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Abstract

Introduction: The criminal act of terrorism which is the common enemy of many countries in the world including Indonesia which in fact is carried out by more than one perpetrator even further than that which is terrorized in a particular terrorist organization, so that the teaching of inclusion in criminal law becomes important to be applied appropriately.

Purposes of the Research: This paper aims to determine whether it is appropriate to use the articles contained in the law on combating terrorism related to the doctrine of inclusion of perpetrators of criminal acts of terrorism that are generally committed by more than one person in a particular terrorist organization.

Methods of the Research: The type of research is normative juridical with analysis using legal documents in the form of primary legal materials, secondary legal materials, and tertiary legal materials.

Results of the Research: In the field of practice, the application of the doctrine of inclusion in the provisions of the law on Combating Terrorism is often cause legal problems, especially in the context of determining the criminal liability of the perpetrators of terrorism, this has resulted in difficulties for law enforcers, especially public prosecutors and judges to determine criminal liability for each perpetrator, in contrast to the application of, so that the punishment for the perpetrators can be more effective and meet the sense of justice and legal certainty.

1. INTRODUCTION

Terrorism is a serious problem for many countries in the world, considering the number of victims and material losses caused by these actions are not small. For example, the events of September 11, 2001 have seen four suicide attacks arranged to attack several places in New York and Washington, D.C.C. At least 3,000 people were killed in this incident. It is believed that the responsible for the events was the Al-Qaeda group led by Osama Bin Laden.¹ In Indonesia itself there have been several terrorist attacks one of the most monumental events Bali bombings that occurred on Saturday, October 12, 2002 carried out by several perpetrators of the brain, including Imam Samudra, Ali Imron and Ali Gufron

¹ Bimo Ario Tejo, "Ajaran Penyertaan Dalam Tindak Pidana Terorisme", Skripsi, Fakultas Hukum Universitas Airlangga Surabaya, 2015, 3-4 lihat juga Remarcho, Meinaky, Fakhlor, Kewenangan Detasemen Khusus 88 Anti Teror Dalam Menangani Aksi Tindak Pidana Terorisme Dalam Perspektif Hak Asasi Manusia, *Jurnal Ilmiah Publika*, 10 no 2 (2022): 230

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as well as some people who have helped the implementation of the Bali bombings. Where from this incident at least more than 187 people both from foreign nationals and Indonesian citizens themselves became victims of death, hundreds of people were injured, and dozens of buildings, cars and motor vehicles were destroyed by fire.² Including the subsequent terrorist events that occurred after the Bali bombings. If the subject is only one person, then there is no question about who is insured, if all the elements have been met. But if the subject consists of two or more persons, then the question arises: Does each subject have to fulfill all the elements of the crime? what is the relationship between these subjects and especially how is the criminal liability on each subject?³

The distinction of the relationship between the participants 'actors is very important because the legal consequences or criminal liability attributed to the participants' actors are distinguished strictly depending on the close or not of the relationships. Thus, for example, the criminal liability of two or more persons who jointly commit a criminal act is the same, but between the perpetrator (main) and the one who helps him is not the same. In the end, it can be said that the main issue in the doctrine of inclusion (*deelneming*) is to determine the form of the relationship between the participants, which then also determines the criminal liability of each participant, for having committed a criminal offense.⁴

Provisions regarding the eradication of terrorism crimes in Indonesia are regulated in a government regulation in lieu of Law Number 1 of 2002 on the eradication of terrorism crimes based on the law of the Republic of Indonesia number 15 of 2003 has been established into law. Law Number 5 of 2018 on amendments to Law Number: 15, year 2003, on the establishment of government regulations in lieu of Law, Number: 1, year 2002, on combating criminal acts of terrorism into law (hereinafter abbreviated as "law on Combating Terrorism").⁵

In the above legislation, the formers of the law have determined the 'criminalization' of criminal theorism as an effort to eradicate terrorism which has become a common enemy not only in Indonesia, but an enemy for many countries in the world. This is in line with the meaning of 'criminalization' itself, that is, criminalization policy is part of Criminal Policy using the means criminal law (penal) and therefore is part of the "Criminal Law Policy" (penal policy).⁶ According to Black's Law Dictionary, "Criminalization is the act or an instance of making a previously legal act criminal, usually by passing a statute".⁷ According to Ted Honderich, Criminalization is "making a given behavior and the attendant formal and informal processes and effects no longer punishable by criminal law".⁸ Criminalization⁹ is also defined as a process to make an act a crime, so that it can be prosecuted and determine how it will be sanctioned. According to Soerjono Soekanto, criminalization is the action or determination of the authorities regarding certain actions that are considered by the

² 56/.

