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The state responsibility in law enforcement against transnational terrorism crimes in Indonesia

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Abstract. Terrorist groups such as the East Indonesia Mujahideen, Jamaah Ansharut Daulah and Jamaah Ansharut carry the potential for transnational terrorism in Indonesia as they are affiliated with international terrorist networks, such as ISIS (Islamic State of Iraq and as-Sham), Al Qaeda, or the Taliban. For this reason, Indonesia is one of the countries in Southeast Asia targeted by terrorist attacks. As a result, in the eyes of the international community, the terrorism movement in Indonesia is increasingly dangerous and almost always linked to overseas radical Islam groups. Coupled with widespread use of websites for terrorism propaganda, the crime of terrorism is not merely intranational but a transnational terrorism crime that is cross-border, becoming a global threat to humanity with a tremendous impact on all aspects of people's lives around the world.

In an effort to combat terrorism crimes, the Government of Indonesia has updated the Law on the Eradication of Criminal Acts of Terrorism, most recently with Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism. . The eradication of terrorism in the law is expected to become a legal instrument for law enforcement, as well as the implementation of state responsibility for the protection of state sovereignty and the human rights of citizens of the Republic of Indonesia.This study is aimed to analyze the state responsibility in law enforcement against transnational terrorism crimes. In that context, this study is normative juridical research using a statutory approach. This study specification is descriptive-analytical. The data collected were then analyzed in a qualitative normative manner. The results of this study show that in law enforcement against transnational terrorism crimes, the punishment focuses more on the theory of retaliation focusing on arrests, detentions and punishments of terrorists, not on the efforts to integrate retributive theory with relative theory with three main objectives of punishment, namely "preventive, deterrence, and reformative" based on the "rule of law" and "legality" principles. For this reason, in the state responsibility in law enforcement against transnational terrorism crimes, it is necessary to have legal harmonization between national and international laws to prevent the state from being predicated as a state of wrongful acts.

Keywords: law enforcement, state responsibility, transnational terrorism

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Introduction

The development of the world as a result of globalization which brings rapid progress in the fields of science and technology, with its continued impact on the advancement of the fields of transportation, communication, and information, has led to the achievement of the goals of the Republic of Indonesia as stated in the fourth paragraph of the Constitution of the Republic of Indonesia in 1945 increasingly faced the complexity of problems, especially due to social shifts and changes in people's behavior with the characteristics of being easy to violate the law and criminal acts that brought fear and harm to other individuals, society and even the state. Terrorism is a form of criminal activity that has caused great fear to the international community in the midst of these advances. This is in accordance with the Report of United Nations High-Level Report on Threats, Challenges, and Change (2004), which stated that terrorism and transnational organized crime is a crime that poses a frightening threat to the world community [1]. The more widespread acts of terrorism crimes with cruel characteristics that no longer care about human values, have caused terrorism to be equated with crimes against humanity, as stated in the opinion of Newton and Scharf, who stated that terrorism can be equated with crimes against humanity set out in the 1949 Geneva Conventions and 1948 Genocide Conventions [2].

The events of September 11, 2001 that occurred in the United States, namely the Al Qaeda terrorist attack which crashed two planes into the twin towers of the World Trade Center in New York and a third plane into the Pentagon Building in Arlington, killing 2,977 people from 93 countries, are historical facts about crimes against humanity [3]. The incident of terrorism has become a world record of a humanitarian tragedy, with the escalation of the destructive impact that has touched the multidimensionality of human life, human identity, dignity as a civilized nation, and the dream of being able to coexist with other nations in universal peace [2].

In addition to the World Trade Center incident in America, terrorism on a large scale also occurred in Indonesia, including the Bali I bombing, Bali II bombing, the Australian Embassy bombing, the JW Marriot Hotel bombing, the Solo gospel church bombing, the JW Marriot and Z Carlton hotels has caused widespread fear in the community, with many casualties, and the destructive power to social, economic, political, and international relations. According to Suharto, these acts of terror indicate a condition that a crime is an extraordinary crime, while the perpetrators should be tried as crimes against humanity [4], as stated by Robertson that terrorism is an attack carried out by non-state actors during peacetime which has resulted in the death of the civilian population until it is tried as a crime against humanity [5].

As an effort to combat crime as part of the law, the Government of Indonesia has carried out development of the Theoretical Criminal Act Act Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism (hereinafter referred to as Law 5/2018). The existence of the law, in its implementation, requires a direction or paradigm as law as a legal fact that legal experts at the theoretical level [5]. The opinion of Atmasasmita below is considered appropriate to be used as a paradigm for eradicating these crimes because it is in accordance with the developing culture both nationally and internationally, namely [6]:

1. Protection of Territorial Rights of the Unitary State of the Republic of Indonesia.

2. Protection of the human rights of citizens of the Republic of Indonesia, whether living in the country or abroad.

3. The protection of the human rights of the suspect/accused of the criminal act of terrorism is a universal right and therefore should not be ignored.

