an exclusive religious ideology.

Keywords: *ISIS Radicalism, Terrorism, Containment Efforts, Policy Formulation.*



Introduction

The Preamble to the Indonesian Constitution of 1945 stated that Indonesia is a unitary state based on law and is responsible for protecting the entire Indonesian nation and participating in a world order based on freedom, eternal peace, and social justice. Therefore, the government is obliged to maintain, implement sovereignty, and protect every citizen from any threats both from within the country and abroad. Today's threat is the many crimes with broad dimensions that can undermine social dynamics.

One of the crimes that has recently been widely discussed by the mass media, both electronic and print media, is the crime of terrorism. The series of terrorist crimes in Indonesia has broadly impacted the life of the nation, state, and society. The resulting impact was a feeling of fear in the broader community because the incident had resulted in many lives and property losses, which impacted the social life of the Indonesian nation, the economy, politics, and Indonesia's relations with the international community.

Before the attack on the World Trade Center in New York, USA, on September 11, 2001 (and the Bali bombing on October 12, 2002), since 1999, the government had handled acts of terror in Indonesia. Data available to the police shows that in 1999-2002 185 bombs exploded, with 62 people dead and 22 seriously

injured.¹ The Bali bombing incident in Legian, Kuta, Bali, has added to the record of crimes against humanity in Indonesia.

Terrorism is the common enemy of the Indonesian people and the enemy of humanity in the world.² To overcome terrorism crimes, the government has made Government Regulation in-lieu-of Law (Perpu) Number 1/2002 concerning the Eradication of Criminal Acts of Terrorism, which was later amended to become Law Number 15/2003 concerning Stipulation of Government Regulation in-lieu-of Law Number 1/2002 on the Eradication of Criminal Acts of Terrorism, to become law. The enactment of Law Number 5/2018 has corrected this regulation. This law is based on four main things:³

1. Realizing the national goal as referred to in the Preamble to the 1945 Constitution, namely protecting the entire Indonesian nation and all of Indonesia's bloodshed;
2. The series of bombing incidents that occurred in the territory of the Republic of Indonesia has resulted in a loss of life regardless of the

¹ Susilo Bambang Yudhoyono, *Selamatkan Negeri Kita dari Terorisme* (Jakarta: Kementerian Polkam, 2002), 7.

² Yudhoyono, 4-5.

³ The Preamble to Law Number 15/2003 concerning the Stipulation of Government Regulations instead of Law Number 1/2002 concerning the Eradication of Criminal Acts of Terrorism to become Law.

- victim, created widespread public fear, and caused loss of property, resulting in a broad impact on social, economic, and political life and international relations;
3. Terrorism is a transnational crime, organized and has an extensive network that threatens national and international peace and security;
 4. It is an effort to restore order and secure public life and provide a solid legal basis and certainty in overcoming urgent problems in eradicating criminal acts of terrorism.

The government has taken various preventive measures, but there are weaknesses related to efforts to prevent and overcome terrorism, such as:

1. Law enforcement against the terrorism crime system is still weak;
2. The quality of human resources that are easy to use and still vulnerable to acts of mobilizing to become sympathizers of terrorist groups;
3. Public awareness of the terrorist modus operandi is still weak.

From some of these weaknesses, if related to the current conditions, it can be understood that the process of regeneration of terrorist cells can still develop, although in a different way and mode. Differences in perspectives on ideology are also the reason for the growth of terrorist cells. The existence of a minority

group that wants to change Pancasila with another ideology oriented towards religion and intends to incorporate Islamic law constitutionally causes the spread of distorted understandings and leads to invitations to carry out terrorist activities.

Acts of terrorism have now changed from bombings and covert military training in certain places by radical groups to directed infiltration of radicalism. It is identified by the many groups claiming to be the most righteous and others, including the government, as "infidels." The proliferation of this radical ideology causes many activities that lead to terrorism.

