

# MEASURING RESTORATIVE JUSTICE IN HANDLING TERRORISM IN INDONESIA

*by Seniwati Et Al .*

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## MEASURING RESTORATIVE JUSTICE IN HANDLING TERRORISM IN INDONESIA

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**Abstract:** *Terrorisme is extraordinary crime which penetrates the barriers of religion and state. The crime of terrorism has grown rapidly in Indonesia which can be threatening security on a national or international scale. Terrorism grows because of two fundamental factors, namely economic deprivation and political injustice. So far, the approach to countering terrorism in Indonesia is not encouraging, it is proven that terrorism crimes still occur every year. A repressive approach enforcing the law of retaliation must be breached with the possibility of opening up opportunities for the implementation of restorative justice in dealing with terrorism, particularly in the criminal justice system. To finish this study, a conceptual and statutory study is carried out so that it gets an adequate discussion. For this reason, it is necessary to enforce laws that are firm and do not benefit either party, by using the Restorative Justice approach which is considered capable of achieving justice in handling cases of terrorism in Indonesia.*

**Keywords :** Handling, Restorative Justice, Terrorism, Harmony.

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## INTRODUCTION

Terrorism lately is dominated by a wrong ideological understanding of Islam. Indeed, the roots of terrorism can come from the superpower's double standards of justice, as well as the incidents exhibited by the authorities which show that the rulers do not take sides with the common people. Unequal justice, economic inequality, low education are other reasons why religious radicalism that leads to acts of terrorism can occur. In Indonesia, crimes related to terrorism are clearly and very firmly regulated in the law, not only the main perpetrators of the bombing but people related to or related to the perpetrators will be punished, for example helping to escort the perpetrators to the scene, helping the perpetrators financially, or even if they know that there is a plan of terrorism<sup>12</sup> but do not inform the authorities, they will be subject to punishment, as regulated in Article 13 of Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism. Even though there have been regulations regarding the threat of criminal terrorism, this has not stopped the perpetrators from doing so. Even the regeneration of terrorism is always emerging, networks of new branches of terrorism have also emerged.<sup>22</sup>

The death penalty imposed on the perpetrators of terrorism is the final weapon for the government in the fight against terrorism. As long as the effectiveness of the death penalty has never been conclusive, the government only relies on counter-terrorism and does not carry out anti-terrorism measures. The government considers that only making a legal instrument (the death penalty) can punish the perpetrators of crime, and acts of terrorism will stop (Institute for Criminal Justice Reform, 2015). The justification of the death penalty can create security and as a deterrent originated from the penology of utilitarianism philosophy - which also influenced the emergence of Theory of Deterrence (Pujiyono, 2020). Jeremy Bentham said the only form of law that is rational to apply in society is the most efficient punishment in creating the greatest happiness for society - in this case it is measured by taking into account the safety factor of society from crime. This makes the death penalty feel more rational because it creates fear in society about committing crimes (Sulhin, 2016). The names of terrorists such as Imran bin Mohammed Zein, Salman Hafidz, Maman Kusmayadi, Mukhlas, Amrozi, Imam Samudra are a list of terrorists who have been punished by the state.

However, in reality, after they are sentenced to death, terrorism continues to grow in Indonesia, new actors and networks emerge. The radical traits and narrow thinking of the perpetrators who are still guided by wrong understanding, have not changed strongly. Prison sentences are also not capable of having a subjective rehabilitation and resocialization effect for the perpetrator after undergoing a sentence. In practice, prison is used as a turning point for terrorism convicts to act more recklessly. Since the 2009 Marriot Hotel bombing, acts of terrorism in Indonesia have involved former terrorism convicts. The second involvement, due to increased roles and actions. For example, Urwah, one of the perpetrators of the 2009 Marriot Hotel bombing. The first time he was arrested, Urwah played a role in hiding information about Noordin M. Top's whereabouts. Second act, Urwah became one of the planners of this deadly attack. Likewise with Afif alias Sunakim, the 2016 Sarinah bombers. Initially, Afif was only involved in military training in Aceh in 2010. After being released, Afif became the main perpetrator of the attacks in 2018.

The still development of terrorist groups in Indonesia and the enforcement of monotonous laws against criminal acts of terrorism must be reviewed regarding the imposition of sanctions and punishments against terrorists as well as the prevention of countermeasures for criminal acts of terrorism. Therefore, there must be a breakthrough for law enforcement against terrorism, one of these breakthroughs is to take a restorative justice approach.