Based on the philosophical perspective and in accordance with the sound of Article 1 Paragraph 3 of the 1945 Constitution of Republic of Indonesia, which states that the Indonesian state is a state of law, the three paradigms become the fundamental basis in eradicating criminal acts of terrorism, with the scope of eradication not only focused on the national terrorism movement, but relating to international and transnational terrorism.

Meanwhile, the potential for transnational terrorism in Indonesia can be seen from the increasingly massive and dangerous phenomenon of terrorist movements carried out by terrorist groups, including the East Indonesia Mujahideen (MIT), Jamaah Ansharut Daulah (JAD), Jamaah Ansharut Tauhid (JAT), and Jamaah Ansharut Tauhid (JAT). Islamiyah (JI). As a transnational terrorism group, MIT is a terrorism group affiliated to ISIS (Islamic State of Iraq and as-Sham) in Syria and Al Qaeda, JAD and JAT are only affiliated to ISIS, while JI, which has the ideology of Islamic fundamentalism, is affiliated to the Taliban and Al-Qaeda.

The relationship between these terrorist groups and international terrorism networks, namely ISIS, the Taliban and Al Qaeda, raises an assumption that Indonesia is one of the countries in Southeast Asia that is the target of terrorist attacks. This assumption is reinforced by the fact that whenever a terrorist incident occurs in Indonesia, it is certain that one of these groups plays a key role in the occurrence of the crime. Based on this fact, the international community has considered the terrorism movement in Indonesia to be increasingly dangerous, especially due to the revelation of the terrorist network of the Bahrun Naim group which is suspected to have links to the terrorist group with Radical Islam groups and acts as the main liaison between the East Indonesia Mujahiddin (MIT) with ISIS (Islamic State of Iraq and as-Sham) in Syria and the international terrorist network Al Qaeda. In this context, the international community suspects that the various terrorism events that often hit Indonesia are closely related because of the role of the Bahrun Naim and MIT network.

In line with the developments and advances in science and technology, the use of modern technology in the fields of communication, informatics and the internet for the dissemination of terrorist movements and ideologies by terrorist groups spread across various countries, including their networks in Indonesia, is an effort to radicalize society by terrorist groups. One of the websites that uses Indonesian and Malay in the material that is disseminated via the internet, contains an introduction to Jemaah Islamiyah (JI) and Al-Qaeda as well as news reports containing messages about the topic of the global Muslim community who are victims of abuses that are considered by the authorities. The site has provoked the public to take action against the rulers who they consider arbitrary [7]. In addition, the Mujahideen in Thailand used their online media platform Khattab Media Publication to translate the religious opinions of Abdullah Azzam, a Palestinian intellectual who is a member of Al Qaeda [7]. What is done by Khattab Media Publicationt is considered to have contributed significantly to the dissemination of justification for the terrorist movement among the Malay-speaking community.

There are allegations that the activities of the four terrorist groups MIT, JAD, JAT and JI are integrated in the ISIS, Al Qaeda and Taliban operations are also a source of funding for their activities. In the Thamrin bombing incident on January 16, 2016, the Indonesian Police have identified that the source of funding for the terrorist act was the ISIS group which sent funds to Bahrun Naim as the mastermind behind the attack. Funds are sent from Syria to Indonesia using the services of the Western Union [8].

In connection with the potential for the development of terrorism crimes, the effectiveness of eradicating terrorism in Indonesia will greatly depend on the quality of law enforcement, so in this context, Indonesia needs a legal framework for law enforcement to run based on its characteristics, namely "the Rule of Law" which spelled out in the supremacy of law, equality before the law and due process of law.

The aspects stated in the definition of law enforcement above are not only needed by the national legal system, but also become a necessity for the international community because the crime of terrorism that must be faced is not only intranational terrorism but is a transnational terrorism crime that is cross-border. thus becoming a global threat to humanity with a tremendous impact on all aspects of people's lives around the world. Thus, law enforcement against terrorism is not only the responsibility of the state in the national legal system but is also related to the responsibility of the state based on international law.