This research discusses the spread of Islamic State Iraq and Syria (ISIS) radicalism that has penetrated Indonesia. Formed in April 2013, ISIS emerged from al-Qaeda in Iraq (AQI), becoming the leading jihadist group fighting the government in Syria and building a military presence in Iraq. Abu Bakr al-Baghdadi, an al-Qaeda alumnus with a doctorate in Islamic history from a university in Baghdad in the late 1990s, led the militant group. ISIS is an armed group that has carried out many acts of violence, kidnapping, and killing of civilians and foreign nationals allied with the United States.

ISIS radicalism as a cross-national organization networked and influenced radical Islamic groups in Indonesia so

that it could lead to fatal terror movements in Indonesia. Therefore, Indonesia faces a significant challenge to overcome the spread of radical ideology and challenges to the diversity of Indonesian society.

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Indeed, many previous studies have reviewed efforts to deal with and prevent

⁴ Sri Lestari, "ISIS Indonesia," *BBC News Indonesia*, July 25, 2014, https://www.bbc.com/indonesia/berita_indonesia/2014/07/140724_isis_indonesia.

⁵ "Pemasang Bendera ISIS 'Dibebaskan,'" *BBC News Indonesia*, August 24, 2014, https://www.bbc.com/indonesia/berita_indonesia/2014/08/140824_pemasang_bendera_isis_depok.

radicalism and terrorism. However, no research has examined the policy formulation of terrorism crimes in Indonesia. Hadiningrat and Wibowo examine more the concept of criminal policy for overcoming the spread of radicalism carried out through social media in Indonesia (supervision, prosecution, and platform and community collaboration) should not only be limited to taking down content on social media but also an assessment to determine the level of radicalization of the perpetrators.⁶ Meanwhile, Sunarto and Evi Fitriani investigate the factors that make it challenging to handle the spread of ISIS ideological propaganda online and the Indonesian government's lack of counter-radicalization actions.⁷ Khoir investigated government policies through SKB 11 Ministers and State Institutions in the regulatory aspect, requiring some improvements. This regulation has yet to specifically explain the definition of radicalism, radical actor, and radical actions/deeds. Thus, the govern-

⁶ Wahyu Hadiningrat and Kurniawan Tri Wibowo, "Penanggulangan Penyebaran Radikalisme melalui Media Sosial dalam Hukum Pidana Indonesia (*Countering the Spread of Radicalism through Social Media in Indonesian Criminal Law*)," *Rewang Rencang: Jurnal Hukum Lex Generalis* 4, no. 2 (February 2023): 187-212, DOI: 10.56370/jhlg.v4i2.304.

⁷ Sunarto and Evi Fitriani, "Kebijakan Pemerintah Indonesia dalam Mengatasi Persebaran Propaganda Ideologi ISIS di Internet," *Jurnal Kajian Lemhannas RI* 6, no. 1 (2020): 77-87. <http://jurnal.lemhannas.go.id/index.php/jkl/article/view/117/39>.

ment's efforts to prevent the spread of radicalism can be maximally actualized, especially for government employees (ASN).⁸

Fatoni examines the need to renew terrorism regulations to counter radicalism by considering aspects of positive legal protection for citizens. This study using a normative (doctrinal) legal approach, is based on the need for legal protection for the community from a sense of security from the threat of this crime. Fatoni agrees with repressive measures in dealing with terrorism and radicalism using a criminological approach. It is a preventive effort against the growth and development of terrorism. He also proposed a pattern of exceptional guidance for non-criminal perpetrators of terrorism.⁹

Meanwhile, in his research, Muladi suggested that preambles or general explanations in regulations must comprehensively describe the legal spirit and reasons for criminalization, such as the large number of innocent victims, the rule of

law, and the stability of sovereignty and integrity of the state, including other serious crimes related to terrorism such as money laundering, arms trade, organized crime, and others.¹⁰

Accordingly, this study analyzes whether the criminalization of the spread of ISIS radicalism is included in counter-terrorism efforts and how the form of policy formulation in countering terrorism crimes in the future. This research is normative juridical research using a statute and conceptual approach. The theory used in this study is the criminal law (penal policy) and the theory of criminal purposes (relative theory) against the perpetrators of ISIS radicalism.