³ Lukman Hakim, *Asas-Asas Hukum Pidana*, (Yogyakarta: Deepublish, 2020), 75.

⁴ *Ibid.*

⁵ Agus Suntoro, Penerapan Asas dan Norma Hak Asasi Manusia Dalam Undang-Undang Pemberantasan Tindak Pidana Terorisme, *Negara Hukum*, 11 no 1 (2020): 64 lihat juga Dwi Haryadi, "Pemberantasan Terorisme Berorientasi HAM", *Jurnal Masalah-Masalah Hukum Undip*, 43 no 2 (2014): 247-254.

⁶ da Nawawi Arief, *Kapita Selekta Hukum Pidana*, (Bandung: Citra Aditya Bakti, 2003), p. 240

⁷ Bryan A. Garner, *Black's Law Dictionary*, Ninth Edition, (USA: West. A. Thomson Reuters Business, 2009) p. 431.

⁸ Ted Honderich, *Punishment; The Supposed Justifications*, (London: Penguin Books, 1979), dalam Yenti Garnasih, *Kriminalisasi Pencucian Uang*, (Jakarta: Fakultas Hukum Pasca Sarjana Universitas Indonesia, 2003): 23.

⁹ Soedarto, *Hukum dan Hukum Pidana*, (Bandung: Alumni, 2007) p. 31-32.

community or groups of people as actions that can be punished in²³ criminal acts¹⁰ or according to Soedarto, criminalization is a process of determining an act that was not originally a criminal act into a criminal act. This process ends with the formation of a law in which the act is threatened with criminal sanctions.¹¹ If the above definition of criminalization is associated with the application of the doctrine of inclusion stipulated in the law on Combating Terrorism, it needs to be elaborated more deeply whether the purpose of combating terrorism crimes in this law by determining criminal sanctions for the perpetrators carried out jointly, is appropriate both at the level of theory and practice?

In the law on Combating Terrorism, it is not regulated in an expressive verbis regarding the teaching of participation and assistance in the crime of terrorism. Although in some articles mentioned there are several roles and forms of assistance that can be categorized as participation and assistance in terrorism crimes. In the paraktek field, law enforcement officers tend not to apply at all (set aside) the teachings of inclusion and assistance as contained in articles 55 and 56 of the Criminal Code (hereinafter abbreviated as "KUHP"), but there are some law enforcers who use Article 55 and Article 56 of the criminal code in terrorism. Thus, it seems as if there is a dualism in the application of law in terms of the teachings of inclusion and assistance in the enforcement of terrorism criminal law that actually causes the eradication of terrorism crimes to be less effective.¹²

As an illustration of an example in writing this article, in the case of the Kartasura suicide bomber at the Lebaran 2019 security post (Pospam) in the Kartasura Roundabout area or known as the Central Java terrorist network, all perpetrators have been tried and decided by the court. Where it is known that the perpetrators basically have different roles and involvement in the case. However, there is a discrepancy where the perpetrators both in the indictment and in the sentence are actually subject to the same article, namely Article 15 and Article 7 of the law on Combating Terrorism, even though the role of each perpetrator in this case is different.

Based on the above, it is necessary to elaborate further on the issue of the doctrine of participation in terrorism crimes in Indonesia based on the law on Combating Terrorism associated with the existence of articles 55 and 56 of the Criminal Code which allegedly with the absence of clear arrangements regarding the doctrine of participation in the case of terrorism crimes, it causes ineffectiveness and even injustice and uncertainty in the eradication of terrorism it self.¹³

2. METHOD

This paper uses normative research methods. In this study used an approach in the form of legislation approach (the statute approach), through the study of legislation²⁴ and regulations that are related to the issue being discussed, and in this case the various legal rules that become the focus as well as the central point of research. In addition, the approach of analysis of legal concepts (conceptual approach) is also another approach used in this study.¹⁴ This research begins by describing the legal facts, then looking for a solution to a

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¹⁰ Soerjono Soekanto, *Kriminologi Suatu Pengantar*, (Jakarta: Ghalia Indonesia, 1981), 62.

¹¹ Soedarto, *Op. Cit.*, h. 32 dan h. 15. ¹⁸ Baca juga Soedjono, *Pertanggungjawaban Dalam Hukum Pidana*, (Bandung: Alumni, 1981), h. 22. Baca juga Muladi, *Demokratisasi, Hak Asasi Manusia, dan Reformasi Hukum di Indonesia*, (Jakarta: The Habibie Center, 2002), h. 255.