## 1. RESEARCH METHOD<sup>8</sup>

This research uses normative legal research (McCrudden, 2017). This research consists of binding library materials which are primary and secondary legal materials. Primary legal materials are: the Criminal Code, the Criminal Procedure Code, and Law Number 5 of 2018 concerning the Eradication of Terrorism. Secondary legal materials consist of books, legal journals, legal theories, expert opinions and legal research results. Datas were collected through a literature study conducted in the library with various literature books, journals and regulations. Datas also done by collecting materials from the internet.<sup>10</sup>

The data that have been sorted are then analyzed through a qualitative analysis with an inductive approach. The phenomena that occur regarding the handling of terrorism in Indonesia which are still problematic are studied in depth by synchronizing with regulations, doctrines and religious opinions, focusing examining regulations. The main point of the study is the regulations conceptualized as norms or rules that apply in society and become a reference for everyone's behavior. So that normative legal research focuses on the inventory of positive law, legal principles and doctrines, legal findings in concrete cases, legal systematic, level of synchronization, comparative law and legal history (Muhammad, 2004).

## 2. RESULT AND DISCUSSION

### 2.1 Terrorism and Its Handling in Indonesia

Terrorism is a disturbing phenomenon. Acts of terrorism are worldwide and do not see international borders. Terrorism that has occurred in Indonesia recently has ideological, historical and political links and is part of the dynamics of the strategic environment at the global and regional levels. Even though the acts of terrorism that have occurred in various regions in recent years have been mostly carried out by Muslims or at least involve Islam as an ideology. In fact, the criminal act of terrorism also violates human rights as a basic right inherent in humans, namely the right to life and the right to feel safe and comfortable. These acts of terror have clearly insulted the human value of national dignity and religious norms. Terror has turned out to be a tragedy of human rights. The increase in the bad impacts caused has touched the multidimensional human life. Currently the eradication of terrorism in Indonesia has a repressive tendency which refers to Law Number 5 of 2018 concerning Combating Terrorism and Government Regulation No. 77 of 2019 concerning Prevention of Terrorism in the context of strengthening counter-terrorism efforts in Indonesia (Apromico, 2019).

Here following are the number of terrorism suspects from 2017 to 2021 that were successfully revealed, sourced from data released by katadata.co.id and databoks from The Police of Republic Indonesia.

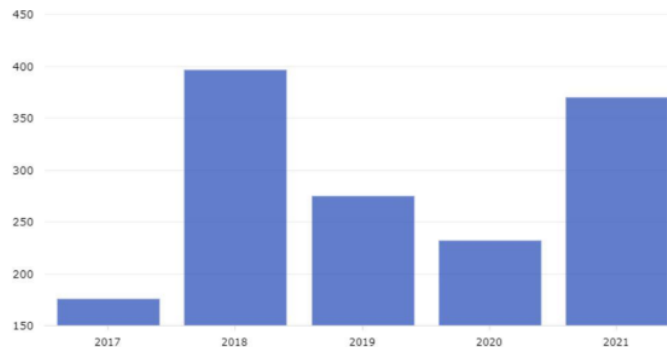


Figure: The number of terrorism suspects in Indonesia (2017-2021)

It is noteworthy that terrorism networks are global and regional or transnational. For this reason, cross-country cooperation is needed to overcome acts of terrorism through various activities in the effort to combat terrorists. On the other hand, public participation is a certainty in countering acts of terrorism. The cultural character of Indonesian society which has a tendency to be friendly, adaptive and accommodating to outside influences, makes the opportunity for the influence of understanding to certain ideological lines to enter and spread. These conditions allow terrorists to grow and thrive in the environmental community. Generally, terrorists try to adapt to their environment (neighbors) and use heterogeneously in the environment to camouflage their identity and activities.

This requires coordination and cooperation of all elements of society. The wider community participation, the more open cooperation between communities, especially religious leaders, youth leaders, and community leaders, as well as stakeholders in preventing and overcoming acts of terrorism (Sutrasno & Poernomosidi, 2018). One of the reasons for the difficulty of counterterrorism is

the narrow understanding among the religious community that the war against terrorism is considered to be fighting Islam. So that there is an understanding in a minority of people who think that war against the government that is fighting terrorism is *jihad*.