Policy Formulation for Radicalism Propaganda Actors

The proliferation of radicalism is mentioned in a *sahih hadith* as follows:

At the end of this period, a group of people who are still young and weak in mind will appear. What they say is the best human speech. They like to read the Koran, but their reading does not reach the base of their throats. They fly from religion like an arrow that shoots from its target. If you find them, then kill them.

⁸ Anan Bahrul Khoir, "Radikalisme dan Aparatur Sipil Negara: Faktor Penyebab dan Upaya Pemerintah Menangani Radikalisme pada Aparatur Sipil Negara di Indonesia," *Kebijakan: Jurnal Ilmu Administrasi* 12, no. 2 (June 2021): 145-162, DOI: 10.23969/kebijakan.v12i2.3938.

⁹ Syamsul Fatoni, "Pembaruan Regulasi Terorisme dalam Menangkal Radikalisme dan Fundamentalisme," *Al-Tahrir* 18, no. 1 (May 2018): 219-241, DOI: 10.21154/altahrir.v18i1.1165.

¹⁰ Muladi, "Hakekat Terorisme dan Beberapa Prinsip Pengaturan dalam Kriminalisasi," *Jurnal Kriminologi Indonesia* 2, no. 3 (December 2002): 1-13, <https://www.neliti.com/id/publications/4221/hakekat-terorisme-dan-beberapa-prinsip-pengaturan-dalam-kriminalisasi>.

Because, in fact, by killing them, those who kill them will be rewarded with Allah on the Day of Resurrection (Narrated by al-Bukhari and al-Muslim).¹¹

Indeed, the emergence of Islamic radicalism in Indonesia is not a new phenomenon. At the beginning of Indonesian independence, several Muslim groups were disappointed because Islam was not the official state religion. The Jakarta Charter concerning the obligation to carry out Islamic law for its adherents, which was initiated by Islamic figures such as Wahid Hasyim and Teuku Muhammad Hasan, was rejected in the session of the Preparatory Committee for Indonesian Independence (PPKI). Although, in the end, the trial results were agreed upon, some other Muslims considered this deceptive and dwarfed the ideals of Muslims.¹²

This disappointment led to rebellions in Indonesia, one of the most notable of which was the Darul Islam/Tentara Islam Indonesia (DI/TII) rebellion in West Java and South Sulawesi. Even though the government overcame it, the ideological influence of DI/TII cannot be eliminated. It was confirmed by the founding of other radical Islamic organizations after the collapse of the New Order, such as

Hizbut Tahrir Indonesia (HTI), Indonesian Mujahidin Council (MMI), Islamic Defenders Front (FPI), Betawi Deliberation Forum (FBR), and others.

The radicalism discussed in this research is the ideology of ISIS which claims to have fighters from Britain, France, Germany, and other European countries, as well as from the United States, Arab countries, and Caucasus countries.¹³ ISIS radicalism does not recognize Indonesia's sovereignty and considers anyone who allows the state to be infidel according to the law as an infidel. It is contrary to Islamic religious norms because the Qur'an mentions (surah an-Nisa [4]: 59), and the Hadith narrated by al-Bukhari and al-Muslim (from Ibn Umar) states that whoever says to his brother is an "infidel"; this accusation will be directed at one of the two. If the accused is not so, then it will return to the speaker (who accuses)—this Hadith is significantly similar to the surah al-Hujurat ([49]: 11).