¹² Herman Sitompul, *Penyertaan Dalam Tindak Pidana Korupsi*, *Hukum dan Keadilan*, 6 no 2 (2019): 116

¹³ ⁵⁰ Irurozi, Samsul Bahri M.Gere, *Media Keadilan: Jurnal Ilmu Hukum*, 10 no 1 (2019): 53

¹⁴ Marzuki, P.M., *Penelitian Hukum*, (Jakarta: Prenada Media, 2005), 93.

legal case with the aim to resolve the legal case. In this study used primary legal material as contained in the Criminal Code and in the act of combating terrorism and court decisions.¹⁵ Then for secondary legal materials in the form of books, journals and other literature related to the discussion of the criminal law system in Indonesia. The collection technique used is the study of documents carried out by reviewing legal materials relevant to the discussion of research.

3. RESULTS AND DISCUSSION

The word "terrorist" (perpetrator) and terrorism (action) comes from the Latin word "terre" which has the meaning of making tremble or vibrate. The word "terror" can also give rise to horror. However, there is no universally accepted definition of terrorism. Basically, the term "terrorism" is a concept in the form of a thing that causes the killing and refreshment of innocent people.¹⁶ The definition of "terrorism" in Black's Law Dictionary is:¹⁷ "Terrorism means an activity that involves a violent act or an act dangerous to human life that is violation of the criminal laws of The United States, or that would be a criminal violation if committed within the Jurisdiction of The United States or of any States: and appears to be intended (i) to intimidate or coerce a civilian population:... (iii) to affect the conduct of government by assassination or kidnapping."

Thus, terrorism is a crime against humanity and human civilization and is a serious threat to the integrity and sovereignty of a country. This is because crimes or crimes of terrorism cause considerable casualties. In addition to casualties and substantial material losses, terrorism crimes also cause psychological casualties so that people feel afraid or uncomfortable in their respective environments.¹⁸ Provisions regarding the eradication of criminal acts of terrorism in Indonesia as stipulated in the government regulation in lieu of Law Number 1 of 2002 on the eradication of criminal acts of terrorism based on the law of the Republic of Indonesia number 15 of 2003 has been set into law. Law Number 5 of 2018 on amendments to Law Number: 15, year 2003, on the establishment of government regulations in lieu of Law, Number: 1, year 2002, on combating criminal acts of terrorism into law (hereinafter abbreviated as "law on Combating Terrorism") is issued with the aim of combating criminal acts of terrorism.¹⁹

The elements of the criminal act of terrorism as stated in Article 6 of the law on Combating Terrorism, consists of 2 provisions, namely:²⁰ a) Any person who intentionally uses violence or threats of violence to create an atmosphere of terror or fear against people widely or to cause victims of a missal by depriving independence or loss of life and property of others, shall be punished with death or life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years; b) any person who

¹⁵ Nurudin, Z.A., *Pengantar Metode Penelitian Hukum*, (Jakarta: Rajawali Pers, 2010), p. 118

¹⁶ Abdul Wahid, dan kawan-kawan, *Kejahatan Terorisme Perspektif Agama, HAM dan Hukum*, (Bandung: Refika Aditama, 2004), p.9.

¹⁷ Henry Campbell Black, MA., *Black's Law Dictionary*, 6th Edition. (St. Paul/Minn, USA: West Publishing, 1990): 1473.

¹⁸ Randi Pradityo, *Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Tindak Pidana Pendanaan Terorisme Terorisme*, *Jurnal Rechtsvinding Media Pembinaan Hukum Nasional* 5 no 1 (2016), 30

¹⁹ Agus Supriyanto, *Tinjauan Yuridis Tindak Pidana Terorisme di Indonesia*, *Journal Of Law*, 6 no 1, 2019, 6 lihat juga I Wayan Bayu Suryawan, I Nyoman Gede Sugiarta, I Made Minggu Widyantara, *Jurnal Preferensi Hukum*, 3 no 2 (2022): 330

²⁰ Heri Firmansyah, *Upaya Penanggulangan Tindak Pidana Terorisme di Indonesia*, *Mimbar Hukum*, 23 no 2 (2011): 380 lihat juga Louis Tappangan, *Penangkapan dan Penahanan Terduga Pelaku Tindak Pidana Terorisme Berdasarkan Peraturan Hukum Indonesia*, *Justitia Jurnal Hukum*, 3 no 2 (2019): 279

intentionally uses violence or threats of violence to create an atmosphere of terror or fear against people widely or to cause mass casualties by causing damage or destruction to strategically vital objects or the environment or public facilities or international facilities, shall be punished with death or life imprisonment or imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years.