This condition is exacerbated by the condition of traditional communities who face economic and social problems which are very easily influenced or recruited to become members of terrorist groups. Another obstacle in preventing and overcoming terrorism is the absence of guidance that guarantees that radical thinking becomes moderate. Terrorist networks that are difficult to track and have wide access make the problem of terrorism difficult to solve. Terrorist members can take advantage of various technological advances, such as the internet and cell phones to make it easier to communicate with their groups. In addition, terrorists also have the convenience to travel and transport across national borders, making it very difficult to break the chain of the global terrorism network. Therefore,

Terrorism activities that have occurred in Indonesia are:

- a. Bomb detonation/bombing: Bombings are the most common tactic used by terrorist groups and are the most popular acts of terror carried out because in addition to having a shock value, this action gets a quicker response because there are <sup>17</sup>atively many victims and can attract the attention of the public and the mass media. Some of the cases that occurred in Indonesia were the Bali Bombings 1 and 2, the JW Marriot Bombing, the Surabaya Cathedral Church, Police Offices and Posts in several places in Indonesia.
- b. Murder: Murder is the oldest form of terrorist act and is still used today. With the murder model that is often used, namely selected / selective murder. Terrorism by means of this murder was carried out by the East Indonesian Mujahidin based in Poso, Sulawesi, but their victims were haphazard, even most of them were farmers.
- c. Robbery: A robbery tactic is usually carried out by terrorists to seek funds to finance their operations, terrorists carry out robberies of banks, jewelry stores or other places. Because terrorism activities are actually very expensive. Robbery can also be used as test material for new personnel training programs. A robbery incident occurred at a gold shop in the magetan area in East Java in 2019, the perpetrator was YT, a member of Jamaah Ansharud Daulah (JAD) Indonesia.
- d. Assault: Attacks are usually carried out by independent terrorists, commonly known as lonewolf. The number of times this method is used, usually the target is the police station, and the perpetrator believes that he will die in the incident. The most recent assault case occurred in March 2021 at the National Police Headquarters by Zakiah Aini, a resident of Ciracas, East Jakarta, an Islamic State sympathizer, and finally died in a shootout with officers.

Indonesia's counter-terrorism efforts have actually been ignored in many ways. Either by direct action in the form of police or military operations, as evidenced by the establishment of the Special Datasemen (Densus 88) (Fitriani et al., 2018). In addition, indirect efforts were made by approaching the community by involving non-governmental organizations (NGOs) and elements of society and efforts to deradicalize them. They are expected to be able to contribute more in providing a better understanding in understanding Islam in order to erode radicalism values.

## 2.2 Measuring Restorative Justice

The settlement of terrorism cases makes the criminal justice system as the backbone. Criminal justice has enormous powers, ranging from the police, the prosecutor's office, the judiciary and the detention centers. Criminal justice has a fundamental responsibility for the public interest (Freiberg, 1997), namely the extent to which actions or decisions issued by judicial (criminal) are accountable to the people. In some cases, the handling at the police can lead to the death of a suspected terrorist (Warti, 2016), as in the case of Siyono in Klaten, Indonesia (Institute for Policy Analysis of Conflict, 2017). He is not deter the potential perpetrator, but instead leads to even more radical actions. The arrest of the suspected terrorist, Siyono, by the Special Detachment 88 Anti-terror was not in accordance with procedures. Because when he was arrested the suspect was in good health, but suspected that he was brutalized and later died in the investigation process.

It is worth developing a criminal justice process that adheres to restorative justice, which is recognized by many parties that this method is appropriate for dealing with problems or conflicts. Actually, the practice of solving problems with the approach or concept of restorative justice (restorative justice) already exists in the culture of the Indonesian nation as has been done by the Indonesian people, although in practice there are still certain elite groups of society (Azhar, 2019).

Restorative Justice is the process of solving criminal cases with the aim of achieving justice that is fully implemented and achieved by perpetrators, victims and victims of the community in general. It is stated so because of the concept of the Restorative Justice approach or a person's vision of a form of justice that emphasizes the process of involvement of all parties who are actively involved in certain criminal acts (Laksana & Octaviani, 2019). Restorative justice is an alternative punishing approach that is very close to the principle of deliberation which is the soul of the Indonesian nation (Sinaga, 2021). Restorative justice is one of the efforts used by law enforcement officials as a way to adjust justice for victims and criminals, but there are many things that must be considered in using this approach, formal and material requirements are needed so that Restorative Justice can be used, sometimes This approach also reaps cons because not all criminal acts can use this approach. For minor crimes, it may be possible to use this approach but for extraordinary crimes such as terrorism it will not be possible to achieve justice if using Restorative justice, the perpetrator and the victim should be able to get the affected minority by means of the perpetrator being punished in accordance with the applicable law, a criminal act of terrorism is an extraordinary crime that can affect and change the social fabric of society, change the mindset of society. Initially, it was to recognize that criminal justice processes serve many purposes, many of which are under tension in specific cases. No ideal approach serves all purposes. But, in some cases, on balance, restorative justice may be the preferred approach among the alternatives (Green & Bazelon, 2020).