Therefore, regulating this issue requires government policy and compliance with its policies. In surah an-Nisa above, it is mentioned that the *ulil amri*, which can be interpreted as a legitimate and sovereign government, has the authority to regulate social issues and

¹¹ Imam az-Zabidi, *Ringkasan Shahih Muslim* (Jakarta: Pustaka Amani, 2002), 345.

¹² Erlangga Husada et al., *Kajian Islam Kontemporer* (Jakarta: Lembaga Penelitian UIN Syarif Hidayatullah, 2007), 5.

¹³ "Bagaimana Kelompok Jihadis Terbentuk?" BBC News Indonesia, July 25, 2014, www.bbc.co.uk/indonesia/dunia/2014/07/140725_profil_isis.

has the delegation of legal authority to manage people's welfare.¹⁴

Nevertheless, Kassebaum stated that crime prevention using criminal sanctions is the oldest method, as old as human civilization—some call it an "older philosophy of crime control." Packer also argues that controlling anti-social acts by using punishment against someone guilty is a social problem with an essential legal dimension. There are two central problems in criminal policy using penal means (criminal law), namely the problem of determining: what actions should be used as a crime and what sanctions should be imposed on the accused.¹⁵

In dealing with the first crucial problem above, which is often referred to as the problem of criminalization, the following matters must be considered in essence:

1. Using criminal law must pay attention to national development goals—realizing social justice and prosperity that is equally distributed materially and spiritually based on Pancasila. Therefore, criminal law aims to overcome the crime and the act itself.

¹⁴ Karaeng Mattawang, "Perintah Taat terhadap Allah, Rasul dan Ulil Amri dan Penegakan Hukum," June 12, 2011, <http://karaengmattawang.wordpress.com/2011/06/12/perintah-taat-terhadap-allah-rasul-dan-ulil-amri-dan-penegakan-hukum/>.

¹⁵ Barda Nawawi Arief, *Masalah Penegakan Hukum dan Penanggulangan Kejahatan* (Bandung: PT. Citra Aditya Bakti, 2001), 155-156.

2. Actions that are attempted to be prevented or dealt with by criminal law must be unwanted actions that cause harm (material and/or spiritual) to residents.
3. Using criminal law must also consider the cost and benefit principle.
4. Criminal law must also pay attention to law enforcement agencies working capacity or ability to anticipate a heavy burden (*overbelasting*) of their duties.¹⁶

Consequently, in an appropriate criminal law policy regarding terrorism crimes, reform is needed based on that one way to deal with terrorism is by using criminal law. Meanwhile, the suspect is punished or imprisoned for violating a legal regulation. It is essentially an imposition of suffering or other unpleasant consequences.

One of the efforts to overcome crimes in society is to apply criminal law policies. Criminal law is an alternative to create order and peace in people's lives. So far, the legal basis for terrorism crimes is Law Number 5/2018 concerning the Eradication of Criminal Acts of Terrorism.

However, based on the explanation above, until now, the perpetrators of spreading radicalism cannot be charged under the provisions of terrorism legis-

¹⁶ Sudarto, *Hukum Pidana dan Perkembangan Masyarakat* (Bandung: Alumni, 1978), 107.

lation. It is because Article 13A in Law Number 5/2018 does not explicitly mention the word "radicalism," which requires as follows: "anyone who has a relationship with a terrorist organization and deliberately disseminates words, attitudes or behavior, writing, or appearance to incite a person or group of people to commit violence which may result in a criminal act of terrorism.

By using the means of penal, there is a purpose of punishment based on the relative theory (*Doel Theorien*). Van Bemmelen revealed three relative theories:

1. General prevention, the government's goal of imposing crimes, is to prevent people from committing crimes. Its function is the enforcement of government authority, law enforcement, and the formation of norms.
2. Special prevention; criminal enforcement is the most important justification of the crime. Criminals realize the consequences of their actions cause suffering. So this punishment serves to educate or improve.
3. The function of protection, with the punishment of revocation of freedom for a particular time, people have avoided being the target of crime, which might have been done had they not been punished.¹⁷

¹⁷ Van Bemmelen, *Hukum Pidana I* (Bandung: Bina Cipta, 1987), 27-28.