In principle, the formers of the law have made a complete law governing the criminal acts of terrorism to overcome the rampant bombings that often occur in various regions in Indonesia. However, it seems that until now it is still difficult to thoroughly investigate and eradicate these terrorist incidents. The eradication of terrorism is of course not enough to use repressive measures alone, but there are also preventive efforts in it. This will prevent or cut off terrorist networks. There are a number of views that repressive measures taken by law enforcement officers by imposing penalties on perpetrators of terrorist crimes are not enough. In combating the crime of terrorism must also take action against people who commit acts of assistance by hiding perpetrators of terrorism and information about terrorist activities.²¹ Thus, it can be understood that basically the criminal act of terrorism is not committed by a single perpetrator, but by several actors involved in a particular terrorist organization. Thus, it can be ascertained that this criminal offense intersects with the teaching of inclusion, which in criminal law is included in the expansion of criminal offenses, which are basically committed singly.

On a practical level, there is difficulty in determining who is meant by "perpetrator", when there is a criminal act (offense) committed by more than one perpetrator. It is where if the culprit is only one person, there is no question about the relationship of the subject element with other elements. But if the perpetrator is more than one person, then there is a difference of understanding between scholars about whether each participant must meet each element of the crime. As it is known that the participants are generally divided into two groups measured from the punishment, namely the group equal to the perpetrator and the helper. Broadly speaking, it can be said that a person participates in his relationship with others, to realize a criminal act, perhaps long before it occurs (for example: Planning), close before it occurs (for example: ordering or moving to provide information and so on), at the time of occurrence (for example: participating, jointly committing or someone is assisted by others) or after the occurrence of a criminal act (concealing the perpetrator or the results of the perpetrator's crime).²²

According to Moeljatno, participation occurs when not only one person is involved in the occurrence of criminal acts, but several people. Nevertheless, not every person is entangled in the meaning of Article 55 and Article 56 of the Criminal Code. For that he must meet such conditions there, that is, as a person who commits or participates in criminal acts or helps to commit criminal acts. Outside of these five types of participants according to our penal code system there are no other participants who can be convicted.²³ Schaffmeister, Keijzer, Sutorius, saying that "one can speak of inclusion":²⁴ a) Except when there is a full-fledged criminal act, there is another who comes into play. The latter is involved in the occurrence of criminal acts so intensively and has occupied such an important place in the

²¹ Edy Renta Sembiring, Zul Akli, Johari, Analisis Yuridis Tindak Pidana Terorisme Yang dilakukan Oleh Anak, *Jurnal Ilmiah Mahasiswa Fakultas Hukum* 4 no 3 (2021), p. 352

²² Lukman Hakim, *Op. Cit.*, h. 75.

²³ Moeljatno, *Asas Asas Hukum Pidana*, (Jakarta: Rineka Cipta, 2015), p. 5.

²⁴ Schaffmeister, D. Nico Keijzer dan E. PH. Sutorius, *Hukum Pidana*, (Yogyakarta: Liberty, 1995), p. 247-248.

chain of causation leading to the offense that he must be convicted as a maker or helper, although he himself carries out only part of the formulation of the offense; b) When some people in a certain relationship with each other have come to the implementation of a complete formulation of the offense, while each of them has less or more to carry out only a part of it. In the latter case we are dealing only with those involved individually and with the implementation of only part of the content of the offense in question.

Kanter and Sianturi, explain: "the term 'participation' is that there are two or more persons who commit a criminal act or in other words there are two or more persons taking part to create a criminal act. It becomes a question, how much part of a person to commit the crime, or since when and to what extent the meaning contained in the term of taking part in it".²⁵ In the law on Combating Terrorism, it is not regulated in an expressive verbis regarding the offense of participation and assistance in the crime of terrorism. Although in some articles mentioned there are several roles and forms of assistance that can be categorized as participation and assistance in terrorism crimes. In the field of practice, law enforcement officers tend not to apply at all the teachings of inclusion and assistance as contained in articles 55 and 56 of the Criminal Code (hereinafter abbreviated as "KUHP"), but there are some law enforcers who use Article 55 and Article 56 of the criminal code in terrorism. Thus, it seems that there is a dualism in the application of law in terms of participation and assistance in the enforcement of terrorism criminal law that actually causes the eradication of terrorism crimes to be less effective.

