

# Juridical Analysis of Terrorism Criminal Sanctions (Case Study of Imam Santoso Criminal Acts)

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# Juridical Analysis of Terrorism Criminal Sanctions in Indonesia (Case Study of Imam Santoso Criminal Acts)

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## Abstract

Terrorism is a crime against humanity and civilization and is one of the serious threats to the sovereignty of each country because terrorism is an international crime that poses a danger to security, world peace and harms the welfare of society. One of the terrorist criminal acts committed by Imam Santosa. This research is to look at the case of Terrorism Criminal Sanctions in Indonesia (Imam Santosa alias Abu Umar Bin Kosasih Bakri). This research is a normative legal research (Case Study). The results of the study stated the criminal prosecution of perpetrator. In accordance with the basic idea of the double track system in imposing sanctions on terrorists.

## Keywords

Terrorism, Verdict, Criminal Law

## 1 Introduction

Terrorism is a crime against humanity and civilization and is one of the serious threats to the sovereignty of each country because terrorism is an international crime that poses a danger to security, world peace and harms the welfare of society. Terrorist acts have become a world wide phenomenon that has international links, both organizationally and at the level of small groups in any country regardless of its purpose. They carry out their activities by exchanging weapons, meeting in planning operations, using the area, and preparing administrative equipment in the form of logistical support individually or in groups. These terrorist activities are carried out with various variations in their manifestations, such as kidnapping, coercion, hijacking, hostage taking, extortion, murder and bombing throughout the world. The acts of violence used tend to be used as objects or trends, both for extortion efforts, or for other demands that are relevant to financial gain or are merely threats.

The most important developments in international terrorism are aid, defense and financing carried out by several countries by providing protection facilities for terrorists including forgery of documents / passports. This assistance makes it easier for terrorists to enter and exit a country in carrying out its terror activities and makes it difficult for the authorities to track down terrorists and their networks. Pinkerton Risk Assessment of the USA has calculated that terrorist attacks around the world are likely to increase [1].

Terrorism has actually become a scourge for Indonesian people. The series of bombings that occurred in the territory of the Unitary Republic of Indonesia as caused widespread public fear, resulted in loss of lives and property losses, thereby causing an unfavorable influence on Indonesia's social, economic, political, and international relations. Detonate a bomb is one mode of perpetrators of terrorism which has become a common phenomenon in several countries. Terrorism is a transnational, organized crime and even an international crime that has a wide network, which threatens national and international peace and security.

The Government of Indonesia is in line with the mandate as stipulated in the Preamble to the 1945 Constitution of the Republic of Indonesia which is to protect all Indonesians and all Indonesian blood, promote public welfare, educate the nation's life and participate in maintaining world order based on independence and eternal peace and social justice, is obliged to protect its citizens from any threat crime whether national, transnational or international in nature. The government is also obliged to maintain sovereignty and maintain national integrity and integrity from every form of threat both from outside and within, including terrorism.

Despite the acts of terrorism that have taken place in various regions in recent years, most of them have been carried out by Indonesians and only a few external actors. But it cannot be denied that the current terrorist act is a combination of domestic actors and those who have trans-national networks [2]. In the framework of preventing and combating terrorism, since long before the rise of events classified as forms of terrorism occurred in the world, the international and regional community and various countries have tried to carry out criminal policies (criminal policy) accompanied by systematic and comprehensive criminalization of acts that are categorized as Terrorism.

Starting from the explanation above, it is associated with criminal acts of terrorism as outlined in several District Court decisions, such as:

**Table 1.** Associated with criminal acts

Case	Criminal Act Comitted	Application of Sanctions
Decision Number 178 / Pid.Sus / 2018 / PN.Jkt.Brt	Stating that the Defendant Imam Santosa alias Abu Umar Kosasih Bakri, has been proven legally and convincingly guilty of committing the crime of "TERRORISM".	Article 15 in conjunction with Article 7 Government Regulations to Replace Law No. 1 of 2002 (4 Years in Prison)
Decision Number 545/Pid.Sus/2019/PN.Jkt.Brt	The defendant Oko Kahana Alias Oko alias Abu Lubabah has been proven legally and convincingly guilty of committing the crime of "TERRORISM".	Article 13 Alphabet C Government Regulations to Replace Law No 1 of 2002 (3 Years in Prison)

Of the several cases that the author has described above, as one of the modus criminal methods of crime. Terrorism is categorized as an Extra Ordinary Crime.