International law, as stated by Jennings & Waats, has specifically established "International law typically governs the rights and responsibility of the state (regulating the rights and responsibilities of the state)" [9]. On the other hand, within the scope of international law, international criminal law has become a paradigm that regulates prohibitions aimed at individuals, and violations that can be subject to criminal sanctions by a country as stated in the opinion of Williams that Criminal law, conversely, is paradigmatically a concern with prohibitions aimed at individuals, and violations that are subject to criminal sanctions by the State [10]. Thus, it can be said that the state's problem in enforcing theoretical law must be in accordance with the two rules of international law. actions that

are not in accordance with the international law of a country, are wrongful acts committed by that country, with the application of sanctions based on international criminal law.

If the three paradigms in eradicating crime that has been described in the previous section are das sollen for the effectiveness of eradicating law enforcement, then the das sein for law enforcement of these crimes, with consideration of the driving factors for the growth and development of the movement, lies in the substance and structure of the Relevant laws. In this context, The Supreme Court of the Republic of Indonesiain its review of the Law on Law 15/2003, has found factors that constitute the das sein in theory, which include [11]:

a. Formulation of articles that are (unpredictable): the elastic nature of the formulation of their provisions, will open up opportunities for law enforcement officers and security forces to use provisions in violation of the principles of fair law enforcement and the principles of law enforcement. principles of international human rights law.

b. Excessive authority of investigators: it is feared that this will open an opportunity to justify the occurrence of certain human rights violations belonging to Indonesian citizens. Especially if in its implementation, law enforcement officers, especially investigators, do not pay attention to the provisions contained in Law No 39 of 1999 concerning Human Rights and Law No 13 of 2005 concerning the Ratification of the Covenant on Civil and Political Rights, particularly with regard to the right of everyone to communicate and obtain information needed to develop their personal and social environment.

c. The lack of rights of suspects, which include the right to be informed promptly of the reasons for arrest or detention, the right to object if there is coercion or torture, and the right of the accused to have access to the outside world.

d. Insufficient protection for witnesses, victims, and law enforcement officers: Such protection is provided to protect the parties from the possibility of threats that endanger themselves, their lives and or their property, either before, during or after the examination of the case, the form of protection is adjusted to the needs of each party.

Based on these factors, as well as taking into account the principle in criminal law, namely “no one can avoid criminal responsibility” [12]. This principle has the meaning of criminal responsibility for perpetrators of terrorism crimes for violating the law, which in Feuerbach's opinion as quoted by Elliot that every just punishment in the state is a logical consequence of a violation of the law, based on the need to maintain order [13]. However, no one can avoid criminal responsibility principle cannot be interpreted as a punishment that is solely a retaliation to the perpetrator of a criminal act due to a violation of the law, but in accordance with the opinion of Van Hamel as quoted by Utrecht that the punishment must contain a frightening element in order to specifically restrain bad intentions [14].

In revealing the problems that have been described above, the problem of this study was formulated as follows “How is the state responsibility in law

enforcement against transnational terrorism crimes?" In relation to the research problem above, the objective of this study is "to analyze the state responsibility in law enforcement against transnational terrorism crimes in Indonesia."

Methodology

This study uses a descriptive analysis research specification that is a method that aims to describe facts about law enforcement against transnational terrorism crimes, in the form of data and analyzed using primary legal materials, secondary legal materials, and tertiary legal materials.

Basically, this research is a normative juridical law research concerning criminal law and international law by using a social-legal research approach. Research with a social-legal research or empirical approach is a legal research regarding the application of positive legal provisions (in abstracto) on certain legal events (in concreto). In this study, the normative legal provisions are laws and regulations related to law enforcement against transnational terrorism crimes, while empirical research is the application of these laws and regulations in law enforcement against transnational terrorism crimes in Indonesia.

In addition, this research also uses a statutory approach, a conceptual approach and a comparative approach. The statutory approach is used in this research to find and examine the laws and regulations related to law enforcement against transnational terrorism crimes. The results of the study are an argument for solving the issues faced to find the concept of law enforcement against transnational terrorism crimes.

Results

Law enforcement is closely related to the principle of the rule of law, namely "equality before the law". Article 1 paragraph (3) of the 1945 Constitution (UUD 1945 has stated that "the Indonesian state is a state of law" and Article 27 paragraph (1) of the 1945 Constitution which states that "all citizens are equal before the law and government and are obliged to uphold law and government with no exceptions." The two articles in the constitution are essential substances regarding the necessity of law enforcement in the life of the state in Indonesia, with a philosophical meaning being the role of the state in carrying out legal functions which are considered fundamental for efforts to create legal certainty.

Andrews argues that there are at least three consensuses for law enforcement with the basic principle being the implementation of the constitution and the pillar being the rule of law. According to Andrews as a whole, the basic principle in implementing the constitution is "the general goal of society or general acceptance of the same philosophy of government; the basis of government; Institutional forms and procedures." Thus, in his thinking, Andrew has set the conditions that must be achieved for law enforcement, namely agreement on common goals or ideals; agreement on the rule of law as the basis for government or state administration and agreement on the form of state institutions and procedures [15].