The concept of Restorative Justice is basically simple (Van Camp & Wemmers, 2013), the measure of justice is no longer based on retribution from the victim to the perpetrator (either physically, psychologically or punishment), but the painful act is healed by providing support to the victim and requiring the perpetrator to be responsible, with the help of family and community. if needed. To realize justice for victims and perpetrators, it is good if law enforcers think and act progressively, that is, they do not apply regulations textually but need to break through rules (rule breaking) because in the end the law is not a tool in order to achieve the justice that society desires (Arief & Ambarsari, 2018). With this concept, the application of Restorative Justice in one of the terrorism cases in Indonesia has not been implemented.

The criminal act of terrorism is an extraordinary crime involving the life of innocent persons (Primoratz, 1990), if the settlement of this case using the Restorative Justice approach may be considered fair to the perpetrator but it will not be considered fair by the families of the victims concerned. So that the concept of revenge remains the spearhead.

The application of the restorative justice opens a harmonious reconciliation between the perpetrator and the victim. Because the network of terrorism systems in Indonesia can be predicted, the end of the application of restorative justice is not only between the perpetrators and victims, but also the involvement of the terrorist network system as a prerequisite. Therefore, a more neutral and objective third party is needed to facilitate the application of restorative justice, even though the decision remains with the component of the criminal justice system. This initiative needs to be carried out, because both the perpetrators and victims of criminal acts each have reasons to shut themselves off from third parties (Syahrin, 2018).

The supporters of restorative justice idea usually oppose the notion of punishment (Daly, 2000), that what they do is punish offenders. Even the term itself may not be pronounced by some people. It is part of a wider development in the history of punishment, in which justice elites have increasingly come to imagine and announce what they are, the intention of responding to crime is not to punish, but to guide, correct, educate, or instruct offenders (Ly, 2000), including disclosing in detail the existing terror network. So technically the steps that can be taken in the application of restorative justice are:

1. Classifying terror behavior is seen from the subject, object and the resulting effect. At this stage it needs to be underlined that not all terrorism behavior can be applied to restorative



justice, but peripheral terrorism behavior, where the perpetrator is involved but only a small part of it is involved.

2. Integrating the willingness of the perpetrators in the research or investigation process. Do not let the general criminal approach to the concept of violence be the initial and main weapon, instead the restorative justice approach must be a priority, so that it raises the willingness of these peripheral actors to work together. Why peripheral perpetrators after being sentenced to prison are the main perpetrators, in part because they want revenge because of the rigors of the investigation and investigation process.
3. Reintegrating the perpetrator with the victim or the community of origin. This is important because most terrorists are those who have a solitary behavior and are different from the behavior and methods of worship according to most people. By reintegrating it to the community, the community will also have a more role in supervising former perpetrators, besides that this will accelerate the process of deradicalisation. It must be remembered that the process of deradicalisation is not just to straighten out misconceptions, but to unite former perpetrators with distant communities is a shortcut to deradicalisation.

### CONCLUSION

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A restorative criminal justice process has the view that realizing justice can be pursued does not have to result in a court verdict. The investigation and investigation process in the police can be used as an initial benchmark for its application. The result also provides justice in totality that cannot ignore the interests and rights of victims and society. Restorative justice aims to achieve harmony restoration, not repay wounds. Therefore, the role of the criminal justice system requires leverage from neutral and objective third parties, which can be religious leaders or academics. Another leverage is the presence and involvement of the community environment as a prerequisite for social integration which is absolutely necessary. Therefore, the authors provide recommendations:

1. It needs full government involvement in upholding justice with the Restorative Justice approach
2. The need for law enforcement officials to be more selective in choosing crimes that are resolved by Restorative Justice
3. The need for support from the community to prevent acts of terrorism from increasing.

### COMPLIANCE WITH ETHICAL STANDARDS

#### Ethical approval:

The data collection involving observation, interview, and Focus Group Discussion were approved by Research And Society Service Institutions, Universitas Sebelas Maret based on Research Assignment Letter from Head of Research Group of Center Study for Democracy and National Resilience, Universitas Sebelas Maret, Indonesia

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#### Conflict of Interest:

All authors declare no potential conflicts of interest concerning the research, authorship, and publication of this article.

**Informed Consent:** All authors have agreed to this manuscript, and all the data used have been approved under the terms of the Research Assignment Letter from Head of Research Group of Center Study for Democracy and National Resilience, Universitas Sebelas Maret, Indonesia

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