On the one hand, participation and assistance can include people who ⁵⁹ not directly involved in the criminal act that is realized, where this can be given before or at the time the criminal act is committed or after the criminal act is committed. Where in this article is also discussed about the Kartasura suicide bombers at the Lebaran 2019 security post (Pospam), in the Kartasura Roundabout area, Sukoharjo, Kranggan Hamlet, Wirogunan, Kartasura, Sukoharjo, which basically was not done by one person, but was also done by several people who collaborated in committing the crime, where the perpetrators have finally been found guilty as contained in the: a) Defendant Rofik who has been sentenced to imprisonment for 12 (twelve) years on, Case Verdict number: 40/Pid.Sus / 2020 / Mrs. Jkt. The team, and it is known that the defendant's role in this case is known to be the maker and assembler of bombs, as well as carrying out bombings; b) Defendant Sugeng Riyadi who has been sentenced to imprisonment for 6 (six) years, on Decision number: 41/Pid.Sus/2020 / Fr.Jkt.The team where the defendant's role in this case is known to the defendant is a person who provides financial assistance, and supports the convicted Rofik; c) The defendant Achmad Sarwani alias Wawan alias adit alias Adit Alfaruqi, who has been sentenced to imprisonment for 4 (four) years, on Verdict number: 587/Pid.Sus/2020 / Fr.Jkt.The team, which is known to act as a party dictated by Ali Amirul Alam alias Umar ALS Ali alias Sun Dee, helped spread radicalism posts from Rofik, Mendoctrin Rofik do amaliyah (bombing); d) Accused Imam Raisna Alias Rio Alias Yuli Alias Yuli Aprianto Bin Biat, who has been sentenced to imprisonment for 4 (four) years, on the verdict number: 840/Pid.Sus/2020 / Fr.Jkt.The team, which is still related to the defendant Rofik case, where the defendant in this case as a party dictated by Chandra, assigned as a liaison by Diki, served as a courier who transferred money and ³⁷ delivered the package to someone assigned by Diki, entrusted money by Diki; e) Defendant Dedi Kusnadi Alias Markus Alias Margono Bin Totok Darmojo (Alm), who has been sentenced to imprisonment for 4 (four) years, on the verdict number:

842/Pid.Sus/2020 / Fr.Jkt.The team, which is still related to the defendant Rofik case, where the defendant's role is as a party that is dictated to the Darus Sahada Islamic boarding school, and assigned by Bimo to find information about the economy, politics, social, and Culture on social Media (newspapers, magazines, TV, Radio and the internet), prepare and provide transportation money, money for daily needs, school, health for the Children of the Wijayanto leaders of Jamaah Islamiyah.

From the case of the perpetrators above, it is known that the perpetrators who were arrested and tried, basically have different roles and involvement in the case. However, there is a discrepancy where the perpetrators both in the indictment and in the sentence are actually subject to the same article, namely Article 15 jo Article 7 of the law on Combating Terrorism. Meanwhile, from the previous explanation, it is known that basically the role and form of involvement of perpetrators of criminal acts of terrorism in the act of combating terrorism, including: a) Persons who incorporate explosives, and firearms for terrorist activities regulated by Article 9 of the Combating Terrorism Act, which states "Any person who unlawfully introduces into Indonesia, makes, receives, attempts to obtain, delivers or attempts to deliver, controls, carries, has in his possession or has in his possession, stores, transports, hides, uses, or issues to and / or from Indonesia any firearm, ammunition or, or something explosives and other materials that are dangerous with the intent to commit a crime of terrorism shall be punished with death or life imprisonment or imprisonment for a minimum of 3 (three) years and a maximum of 20 (twenty) years"; b) Persons who enter and trade without permission chemical weapons, biological weapons, radiological, microorganism, radioactive or its components, which is regulated by Article 10A of the law on Combating Terrorism.; c) Persons who raise funds for terrorist activities regulated by Article 11 of the law on Combating Terrorism; d) Persons who raise funds and follow up on terrorist activities, either by means of threats or bombings with chemical weapons, biological weapons, radiology, microorganisms, radioactivity or its components regulated by Article 12 of the law on Combating Terrorism; e) The person who gives and lends money to the perpetrators of terrorism, which is regulated by Article 13 letter A of the law on Combating Terrorism; f) Persons who conceal the perpetrators of terrorism offences provided for in Article 13 letter B of the Combating Terrorism Act; g) A person who hides information is a criminal act of terrorism provided for in Article 13 letter C of the law on Combating Terrorism; h) The person who plans, moves others to commit terrorism regulated in Article 14 of the law on Combating Terrorism; i) Persons who commit conspiracy, attempt and / or assistance to commit terrorism as stipulated in Article 15 of the law on Combating Terrorism provided that the action of Article 15 is accompanied by funding.

When looking at the formulation of the provisions of the eradication law above, both the public prosecutor and the judge who examined the decision Number: 40/Pid.Sus/2020 / Fr.Jkt.Tim. Verdict Number: 41/Pid.Sus/2020 / Fr.Jkt.Tim. Verdict Number: 587/Pid.Sus/2020 / Fr.Jkt.Tim. Verdict Number: 840/Pid.Sus/2020 / Fr.Jkt. Team, and verdict number: 842/Pid.Sus/2020 / Fr.Jkt.The team, in its implementation, does not apply the offense of participation or assistance in criminal acts as stipulated in Article 55 and Article 56 of the criminal code, so that in its implementation the punishment of perpetrators of terrorism crimes who only use the same charges, namely Article 15 and Article 7 of the law on Combating Terrorism, certainly does not reflect a sense of justice and does not guarantee legal certainty and does not meet the purpose of the punishment it self. Article 7 of the law on Combating Terrorism states that: "Any person who knowingly uses violence or the threat of violence with the intent to create an atmosphere of widespread terror or fear

of persons or to cause mass casualties by depriving others of liberty or loss of life or property, or to cause damage or destruction to strategically vital objects, or the environment, or public facilities, or international facilities, shall be punished with imprisonment for a maximum term of life”.