The law enforcement theory has the logic that concrete law enforcement is the application of positive law in practice as it should be obeyed. Therefore, providing justice in a case means deciding the law in concreto in maintaining and guaranteeing the observance of material law by using the procedural method established by formal law [16]. Thus it can be said that public compliance with the law will not be realized when many people violate the law by avoiding legal sanctions. Regarding public compliance, in an effort to enforce the law, state administrators are required to "truly understand the legal spirit that underlies the legal regulations that must be enforced" [17].

Efforts and policies to make legal regulations in eradicating criminal acts of terrorism essentially cannot be separated from the purpose of crime prevention which is part of the politics of criminal law. Quoting the opinion of Muladi & Arief, it can be said that the legal politics of law enforcement for criminal acts of terrorism can be interpreted as all rational efforts from the community to tackle terrorism crimes [18]. These efforts include the activities of legislators, police, prosecutors, courts, and officials related to the execution of terrorism convictions.

The legal system not only regulates the law for the national interest of a country but also regulates the obligations of the state for interaction in its international relations. It is in interactions with other countries that the provisions of international law regarding state responsibility emerge which are laws regarding state obligations that arise when the state has or has not taken an action [19]. Thus, it can be said that the law regarding state responsibility is related to state jurisdiction to regulate power in carrying out state actions. Recognition as a state of law brings consequences for Indonesia when interacting in international relations to comply with all international law so as not to be attributed as a country that is included in the wrongful act towards its international obligations.

The emergence of the concept of state responsibility is due to the principle of equality, state sovereignty and peaceful relations in international law. Indonesia as a dynamic legal state, the essence is that Indonesian national law must appear accommodative, adaptive and progressive. Accommodative means being able to absorb and accommodate the dynamic needs of the community. This legal meaning describes its function as a protector and protector of the community. Adaptive means being able to adapt to the dynamics of the times, so it is never obsolete. While progressive, meaning that it is always oriented to justice, certainty and benefit, with the aim of guarding the dynamics of a society that is always developing and changing.

A state of law like Indonesia, in the context of international relations, has state responsibilities which are an obligation that must be complied with because this issue is a stipulation contained in international law, where the state is the main legal subject in that law. This is in accordance with the notion of state responsibility as stated by Wallace, who argued that state responsibility is an obligation that must be carried out by the state to other countries based on international law orders [20]. This understanding shows that if a country does not fulfill the obligations imposed on it under international law, it can be asked for responsibilities both public and private."

This is stated in the opinion of Lehnardt, who believes that in international law, state actions are distinguished between state actions in public (iure imperium) and private (iure gestiones) capacities [21]. The concept of state responsibility in relation to the eradication of terrorism crimes is a public act of the state, as preventive and repressive prevention and control measures to protect state security and the rights of its citizens. However, state actions to counter terrorism do not turn into acts to cover up, or justify violations of human rights [11].

Draft Articles on the Responsibility of States for Internationally Wrongful Acts, ILC's 53 rd Session, in Geneva in 2001 have set out the principles governing the emergence of a state's responsibility to another state, by setting a precondition which is a condition for the emergence of state responsibility, namely the existence of wrongful act by the state. The determination of a country to commit a wrongful act is based on proving its elements, namely subjective and objective elements.

The subjective element is imputability to the state as a result of the actions of individuals either due to negligence or intentional which is contrary to international law. While the objective elements are (i) the inconsistency of the action against international law (ii) causing moral and material damage to other international subjects (iii) the absence of certain circumstances that exclude wrongdoing.

Furthermore, the categorization of wrong state actions that can lead to responsibility is stated in Article 2 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, which states that a state act of error occurs when an action or omission is attached to the countries under international law that are deemed to have violated international obligations. Meanwhile, in Article 4 of the UN convention it is stated that "actions or omissions carried out by state apparatus in their capacity to carry out state policies that violate international law, the state can be held responsible" [22].

The issue of action or omission is in the spotlight of Akehurst as quoted by Malanczuk with his opinion that in international law, the actions or omissions of a country can be categorized as state crimes, even though legal responsibility is still imposed on individuals, not on abstract entities such as the state [23]. In order to hold the state accountable for the crime, it must be proven that the state's actions were attributed to it through what its officers did. This is what Degan refers to as an objective element that distinguishes it from the elements of criminal acts on individual responsibility which must fulfill the elements of actus reus and mens rea [24].