In the case above. The Public Prosecutor did not apply Law Number 5 of 2018 concerning Amendment to Law Number 15 of 2003 concerning Stipulation of Government Regulations to Replace Law Number 1 of 2002 concerning Eradication of Terrorism Criminal Act

Into Law. In the imposition of terrorism, the prevention aspects simultaneously, planned and integrated need to be prioritized to minimize the occurrence of Terrorism Crimes.

From the data above, it has been explained that the conviction of the perpetrators of criminal acts of terrorism from various decisions that the author has presented is, or as stipulated in Article 13 Number 1 of 2002 concerning Eradication of Terrorism Criminal Acts which states that "Anyone who intentionally provides assistance or facilities to the perpetrators of criminal acts of terrorism, by:

- a. give or lend money or goods or other assets to perpetrators of criminal acts of terrorism;
- b. hide the perpetrators of criminal acts of terrorism; or
- c. hide information about criminal acts of terrorism."

Convicted to a minimum imprisonment of 3 (three) years and a maximum of 15 (fifteen) years.

In imposing the sanctions, Law Number 5 of 2018 concerning Amendment to Law Number 15 of 2003 concerning the Establishment of Government Regulation to Replace Law Number 1 of 2002 concerning Eradication of Terrorism Criminal Act Into Law is located in Article 13A which states that :

"Anyone who has a relationship with a Terrorism organization and intentionally spreads a speech, attitude or behavior, writing, or display with the aim of inciting a person or group of people to commit Violence or Threats of Violence which may result in a Terrorism Criminal offense being convicted with a maximum imprisonment of 5 (five years)."

Terrorism is not just an act of terror, but in reality is a criminal act of terrorism. It violates human rights as a basic right inherently inherent in human beings, that is the right to life and the right to feel safe and comfortable. Recognition of human rights is one embodiment of the concept of the rule of law stipulated in the provisions of Article 1 paragraph (3) of the 1945 Constitution. In seeking the fulfillment and protection of citizens' human rights from acts of terrorism, the Indonesian government feels the need to form a law Combating Terrorism Criminal Acts, that is by formulating Government Regulations to Replace Law (Perpu) No. 1 of 2002 [3]. These various acts of terror have clearly undermined the human values of national dignity, and religious norms. Terror has shown as a tragedy of human rights. The escalation of the destructive impact has been or has touched more multidimensional human life. Human identity, dignity as a civilized nation, and ideals can coexist with other nations in the noble mission of "universal peace" still defeated by terror. Because of this familiarity with acts of terror, finally terror shifted itself as "terrorism".

Based on the explanation above, this study with the title, Juridical Analysis of Terrorism Criminal Sanctions in Indonesia (Imam Santosa alias Abu Umar Bin Kosasih Bakri).

## 2. Discussion

The word "terrorist" and terrorism come from the Latin word "terrere" which more or less means to make shaking or trembling. The word terror can also cause horror, but until now there has been no universally accepted definition of terrorism. Basically the term terrorism is a concept that has a sensitive connotation because terrorism results in the emergence of innocent civilian victims [4].

Terrorism is roughly a term that used to use violence against civilians / non-combatants to achieve political goals, on a smaller scale than war. In terms of language, the term terrorist originated in France in the 18th century. The word Terrorism which means in a state of terror (under the terror), comes from the Latin "terrere" which means trembling and "deterre" which means fear [4].

The term terrorism was originally used to designate an enemy of territorial or cultural disputes against ideologies or religions that carry out acts of violence against publicity. The term terrorism and terrorist today has a political meaning and is often used to polarize the effect of which terrorism was only for the term violence committed by the enemy, from the

point of view of being attacked. While terrorists are individuals who are personally involved in acts of terrorism. The use of the term terrorist extends from citizens who are dissatisfied to political non-conformists.