Based on the objective of punishment in relative theory, the legal policy in criminal enforcement against ISIS radicalism which contains the spread of hatred to individuals or groups and the State, is very appropriate. It is because of the following reasons:

1. The sentencing of criminals spreading ISIS radicalism shows the government's authority in law enforcement.
2. Spreading hatred towards fellow human beings according to religious norms is also unjustified. Islam does not teach us to hate each other. Islam orders its followers to have good relations with fellow human beings (*habl min al-nas*), maintain inter-religious harmony, and tolerate religious communities. These are also regulated in the Pancasila constitution and the principle of Indonesia's diversity.
3. The ideology of ISIS radicalism uses violence in the name of religion and accuses infidels (*kafir*) and apostates (*murtad*) of people and groups (including the state) who disagree with its interpretation. This view deviates from Islam because it can trigger acts of violence accompanied by terrorism. Instead, Islam recognizes a legitimate government and forbids accusing one another of being infidels.

Policy Formulation in Law Enforcement for Containment Terrorism

At least two main bases form the basis for compiling policy formulation. *First*, spreading radicalism and hatred is a crime that fulfills the unlawful element in criminal law. Langemeyer said, "To prohibit an act which is not unlawful, which cannot be considered wrong, is absurd."¹⁸ The problem is whether the measure of an act is correct or not. First, if the action matches the law's prohibition, there is a mistake. The location of the unlawful act is evident from the nature of the violation of the provisions of the law unless it includes exceptions that have been determined by law as well. For them, breaking the law means going against it because it is the law; such an establishment is called a formal establishment.

Conversely, some argue that it is not certain that all actions that comply with statutory prohibitions are against the law. For them, what is called law is not just a law; in addition to laws (written law), there are also unwritten laws, namely norms or realities, that apply in society. Such a stance is called a material stance. A writer (Vos) who adheres to a material stance formulates an unlawful act as an act that society does not allow.

In Article 156 of the Criminal Code (KUHP), the act of spreading feelings of hostility, hatred, or contempt for one or several groups of people can be punished. It is stated:

Whoever publicly expresses hostility, hatred, or contempt towards one or several groups of the Indonesian people shall be punished by a maximum imprisonment of four years or a maximum fine of four thousand five hundred rupiahs. The words group in this article and the following articles mean each part of the Indonesian people who differ from one or several others because of race, country of origin, religion, place of birth, descent, nationality, or position according to constitutional law.

So far, Article 156 above has not been able to prosecute the perpetrators of spreading radicalism in Indonesia, including ISIS. ISIS radicalism is more about two issues that can cause causation: if it is not prevented, it can lead to acts of violence, terror, and treason against the state.

The Criminal Code states that expressing hatred is an element of a crime. In Law Number 5/2018, there is no such element. Therefore, views against the law formally and materially deserve to be included in an article formulation in future revisions to the Terrorism Law as a form of prevention in terrorism crimes.

¹⁸ Moeljatno, *Asas-Asas Hukum Pidana, Revised Edition* (Jakarta: Rineka Cipta, 2008), 140-141.

The second is criminal responsibility for spreading radicalism. Law Number 5/2018 lists people and corporations as subjects of criminal acts that can be accounted for in an act of terrorism. Indonesia has many Islamic boarding schools, and there are Islamic boarding schools that do not have permission from the Ministry of Religion.

The Islamic boarding school is used as a place for spiritual education and the development of radical ideology. The efforts made by the Ministry of Religion and the ulemas to date are to take a cultural approach to Islamic boarding schools which are indicated to teach radicalism. This cultural approach means providing an understanding that Indonesia has a different ideology from Middle Eastern countries and so on. The Ministry of Religion has so far been unable to impose sanctions on Islamic boarding schools that are indicated to teach radicalism because there is no legal regulation regarding this matter.