Meanwhile, Shaw as quoted by Starke stated that the important characteristics of state responsibility are the following factors [25]:

1. The existence of an international legal obligation that applies between two certain countries.

2. The existence of an act or omission that violates the international legal obligations that give birth to state responsibility.

3. There is damage or loss as a result of unlawful acts or omissions.

State responsibility associated with transnational terrorism crimes will raise very complex problems because in eradicating transnational terrorism,

the state requires an integrated approach to assessing the threat of terrorism atrocities, taking into account the complexity, contingencies, and unintended consequences of these terrorist crimes with victims. victims are generally civilians. This is according to the opinion of Crenshaw, who states that transnational terrorism involves actions where the victims, perpetrators, and locations of the terrorist events represent different countries and nationalities [26].

The crime of terrorism is a form of criminal act or crime with an international dimension with all forms of terror acts that are very frightening to the public and have taken many victims in various countries in the world. This is in line with the stipulation of terrorist crimes in the Convention For The Prevention And Punishment Of Terrorism in Geneva, 1937, the International Convention For The Suppression Of Terrorism Bombing, 1998 and the International Convention For The Suppression Of The Financing Of Terrorism, 1999 as transnational crimes.

Along with the development of science and technology, in the movement and acts of terrorism, in carrying out its acts of terror, the theoretical movement has begun to use cyber media to commit these crimes. As Denning argues, cyber crimes are criminal acts to carry out threats against the law against computers, computer networks, and the information contained in them which are intended to intimidate or coerce a government or its citizens for certain political or social purposes [27].

Through the use of information technology and the internet, terrorism carries out propaganda and disseminates material containing hatred, incitement, glorification or worship of terrorism, spreading the ideology of terrorism that provides support for terrorism. In addition, the internet technology media is also used for efforts to raise funds for the financing of these terrorist movements. Two motives of terrorists using the internet, according to the opinion of Conway are [28]:

a) Individually controlled: The sending and receiving of information over the internet is individually controlled. Thus the cyberterrorists can feel safer to use the internet as a medium for sending and receiving information.

b) Not easy to trace. Internet access via computers by cyberterrorists is not easy to track, because there have been anonymising and faking techniques or disguised techniques so that it is not easy to find out their whereabouts.

Starting from the theoretical concepts that have been described above, the opinion of Arief is an important legal reference as he stated [29]:

That in tackling the crime of terrorism, two things need to be considered in the policy of countering the crime of terrorism, namely: "(1) there needs to be an integral approach between penal and non-penal policies, (2) it is necessary to have a policy approach and a value approach in the use of sanctions, especially criminal sanctions."

Based on these reasons, the first thought of the concept of state responsibility in law enforcement against transnational criminal acts departs from the facts that occurred in the case of giving the death penalty to perpetrators of terrorism. The giving of the death penalty shows the legal motivation to implement the retributive theory which views that punishment is revenge for mistakes that have been made. Although this tendency to retaliate is in principle a normal

phenomenon, the death penalty, in the perspective of punishment theory, is a strong reaction to the act of the perpetrator who must accept the sanction for his guilt [30]. In that context, as in the opinion of Andenaes quoted by Muladi & Arief, the judge's view of the death penalty is solely "to satisfy the demands of justice from the community, as well as the demands of morality for imperative categorization, for achieving justice" [18].

The theory of retaliation in principle is an action that is emotional and therefore sometimes tends to be irrational. Based on that, then in the concept of law enforcement for the eradication of transnational terrorism, the concept of theory of retaliation should be integrated with a relative theory based on 3 (three) main objectives of punishment, namely "preventive, deterrence, and reformative" [31]. Related to the purpose of fear or deterrence in punishment is to cause fear for everyone to commit a crime. This goal is divided into 3 (three) parts, namely:

"individual goals, public goals and long-term goals. The purpose of deterrence that is individual is intended so that the perpetrator becomes a deterrent to commit crimes again. The purpose of deterrence is public, so that other members of the community are afraid to commit crimes. The purpose of deterrence that is long-term or long-term deterrence is to be able to maintain the constancy of public attitudes towards crime" [32].

Based on these theories, the thinking in the the law enforcement to eradicate transnational terrorism is based on laws that can create a deterrence effect, by increasing the possibility of criminals who are part of terrorist activities to be arrested, convicted, and sentenced. serious crime [33].

In relation to the state responsibility in law enforcement against transnational crimes, it is necessary to accommodate thoughts on strengthening material criminal law with the following steps:

1. Establish international instruments relating to the eradication of terrorism derived from UN conventions in national law.