While the provisions of Article 15 of the law on Combating Terrorism stated: “Any person who commits its conspiracy, attempt, or assistance to commit criminal acts of terrorism as referred to in Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, and Article 12 shall be punished with the same crime as the perpetrators of criminal acts. (this provision has been changed to “any person who commits conspiracy, preparation, trial, or assistance to commit a criminal act of terrorism as referred to in Article 6, Article 7, Article 8, Article 9, Article 10, Article 10A, Article 12, Article 12A, article 12B, Article 13 letters b and C, and Article 13A shall be punished with the same penalty in accordance with the provisions referred to in Article 6, Article 7, Article 8, Article 9, Article 10, Article 10A, Article 12, Article 12A, article 12b, Article 13 letters B and letters C, and Article 13A)”.

When looking at the provisions of Article 15 of the law on Combating Terrorism, there is indeed an element that states “convicted of the same crime in accordance with the provisions. This seems to imply that if there is an offender who meets the elements of the offense in the provisions of Article 6, Article 7, Article 8, Article 9, Article 10, Article 10A, Article 12, Article 12A, article 12b, Article 13 letter b and letter c, and Article 13A, it can be convicted under the provisions of this article 15. But please also note that basically, the provisions contained in Article 15 are certainly not able to stand alone if done by more than one perpetrator, so the provisions in articles 55 and 56 of the criminal code still need to be used to explain the position, role, and actions of perpetrators in terrorism crimes that occur, so that criminal liability of the perpetrators can be clearly known.

Roeslan Saleh stated that criminal liability is defined as the continuation of objective reproaches that exist in criminal acts and subjectively qualify to be convicted for his actions. More simply is that the basis of the existence of a criminal offense is the principle of legality, while the basis for the conviction of the maker is the principle of no crime without error (abbreviated as the principle of error). This means that the perpetrator of a crime will only be convicted if he has guilt in committing the crime.

In line with Roeslan Saleh, Moeljatno separates firmly between criminal acts and criminal liability. The basis of a criminal act is the principle of legality and the basis of criminal liability is guilt. Which by Chairul Huda then developed into no criminal liability without fault. The principle of legality in criminal law in Indonesia as expressed in Article 1 Paragraph (1) of the Criminal Code (KUHP) which reads: “No act can be punished, except based on the strength of the provisions of criminal law that has existed before”. As for the concept of ‘guilt’ it is often elaborated as ‘geen straf zonder schuld’, or ‘no criminal without guilt’ as a basis for holding someone criminally accountable.²⁶

Guilt is an important element in determining criminal liability. In this concept, there are 2 conditions to be able to convict a person, namely there is a prohibited outward act or criminal act (actus reus) and there is an evil/despicable inner attitude (mens rea).²⁷ Errors in the theory of criminal liability can be determined from 2 (two) sides, namely

²⁶ Roeslan Saleh, *Perbuatan Pidana dan Pertanggung jawaban Pidana: Dua Pengertian Dasar Dalam Hukum Pidana* Jakarta: Aksara Baru, 1983), p. 75.

²⁷ Mahrus Ali, *Asas-Asas Hukum Pidana Korporasi*, (Depok: Rajagrafindo Perkasa, 2015), 93.

psychological errors and normative errors:²⁸ a) Psychological guilt is a certain mental or psychic state of the perpetrator of the crime and the relationship of that mental state with his actions in such a way that the perpetrator can be held accountable for his actions; b) Normative error is that the creator can be harmed in terms of society that in fact the creator can do otherwise if he does not want to do the action or should avoid the action; c) The use of self-inclusion offense when looking at the explanation of the provisions of articles 55 and 56 of the criminal code, actually has a function to; d) Determine the personal circumstances of the perpetrator so that it can be known what elements can eliminate, reduce or incriminate the criminal, taking into account the acts committed by the perpetrators and the relationship between each act of the perpetrator and the criminal responsibility that can be imposed on each perpetrator; e) To be able to understand the "form of cooperation "and" requirements in the participation offense in order to determine the accountability of the participants of the offense. To really make sure that the crime is inflicted on those who have committed the crime (actus reus) and are guilty of it (mens rea), and not just assumed to be in the criminal act itself (inherent); f) To be a consideration for criminal law practitioners in terms of filing a claim for the public prosecutor, defense (pleidooi) for lawyers/Legal Counsel and the verdict for the judge.