Thus, referring to the provisions of Article 1 point 10 of Law Number 5/2018, a Corporation is an organized group of people and/or assets, whether legal entities or not. Islamic boarding schools can be called a corporation because groups of people have organized wealth, both legal and non-legal entities. As a future punishment policy step, Islamic boarding schools that are suspected of spreading radicalism may be subject to sanctions as an effort to combat terrorism crimes. The

sanctions imposed in Article 12A of Law Number 5/2018 are only for management, not for corporations as legal subjects.

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A person and a corporation will be held criminally responsible if they have committed a crime. A person's sentence is not enough if that person has committed a crime that is against the law or is against the law; the form of punishment still needs to be conditional, that the person, in his actions, has made a mistake.

Simons stated that a crime occurs if there is a particular psychological condition in a person who commits a criminal act, and there is a relationship between this condition and the act committed so that the person can be accused of committing the act.¹⁹

¹⁹ Moeljatno, 171.

Law Number 5/2018, especially for imprisonment, has a specific minimum sentence. In principle, this remarkable minimum sentence is applied to certain terrorism offenses deemed very detrimental, harmful, or disturbing to society and offenses which are qualified or aggravated by the consequences (*Erfolgsqualifizierte Delikte*). The provision of specific minimum criminal threats for certain crimes (including terrorism) has a sufficient basis. These reasons include: to reduce criminal disparities, to meet the demands of society that require an objective minimum standard for offenses that are highly disgraceful and detrimental or endangering the community/state, and to make general prevention more effective.

Thus, the appropriate criminal sanctions to be imposed on perpetrators of spreading radicalism if individuals or groups are imprisoned for a minimum of four years and a maximum of seven years, and for corporations that commit crimes other than imprisonment for their management, prohibition of corporate activities, and license revocation.

Imposing criminal sanctions against corporations means that corporations as legal and non-legal institutions constituted can be treated as legal subjects as individuals. The corporation referred to by the author is an Islamic boarding school that has been proven to spread radicalism, bearing in mind that currently, in Indonesia, there is no imposi-

tion of sanctions on Islamic boarding schools. Criminal sanctions are given to its administrators; for example, the leaders of Islamic boarding schools are imprisoned for a particular time. Islamic boarding schools are subject to fines, prohibition of institutional activities, and revocation of boarding school permits.

Islamic boarding schools are not enough if they are only prohibited from carrying out activities institutionally because if there is no coaching effort, these sanctions will not provide benefits. Instead, they will cause unrest in the community. The government must make every effort so that the Islamic boarding schools continue their educational activities by reforming or replacing the leaders and teachers of the Islamic boarding schools. The government should coordinate continuous coaching efforts for Islamic boarding school students through the Ministry of Religion, which will later be handed over to related parties such as the Indonesian Ulema Council (MUI) and other parties, which according to the government, have the authority to handle this matter. Implementing this policy requires comprehensive participation for the assistance to be successful.

Conclusion

The policy of criminal prosecution of perpetrators of spreading Islamic State of Iraq and Syria (ISIS) radicalism can

be carried out as an effort to combat terrorism crimes by considering that the punishment of ISIS radical spreaders demonstrating the government's authority with the law enforcement; spreading hatred against fellow human beings according to religious norms is not justified; and the radical ideology of ISIS deviates from the Islamic teachings. Meanwhile, policy formulation in countering terrorism crimes in the future includes two main points: radicalism that spreads hatred against other individuals, other groups, and the state is a crime that fulfills the unlawful element in criminal law, and criminal responsibility for spreading radicalism, both individuals and corporations (legal entities and non-legal entities). Thus, forms of radicalism acts can be formulated in law enforcement efforts in Indonesia, both in efforts to convict perpetrators of criminal law in protecting social life or in strengthening state ideology.

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