2. Criminalization by adhering to the legal principles set out in the International Covenant on Civil and Political Rights (CCPR) established by the United Nations General Assembly based on Resolution 2200A (XXI) on December 16, 1966, which obliges member states to protect their rights– individual civil and political rights, which in the context of law enforcement against terrorism, especially the right to obtain a fair and impartial court process.

3. The absolute obligation to criminalize financing for terrorism as stipulated in the UN Convention UNTOC 2000 and the International Convention for the Suppression of the Financing of Terrorism 1999.

4. Re-formulate the legal concept of incitement through propaganda, either through face-to-face da'wah or through social media (internet), and recruiting new members of terrorist groups

5. Re-formulate ownership of goods for the purpose of acts of terrorism

Meanwhile, the concepts for formal criminal law changes include:

a. Integrating the mechanism of material law and formal law in the law on combating terrorism.

b. Arrangements in the law that allow intelligence reports as evidence.

c. Establishing wiretapping techniques and judicial surveillance in the law on eradicating theorists.

d. Re-formulating the length of the detention period in order to have a contextual relationship with the Criminal Procedure Code.

e. Witness protection arrangements are in accordance with the law on witness and victim protection, with due regard to human rights norms.

f. Strengthening of anti-terrorism financing.

The eradication of terrorism has so far prioritized repressive measures in the form of arrests, detentions and punishments of terrorists, while preventive measures have not become a priority. The eradication of terrorism will actually be more effective, if only there is a balance between repressive and preventive measures, while still based on the principles of rule of law and principle of legality. Regarding the principle of legality, Fuller stated that one of the eight things that cause the failure of any legal system is contradictions in the law. This opinion has given the meaning that a legal system must not contain regulations that conflict with each other [34].

Based on the above definitions, in the context of the state responsibility in law enforcement against transnational terrorism, all criminal acts formulated in the law on eradicating theorists in positive law in Indonesia should be based on the elements of criminal acts, namely "behavior, the object of the crime, the quality of the legal subject of the crime, the nature of against the law, errors, constitutive consequences, accompanying circumstances, additional conditions for prosecuting criminals, which can be punished as well as aggravate and reduce the crime [35].

In addition to the matters mentioned above, several principles contained in the international legal framework in relation to the state's responsibility in law enforcement to eradicate transnational terrorism are as follows:

1. Every violation of criminal law by acts of terrorism must be properly declared as “offenses against the penal law” with proven criminal elements. The state must be avoided from actions that can be categorized as “wrongful acts” because they take actions without strong justifications, state actions in eradicating terrorism are unreasonable measures both in carrying out prevention as well as in overcoming terrorism crimes as needed.

2. In accordance with the non-discrimination principles, in eradicating the crime of terrorism, the state shall completely abstain from discriminatory actions based on ethnicity, religion, race, and intergroup. Thus, national criminal law must reflect this principle, both in substance and in legal practices by law enforcement elements.

3. In eradicating terrorism, the state must ensure that there are no violations of human rights both in finding, preventing, rehabilitating, or punishing the perpetrators of terrorism crimes.

In general, the perpetrators of criminal acts of terrorism to carry out their actions require substantial funds. Regarding economic resources for financing transnational organized crime, it has been stated in Article 1 of the International Convention for the Suppression of the Financing Terrorism. On this issue of

financing terrorism crimes, Schmid stated that access to greater financial resources is needed for terrorist attacks. These financial resources are generally the result of transnational crimes, such as corruption, smuggling, human trafficking, fraud, kidnapping, bribery, embezzlement, tax crimes, banking crimes, and other crimes classified as serious offences [36].

The economic crime of money laundering has become an important issue in the eradication of terrorism and has become the focus of international attention in its eradication. Money laundering as a serious crime has been declared a financial crime and in terrorism operations, funds owned by terrorist groups will almost certainly be laundered first or at least it must be immediately carried out [37]. Thus, in the context of the relationship between money laundering and criminal acts of terrorism, the crime of terrorism is always preceded by the crime of money laundering. Based on this connection, in the logic of criminality, it is very reasonable for UNTOC to recommend that the crime of money laundering be regulated in the terrorism law.

Order in society is an important factor when criminal law becomes the legal basis for cooperation in eradicating transnational terrorism. The phenomenon in various international agreements shows the rise of transnational crimes that use banking as a medium to carry out crimes, especially money laundering which is used for terrorism financing facilities. Based on this, the essence of the concept of state responsibility in law enforcement against criminal acts of transnational terrorism, as stated in the legality principle; legal protection is more important to the state and society than individual interests, with the main idea being focused on crime as an "act of execution or negligence that is dangerous in nature" as specified in criminal law (a crime is a socially dangerous act of commission or omission as prescribed in criminal law) [38].