Acts of terrorism can be carried out by individuals, groups of people or countries as an alternative to declaring war openly. Countries that support violence against civilians use positive terms for their combatants, for example paramilitaries, freedom fighters or patriots. Violence committed by state combatants, however, is more acceptable than committed by "terrorists" who do not obey the laws of war and therefore cannot be justified in committing violence. Countries involved in warfare also often commit violence against civilians and are not labeled as terrorists.

Although the term State Terrorism later emerged, the majority differentiated between violence perpetrated by the state and terrorism, only to the extent that acts of terrorism were carried out randomly, without compromise, victims could be military or civilian, men, women, old, young and even children, rich poor, anyone can be attacked. Terrorism is not part of an act of war, so it should be considered a criminal act. In general civilians are the main target of terrorism, therefore attacks against military targets cannot be categorized as acts of terrorism.

Terror that has been present and incarnated in human life, has become a fierce virus and frightening monster that can cause humanitarian tragedy any time. The presence of terror has caused Human Rights to lose their existence in the hands of terror makers who have created barbarities in the form of social, political animalization, culture and economy. Terror has shown its true form as a tragedy on Human Rights.

The impact of the damage caused has touched many multidimensional human lives. Human identity, dignity as a civilized nation and ideals can coexist, other nations in the noble mission of universal peace are still defeated by terror. So intimately this act of terror is used as one of human choices, finally terror shifts itself as terrorism. It means that, terrorism takes part in this national life to show another portrait of and among various types and types of crimes, especially violent crimes, organized crime and crime which is classified as extraordinary.

Basically, the term of terrorism is a concept that has a very sensitive connotation because terrorism causes murder and misery of innocent people. No country wants to be accused of supporting terrorism or a place of protection for terrorism groups. who want to be accused of committing acts of terrorism for using military force? Seen from the perspective of the Indonesian National Law, terrorism crimes can be categorized as criminal acts. The elements to determine terrorism as a criminal act can be known by understanding about the fundamental aspects related to criminal acts. Dogmatically, the main problems relating to criminal law are talking about three things, such as:

- a. Prohibited acts;
- b. People who carry out prohibited acts;
- c. The criminal is threatened with violations.

In Indonesia, regulations regarding terrorism are regulated in Act Number 5 of 2003 concerning the Eradication of Terrorism Crimes. The philosophy contained in the Law on Combating the Criminal Acts of Terrorism that Terrorism is an enemy of humanity, a crime against civilization, is an International and Transnational Crime. The purpose of the establishment of the Law on the Eradication of Terrorism is the protection of the community, while the paradigm of the establishment of the Law on the Eradication of Terrorism which is a triune paradigm, that is protecting the territory of the Unitary State of the Republic of Indonesia, Human Rights, and Protection of Suspect Rights. Furthermore, in Article 6 and Article 7 of Law Number 15 of 2003 concerning Eradication of the Criminal Acts of Terrorism formulate the definition of the crime of terrorism, such as, Article 6 of Law Number 15 of 2003 concerning Eradication of the Criminal Acts of Terrorism and Article 7 of the Law Number 15 of 2003 concerning eradicating criminal acts of terrorism.

The difference between Article 6 and Article 7 of Law Number 15 Year 2003 Concerning Eradication of the Criminal Acts of Terrorism, that is Article 6 is a material offense so that the element that must be proven is the result of acts in the form of an atmosphere of terror or widespread fear or cause mass victims, whereas Article 7 is a formal offense so what must be proven is the intention to create an atmosphere of terror or widespread fear or cause mass victims, even though the threat of violence has not been carried out.

Terrorism is a form of crime that is well organized, transnational in nature and classified as an extra-ordinary crime that does not discriminate against targets.

Terrorism is included in Criminal Sanctions, which is a cause and effect penalty, because it is the case and the effect is the law, the affected person will get sanctions either going to prison or other sentences from the authorities. Criminal sanctions are a type of misdemeanor sanctions that are threatened or imposed on an act or perpetrator of a criminal act or criminal offense that can interfere or endanger the legal interest.