If it is related to the teaching of participation that is not applied in the case of decision Number: 40 / Pid.Sus/2020 / Fr.Jkt.Tim. Verdict Number: 41/Pid.Sus/2020 / Fr.Jkt.Tim. Verdict Number: 587/Pid.Sus/ 2020 / Fr.Jkt.Tim. Verdict Number: 840/Pid.Sus/2020 / Fr.Jkt.Team, and verdict number: 842/Pid.Sus/2020 / Fr.Jkt.The team, in general, actually caused uncertainty in the implementation of criminal law, especially in terrorism crimes.

This can be seen from the punishment received by the perpetrators Sugeng Riyadi, and Achmad Sarwani aka Wawan alias adit alias Adit Alfaruqi, who actually only received a sentence of 6 years (Sugeng Riyadi), and 4 years in prison (Achmad Sarwani), this verdict is lighter than the main perpetrator of the bombing, namely Rofik Asharudi Als. Rofik is 12 years in prison. While it is known that the perpetrators Sugeng Riyadi and Achmad Sarwani alias is the party that can actually be categorized ordered to do, or as explained earlier, the role of Sugeng Riyadi, and Achmad Sarwani alias Wawan alias adit alias Adit Alfaruqi is as "who ordered to do the deed (doen plegen, middelijke dader)", where from the previous explanation it is known that someone told others to do the deed, meaning that the sender does not do the act in question. From the previous explanation, it is known that the doenpleger or the person who performs the act through the intercession of another person, while the intermediary is only used as a tool. Thus, there are two parties, namely the direct maker (manus ministra/auctor phisicus), and the indirect maker (manus domina/auctor intellectualis). The elements on doenpleger are: a) The tools used are human; b) Tools used to do; c) The tools used cannot be accounted for.

Participation occurs when not only one person is involved in the occurrence of criminal acts, but several people. If it is related to the understanding of doenpleger, if someone has the will to carry out a criminal act, but someone who has the Will does not want to do it himself, but uses other people who are told to do it. As a condition of the person ordered it must be a person who cannot be convicted. The command to do (doenplegen) occurs before the action by the person who is told to do an offense. According to the science of criminal law in doenplegen there are two parties namely direct perpetrators (manus ministra) and indirect perpetrators (manus domina). It is called an indirect

²⁸ *Ibid.*, 139-140.

perpetrator because manus domina does not directly commit his own delicts as he wishes but through the intercession of other people who are only as a tool.²⁹

In doenpleger, usually the person who told to do it as a behind-the-scenes actors or indirect actors (manus domina, onmiddelijke dader, intellectueele dader). It is the one who commands to do this that makes others do evil. If someone asks, it means someone is asked. The person who is told is the one who commits the offense, which is also commonly called the direct perpetrator or material perpetrator (manus ministra, middelijke dader, materiele dader), the person who is told is just a tool for the person who ordered, so it should be in execution, it should be Sugeng Riyadi, and Achmad Sarwani alias Wawan alias adit alias Adit Alfaruqi subjected to this element as the mastermind/brain of the bombing that occurred at the security post (Pospam) Lebaran 2019 in the Kartasura Roundabout area, Kartasura, Sukoharjo, a hamlet in kranggan, wirogunan, Kartasura, Sukoharjo, and it is fitting that the provisions of Article 55 paragraph (1) of the criminal code is used as a Juncto (jo) in linking the acts committed Sugeng Riyadi, and Achmad Sarwani alias Wawan alias adit alias Adit Alfaruqi, and it is fitting that the defendant Sugeng Riyadi, and Achmad Sarwani alias Wawan alias adit alias Adit Alfaruqi sentenced to the same severity or approaching even exceeding the sentence received by the defendant Rofik Asharudi Als Rofik.

The significance of the application of the doctrine of participation in the criminal act of terrorism as occurred in the case in the above case becomes very necessary, because as an explanation of the function of the offense of participation if the doctrine of participation in the criminal code is not applied, it will be very unfair when in a criminal act there, while the person who ordered it cannot be reached by criminal law and thus cannot be convicted on the grounds of not committing a criminal offense or not causing a consequence as prohibited in the formulation of a criminal offense.³⁰ In addition, the importance of participation offenses carried out is certainly intended to summarize the general elements of almost every criminal offense, both regulated within and outside the Criminal Code, which in this article is particularly related to the elements and the role of perpetrators of terrorism crimes, because a law can be in any formulation of its articles States and specifies anyone in addition to the main perpetrators involved in a criminal offense and can be held accountable according to criminal law.