Conclusion

The state responsibility in law enforcement against transnational terrorism crimes departs from thoughts that come from causes regarding law enforcement against transnational terrorism crimes in Indonesian criminal law and the state responsibility in eradicating terrorism crimes. The thoughts in the concept are as follows:

1. The concept of law enforcement for the eradication of transnational terrorism crimes is based on the integration of retributive theory with relative theory with three main objectives of punishment, namely "preventive, deterrence, and reformative."

2. The eradication of terrorism has so far prioritized repressive measures in the form of arrests, detentions and punishments of terrorists, while preventive measures have not become a priority. The eradication of terrorism will actually be more effective, if only there is a balance between repressive and preventive measures, while still based on the principles of "rule of law" and "principle of legality."

3. The state responsibility in law enforcement for the eradication of transnational terrorism crimes is closely related to the issue of terrorism financing, including the forms and modes of financing terrorism crimes, the opportunities for internet technolog, as well as fast and real-time money transfer technology.

4. The effectiveness of eradicating transnational terrorism crimes will depend on the extent to which there is harmonization of law, between national law and international law so the state avoids the predicate of wrongful acts.

Suggestions related to the state responsibility in law enforcement against transnational terrorism crimes, are as follows:

a. Considering that terrorism is a crime against humanity, the Law on the Eradication of Terrorism should integrate the retributive theory with the relative theory to create a deterrent effect by increasing the possibility that the perpetrators of terrorism crimes will be subject to severe punishments.

b. The law on the eradication of terrorism should uphold the principles of "rule of law" and the "principle of legality", which can eliminate provisions that conflict with each other, both in material criminal law and formal criminal law.

c. In relation to the problem of financing terrorism, the rules of criminal law in eradicating terrorism crimes should be more directed to the protection of the country's economy as a result of money laundering crime for terrorism crimes.

It is necessary to harmonize the law between national law and international law so the state avoids the predicate of wrongful acts.

References

1. UNO. (2004). *Reports of the Secretary General's High Level Panel on Threats, Challenges and Change*. [Online] Available from: http://www.un.org/secureworld.

2. Scharf, M. & Newton, M. (2011) Terrorism and Crimes Against Humanity. In: Sadat, L. (ed.) Forging a Convention for Crimes against Humanity. Cambridge: Cambridge University Press. pp. 262–278. DOI: 10.1017/CBO9780511921124.015

3. Krisnawati, E. (2021) *Serangan Peristiwa 9/11 WTC: Kronologi Serangan Teroris 11 September*. [Online] Available from: https://tirto.id/sejarah-peristiwa-9-11-wtc-kronologi-serangan-teroris-11-september-gjjX

4. Soeharto. (2007) *Perlindungan Hak Tersangka, Terdakwa, dan Korban Tindak Pidana Terorisme dalam Sistem Peradilan Pidana Indonesia*. Bandung: Bandung: Padjadjaran University. pp. 2–3.

5. Robertson, G. (2002) *Kejahatan Terhadap Kemanusiaan; Perjuangan Untuk mewujudkan Keadilan Global*. Jakarta: Komisi Nasional Hak Asasi Manusia.

6. Atmasasmita, R. (2002) *Masalah Pengaturan Terorisme dan Perspektif Indonesia*. Jakarta: Badan Pembinaan Hukum Nasional Departemen Kehakiman dan HAM RI.

7. Nala Nourma Nastiti et al. (2017) Tantangan Implementasi Kerjasama Anti- Terorisme Antara Indonesia Dan Australia Tahun 2007–2016. *Jurnal Dinamika Global*. 2(2). Desember.

8. Kompas.com (2016) *Kaleidoskop 2016, Kilas Blik Bom, Thamrin*. [Online] Available from: https://megapolitan.kompas.com/read/2016/12/16/07000081/kaleidoskop.2016.kilas.balik.bom.thamrin?page=all.

9. Jennings, R. (ed.) (2008) *Oppenheims's International Law*. 9th ed. London: Oxford Public International Law.

10. Williams, G. (1955) The Definition of Crime. *Current Legal Problems*. 8(1). p. 107. DOI: 10.1093/clp/8.1.107

11. The Supreme Court of the Republic of Indonesia. (2007) *Academic Study of Terrorism Law*.

12. Library of the Supreme Court of the Republic of Indonesia. (2007) *NASKAH AKADEMIS: Undang-Undang. Terorisme*. [Online] Available from: https://perpustakaan.mahkamahagung.go.id/assets/resource/ebook/Naskah%20Akademissupreme%20%20Undang-Undang%20Teroisme.pdf

13. Atmasasmita, R. (2018) *Rekonstruksi Asas Tiada Pidana Tanpa Kesalahan: Geen Straf Zonder Schuld*. Jakarta: Gramedia Pustaka Utama.