Criminal sanctions are basically a guarantee for rehabilitating the behavior of the perpetrators of the crime, a criminal is suffering or misery that is deliberately charged to people who commit acts that meet certain elements of conditions, while Roslan Saleh asserts that the criminal is a reaction to offense, and this is tangible a lament that the State deliberately delegated to the offender. In Indonesia, in general, there are at least three types of legal sanctions, such as follows:

- a. Criminal law sanctions
- b. Civil law sanctions
- c. Administrative sanctions

Punishment itself is regulated in Article 10 of the Criminal Code (KUHP), which is:

1. The basic punishment, which is divided into:

- a. Death penalty
- b. Prison sentence
- c. Imprisonment
- d. Penalty for fines

2. Additional punishment, which are divided into:

- a. Revocation of certain rights
- b. confiscation of certain items
- c. announcement of the judge's decision

The purpose of punishment is to prevent the commission of a crime in the future, the purpose of the conviction is necessary to know the law nature of the crime. that in the context it is said by Hugo De Groot "malim pasionis propter malum actionis", that is the suffering suffered by evil. Based on this opinion, there appears to be a contradiction about the purpose of punishment, that is between those who state that the criminal as a means of retaliation or absolute theory and those who state that the criminal has a positive goal or objective theory, as well as a view that combines the two goals of punishment. Muladi termed goal theory as teleological theories and the combined theory referred to as an integrative view in the purpose of punishment which assumed that punishment had a plural purpose, which was a combination of utilitarian views which stated that the goal of punishment must have proven beneficial consequences, justice could not be through imposition of suffering that is acceptable for the purpose of suffering itself, for example that the criminal suffering must not exceed the rewards that should be given by the criminal offender [5].

The forms of criminal sanctions that are widely applied are imprisonment, confinement and fines, while capital punishment only exists in a number of laws such as the Narcotics Act, psychotropic substances and others. Inclusion of forms of criminal sanctions can be identified in every criminal legislation, both qualified general criminal offenses and special criminal offenses. From the above facts it turns out that criminal sanctions so far in the legislation policy product are still used as the "main sanctions", because the number of criminal legislation products that contain criminal sanctions shows that the level of un-

understanding of legislators on criminal and criminal matters is still limited. The understanding of legislators regarding the types of criminal sanctions is still much influenced by the old view which asserts that everyone who has committed a crime must be rewarded with a criminal worth.

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### 3. Research Methods

This research is a normative legal research (Case Study). The place of the research was at the North Jakarta District Court which is located at Jl. Gajah Mada No.18, RT.3 / RW.1, Petojo Utara, Gambir District, Central Jakarta City, Special Capital Region of Jakarta 10130. The method that used in this research is a normative juridical approach. Juridical approach (law is seen as the norm or *das sollen*), because in discussing the problems of this study using law materials [6]. After the required data is collected then it leads to the identification of problems which ultimately leads to problem solving [7]. Normative legal research focuses on written regulations in the form of literature in the form of legislation, norms and methods relating to the subject matter. In each principle of law, its substance, law structure and law culture are discussed. To answer the problem and achieve the objectives of this study, researchers used a type of normative research by looking at the law in its normative context. Studies in normative law are more focused on library research (Library Research).

### 4. Research Methods

Criminal Acts of Terrorism in Decision No. 178 / Pid.Sus / 2018 / PN.Jkt.Brt has the following elements:

Each person; Based on the provisions of Article 1 number (2) of Law no. 15 of 2003 concerning Stipulation of The Government Regulations to Replace Law No. 1 of 2002 concerning the Eradication of Terrorism Act Into the Law, "Everyone" is an individual, a group of people whether civil, military, or police who are individually or corporally responsible. According to the Supreme Court Jurisprudence No. 1398 K / Pid / 1994 dated 30 June 1995 the notion of "everyone" is equated to the meaning of "everyone". "Everyone" is defined as any person or anyone who commits a crime as a law subject who can be held liable according to the law for all their actions. What is meant by "everyone" in criminal law is the subject of the perpetrators of a criminal act, in the sense of a person or anyone as a criminal, and that person is capable of being responsible and legally accountable for their actions. In this case, which is filed as "everyone" is Defendant Iman Santosa Alias Abu Umar Bin Kosasih Bakri, based on the facts revealed in court from the witnesses' testimony, it basically shows that the defendant was the criminal offender charged in this case. The element "Everyone" does not require a certain quality to do, so it can include anyone including the defendant Iman Santosa Alias Abu Umar Bin Kosasih Bakri nor were there reasons for forgiveness or justification. Furthermore, during the examination process it can be concluded that the defendant is healthy both physically and spiritually as seen from the defendant's ability to respond to the witnesses' statements and in giving his statements sufficiently able to explain in detail what happened in this case, so that under these circumstances it can be said that the defendant is a legal subject who is able to take responsibility and his actions can be accounted for legally.