Further from the above, in the context of criminal assistance as contained in Article 56 of the Criminal Code, again the perpetrators of Imam Raisna Alias Rio Alias Yuli Alias Yuli Aprianto Bin Biat and Dedi Kusrini Alias Markus Alias Margono Bin Totok Darmojo (Alm) which in reality is in accordance with the description on the indictment of the Public Prosecutor, only indirect assistance to criminal acts committed by Rofik Asharudi Als. Rofik, was charged and sentenced to the same sentence as Achmad Sarwani alias Wawan alias adit alias Adit Alfaruqi, which is equally sentenced to 4 years imprisonment, while it is known the role of Imam Raisna Alias Rio Alias Yuli Alias Yuli Aprianto Bin Biat is direct assistance and the role of the defendant and Dedi Kusrini Alias Markus Alias Margono Bin Totok Darmojo (Alm) is: a) Those who knowingly provided assistance at the time of the crime committed; b) Those who deliberately give the opportunity, means or evidence to commit a crime.

²⁹ Moeljatno, *Op. Cit.*, 5.

³⁰ Wachid Ridwan, Ma;mun Murod, *Irisan Motif Ancaman Terorisme: Studi Kasus Penegakan Hukum Densus 88 Anti Teror di Yogyakarta, Surabaya dan Makasar Tahun 2021*, *Independen: Jurnal Politik Indonesia dan Global*, 3 no 1 (2022): 19-22

From the description mentioned above, it can be seen that in its implementation on the crime of terrorism, although theoretically known elements of participation and assistance of criminal acts can be seen in real terms can be applied in decision Number: 40/Pid.Sus/2020 / Fr.Jkt.Tim. Verdict Number: 41/Pid.Sus/2020 / Fr.Jkt.Tim. Verdict Number: 587/Pid.Sus/2020 / Fr.Jkt.Tim. Verdict Number: 840/Pid.Sus/2020 / Fr.Jkt.Team, and verdict number: 842/Pid.Sus/2020 / Fr.Jkt.Team, but in fact the elements of participation and assistance in criminal acts in the above cases are not properly applied by the public prosecutor or judge.

4. CONCLUSION

Even though the provisions regarding the teaching of inclusion are not expressive verbis have been included in stadia legislation of a special nature (lex specialist) as contained in the government regulation in lieu of Law Number 1 of 2002 concerning the eradication of terrorism based on the law of the Republic of Indonesia number 15 of 2003 has been established by Law No. Law Number 5 of 2018 on amendments to Law Number: 15, year 2003, on the establishment of government regulations in lieu of Law, Number: 1, year 2002, on the eradication of terrorism crimes into law (abbreviated as "law on the eradication of terrorism"), however in the field of practice, the application of the doctrine of inclusion in this provision often raises legal problems, especially in the context of determining criminal liability from perpetrators of terrorism crimes, which for example against perpetrators of terrorism crimes, the execution of the punishment becomes equalized, as if each perpetrator committed the same crime, although in reality the perpetrators of each act are different. In this case, the doctrine of inclusion in general (lex generalis) regulated in 55 and 56 of the Criminal Code can basically provide greater benefits in criminal law enforcement in order to determine criminal liability to perpetrators of terrorism crimes, so that in the end the eradication of terrorism crimes can be achieved without forgetting the side of justice and legal certainty.

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⁴ Remarcho, Meinaky, Fakhlur, Kewenangan Detasemen Khusus 88 Anti Teror Dalam Menangani Aksi Tindak Pidana Terorisme Dalam Perspektif Hak Asasi Manusia, *Jurnal Ilmiah Publika*, 10 no 2 (2022): 230.

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¹³ Abdul Wahid, dan kawan-kawan, *Kejahatan Terorisme Prespektif Agama, HAM dan Hukum*, Bandung: Refika Aditama, 2004.

¹⁴ Amirudin, Z.A., *Pengantar Metode Penelitian Hukum*, Jakarta: Rajawali Pers, 2010.

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¹⁶ Louis Tappangan, Penangkapan dan Penahanan Terduga Pelaku Tindak Pidana Terorisme Berdasarkan Peraturan Hukum Indonesia, *Justitia Jurnal Hukum*, 3 no 2 (2019): 279

³⁵ Lukman Hakim, *Asas-Asas Hukum Pidana*, Yogyakarta: Deepublish, 2020.

¹⁸ Moeljatno, *Asas Asas Hukum Pidana*, Jakarta: Rineka Cipta, 2015.

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²⁸ Schaffmeister, D. Nico Keijzer dan E. PH. Sutorius, *Hukum Pidana*, Yogyakarta: Liberty, 1995.

⁴¹ Soedarto, *Hukum dan Hukum Pidana*, Bandung: Alumni, 2007.

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