14. Elliot, M.A. (1952) *Crime in Modern Society*. New York: Harper & Bros Publisher.

15. Utrecht, E. (1987) *Hukum Pidana I*. Surabaya: Pustaka Tinta Mas. p. 168.

16. Andrews, W.G. (1968) *Constitutions and Constitutionalism*. New Jersey: Van Nostrand Company. p. 12.

17. Shant, D. (1988) *Konsep Penegakan Hukum*. Yogyakarta: Liberty. p. 32.

18. Hartono. (1969) *Apakah The Rule of Law Itu?* Bandung: Alumni. p. 58.

19. Muladi & Arief. B.N. (1992) *Bunga Rampai Hukum Pidana*. Bandung: Penerbit Alumni. p. 1.

20. Adolf, H. (1991) *Aspek-aspek Negara dalam Hukum Internasional*. Jakarta: CV Rajawali. p. 203.

21. Wallace, R.M.M. (2002) *International Law*. 4th ed. London: Sweet&Maxwell. p. 175.

22. Lehnardt, C. (2007) Private Military Companies and State Responsibility. *International Law and Justice Working Papers*. New York: NYU Law School. p. 5.

23. UNO. (2001) *Draft Articles on the Responsibility of States for Internationally Wrongful Acts*. ILC's 53 rd Session, Geneva.

24. Malanczuk, P. (1997) *Akehurst's Modern Introduction to International Law*. London: Routledge. p. 327.

25. Degan, V.D. (2008) Responsibility of States and Individuals for Genocide and other International Crimes. In: Buffard, I. et al. (eds) *International Law Between Universalism and Fragmentation*. Leiden: Martinus Nijhoff.

26. Starke, J.G. (1997) *Pengantar Hukum Internasional*. Jakarta: Sinar Grafika. p. 16.

27. Crenshaw, M. (2020) *Rethinking Transnational Terrorism an Integrated Approach*. Washington DC: United States Institute of Peace. [Online] Available from: https://www.usip.org/sites/default/files/2020-02/pw_158

28. Denning, D.E. (2000) *Cyberterrorism. Testimony before the Special Oversight Panel on Terrorism Committee on Armed Services U.S. House of Representatives*. Georgetown University. [Online] Available from: http://www.cs.georgetown.edu/~denning/infosec/cyberterror.htm

29. Conway, M. (2003) *Terrorism and IT: Cyberterrorism and Terrorist Organizations Online*. [Online] Available from: http://doras.dcu.ie/502/1/terrorism_it_2003.pdf

30. Arief, B.N. (1996) *Bunga Rampai Kebijakan Hukum Pidana*. Bandung: PT. Citra Adityabakti. p. 35.

31. Hamzah, A. (1993) *Sistem Pidana dan Pemidanaan Indonesia, dari Retribusi ke Reformasi*. Jakarta: Pradnya Paramita.

32. Sholehuddin, M. (2007) *Sistem Sanksi dalam Hukum Pidana, Ide Dasar Double Track System dan Implementasinya*. Jakarta: Raja Grafindo Persada. p. 42.

33. Atmasasmita, R. (1995) *Kapita Selekta Hukum Pidana dan Kriminologi*. Bandung: Mandar Maju. p. 8.

34. Barnes Jr, W.L. (1999) Revenge on Utilitarianism: Renouncing A Comprehensive Economics Theory of Crime and Punishment. *Indiana Law Journal*. 74(1). pp. 627–651. [Online] Available from: https://www.repository.law.indiana.edu/ilj/vol74/iss2/5. p. 630-631

35. Fuller, L.L. (1969) *The Morality of Law*. New Haven: Yale University Press. p. 33.

36. Chazawi, A. (2005) *Pelajaran Hukum Pidana*. Jakarta: Penerbit PT Raja Grafindo Persada. p. 82.

37. Schmid, A.P. (2018) *Revisiting the Relationship between International Terrorism and Transnational Organised Crime 22 Years*. [Online] Available from: https://icct.nl/wp-content/uploads/2018/08/ICCT-Schmid-International-Terrorism-Organised-Crime.

38. Garnasih, Y. (2006) Anti Pencucian Uang di Indonesia dan Kelemahan Implementasinya. *Jurnal Legislasi Indonesia*. 3(4). p. 135. [Online] Available from: http://library.stik-ptik.ac.id/file?file=digital/37263-Jli%20Vol.3-06-103.pdf

39. Purnomo, B. (1994) *Asas-asas Hukum Pidana*. Jakarta: Ghalia Indonesia. p. 172.

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