Elements carrying out evil agreements, trials, or assistance to commit criminal acts of terrorism intentionally using violence or threats of violence intended to cause an atmosphere of terror or fear of people widely or cause mass casualties by seizing freedom or loss of life or property of people others, or to cause damage or destruction to vital strategic objects, or the environment, or public facilities, or international facilities.

In this case, submitted as "everyone" is Defendant Iman Santosa alias Abu Umar Bin Kosasih Bakri, based on the facts revealed in the trial from the witnesses' testimony, it basically shows that the defendant was the perpetrator of the criminal act charged in this case. In this element there are three actions that are alternative, such as evil agreement, trial, or assistance means that if one of the actions has been proven then this element has been fulfilled. Understanding of evil agreements, trials are not explained in this law. However, for assistance in this article are before, during and after the crime was committed (Vide explanation of the Act). As a reflection to interpret the above definition, we can take the norm from authentic interpretation (17) of the Criminal Code, especially Article 88, Article 53 paragraph (1) and Article 56; According to Article 88 of the Criminal Code, there is an agreement of evil, if two or more people have agreed to commit a crime. According to the Academic text regarding information relating to the Draft Law on Combating Terrorism Criminal Acts, it is stated that in order to provide a stronger legal instrument in the prevention of criminal acts of terrorism, a law is needed which explicitly stipulates that consenting to commit criminal acts of terrorism is an act criminal. That is because terrorism almost always involves evil consensus, and rarely does terrorism be carried out by just one person. Usually, the first stage of any terrorism crime occurs when two or more people agree or agree to commit a terrorism crime. In the case of a Trial, according to Article 53 paragraph (1) of the Criminal Code, limits are set about when it is said that there is an attempt to commit a crime that can be convicted, that is "Trying to commit a criminal offense, if the intention for that has turned out to be from the beginning of the implementation, and not the completion of that implementation. , not solely due to their own will. " Limitations on this experiment require "the beginning of implementation". According to the Academic text of the Bill on the Eradication of Terrorism (historical interpretation), this limitation does not provide adequate protection for the public against terrorism. Although it is difficult to determine the limits of acts of "commencement", some International Criminal Law experts consider these limits too narrow so that they cannot provide maximum protection against attempted terrorism. This can limit the choices available to police and public prosecutors and limit the ability of law enforcement to anticipate and stop disasters (acts of terrorism) before they occur. Therefore law enforcement officials need a stronger law framework to stop the attempted terrorism crime before it is carried out; therefore the actions of the defendant who had agreed with witness Dwi Joko Wiwoho, witness Heru Kurnia to go to Syria, wanted to join Daulah Islamiah, the ISIS group led by Abu Bakar Al Baghdadi, who is currently fighting against the Basar Al Asad government forces, which is the legal government in Syria; description of these considerations then the element "Making consensus, trial, or assistance to commit criminal acts of terrorism by intentionally using violence or threat of violence intends to cause a widespread atmosphere of terror or fear of people or cause mass victims by depriving independence or loss of life or other people's property, or to cause damage or destruction to vital strategic objects, or the environment, or public facilities, or international facilities have been fulfilled.

### 5. Conclusions

The implementation of the rule of law relating to criminal sanctions in the decision Number 178 / Pid.Sus / 2018 / PN.Jkt.Brt. Criminal sanctions and sanctions actions that run in parallel, together and together in order to achieve the objectives of the criminal prosecution of criminals. This is in accordance with the basic idea of the double track system in imposing sanctions on terrorists who commit crimes, which is very appropriate to apply, because in addition to avoiding the negative impact of the crime of losing independence, the offender is possible to obtain guidance for future development.

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