

Penal Rules for Perpetrators of Terrorism Crimes in The Perspective of Indonesian Criminal Law

Jacky Wicaksana, Fitria Ramadhani Siregar, Abdul Razak Nasution

Abstract

Terrorism is an extraordinary crime that requires extraordinary treatment. Terrorism has become a global phenomenon that has penetrated almost all countries in the world, including Indonesia. As in other regions, terrorism in Indonesia also has a theological and ideological basis as well as networks so that it has a strong resilience. Until now, terrorism has become one of the serious threats to national security. Terrorism is a theme that invites the attention of many people, especially academics, to study it from various aspects. Acts of terrorism often occur in Indonesia. The event that occurred domestically, which made the image of the Indonesian state unsafe for foreign citizens was in the case of the Bali Bombing. Indonesian people generally condemn these acts. The crime of terrorism resulted in the killing of many victims, which is very contrary to the Qur'an and Law Number 5 of 2018, so that the perpetrator must be sentenced to criminal sanctions or punishment as a result of his actions, namely the death penalty. This study uses a normative juridical approach method, with analytical descriptive research specifications. The data used in this study is secondary data obtained through literature studies, then analyzed qualitatively using law enforcement theory and Islamic justice theory. The result of this study is that the Government has made a new law in an effort to prevent acts of terrorism, namely Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 Regarding the eradication of terrorism crimes into law. Article 6 explains that: "Any person who deliberately uses violence or threats of violence that creates an atmosphere of terror or fear of people at large, causes mass casualties by depriving others of their liberty or loss of life and property, or causes damage or destruction to strategic vital objects, the environment or public facilities or international facilities shall be punished with a maximum penalty of imprisonment short 5 (five) years and paing lama 20 (twenty) years, life imprisonment, or death penalty".

Keywords: Terrorism, Crime, Criminalization

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Introduction

A criminal act is an act or series of human acts that are contrary to laws or other laws and regulations, which are committed with a purpose, and for the act must be committed by a person who can be held accountable, the term criminal act comes from a term known in Dutch criminal law, namely strafbaar feit. Although this term is found in the Dutch WvS, as well as the Dutch East Indies WvS (KUHP), there is no official explanation of what is meant by Strafbbaar feit (Chazawi, 2010).

Strafbbaarfeit can be interpreted as an act that is threatened with a criminal act, that is unlawful, that is related to a mistake and that is committed by a person who is capable of being responsible:

Terrorism is a coordinated attack that aims to inflict a sense of terror on a group of people. Unlike war, terrorist acts do not follow war procedures, so the timing of their execution is always sudden and the victims are random and often civilians. More recently, terrorism has been associated with the concept of military and extremism popularized by Western media, associated with regions such as the Middle East, Northern Ireland, and Colombia that are unpopular with Westerners.

According to J. Bowyer Bell, terrorism is a weapon of the weak party, but it is a powerful weapon to influence the other strong party, while David Fromkin sees it more from the point of view of goals and means, Terrorism is an attempt to influence the other party by relying on the psychological changes of the other party. Terrorism is caught up in acts of violence and brutality. This trap turns the act into a universal evil, so that noble goals are destroyed due to a lack of transparency.

According to the researcher, the crime of terrorism is very organized and international so that the Indonesian government must be extra and serious in handling cases of terrorism that threaten, and terrorism does not always arise on the basis of religion because religion does not teach about terrorism. Fundamentalism or liberalism will not be effective in eliminating radicalism. Terrorism is not Islam and Islam is not terrorism. The emergence of terrorism by Muslims is a misunderstanding of the essence of religious teachings themselves. So it does not look at the integrity of Islam comprehensively, but an understanding that is piece by piece. This misunderstanding then develops into the abuse of religion (Yasmira, 2024).

The continuing threat of terrorism in Indonesia was also due to the fact that at that time there was no strong legal framework for intelligence activities to support efforts to prevent and eradicate terrorism. Another obstacle in preventing and eradicating terrorism is the lack of guidelines that guarantee that radical thinking can be moderated. (Adji, 2016) At the same time, the system of monitoring the distribution of bomb-making materials is still weak, so terrorists still have the freedom to make bombs, which if not detected can cause chaos in various locations. Also related to differences in ideology and understanding of different religions, social and educational disparities make people more vulnerable to terrorist network infiltration. With the passage of Law Number 5 of 2018 concerning the Eradication of Terrorism Crimes, it is hoped that it will be an important step in efforts to create security and emphasize preventive efforts, hopefully terrorist acts will not occur again (Masyar, 2009).

According to Neil J. Smeler, various political factors such as economic, political, religious and other conditions can give rise to organized terrorist movements. However, this condition does not guarantee the occurrence of violent acts committed by terrorists, unless it is accompanied by other factors, such as the doctrine of religious ideology embraced by religious leaders, with the ideological doctrine instilled by their supporters, so that it can lead to the occurrence of terrorists. commit acts of violence that threaten entire communities and are perceived as obstructing their goals, and anyone they consider to be violating their religion is targeted by perpetrators of terrorism. Based on violence committed by terrorist groups, it is one way to teach deviant behavior and the view that violence is an innovative, regressive behavior

(retreatis) or rebellious behavior (Wahid, 2004). In Indonesia's positive law, the punishment of terrorist perpetrators is applied not only to the main perpetrator such as the perpetrator of the bombing or murder, but also to the person associated with the perpetrator, such as the person who intentionally kills the perpetrator. or to create favorable conditions for the perpetrator, or to provide money or financial support to the perpetrator⁴, to the person who conceals the terrorist perpetrator or the person who conceals information about the perpetrator a terrorist criminal act, as stipulated in Article 13 of Law Number 15 of 2003 concerning the eradication of crime. Terrorist Crimes. The large number of terrorists who have been sentenced to prison does not seem to dampen their enthusiasm to continue carrying out terrorist activities to take revenge against them (Pradityo, 2016).

the condemned group From a subjective point of view, perpetrators who are subject to criminal sanctions after serving their sentence (recidivism) seem to be unable to provide corrective effects on themselves or their group. The extreme nature of the beliefs and thoughts of the perpetrators of crimes is still cultured even though they have served their sentence. It turns out that prison sentences cannot have a subjective impact on the rehabilitation and resocialization of the perpetrator after being released from prison. In fact, prison is used as a turning point to encourage terrorism convicts to act more recklessly.

Since the second Marriott Hotel bombing in 2009, terrorist acts in Indonesia have all involved people convicted of terrorism. Participate a second time due to increased roles and actions. Call it Urwah, one of the perpetrators of the Marriot hotel bombing in 2009. When he was first arrested, Urwah played a role in hiding information about the whereabouts of Noorder M. Tinggi. In the second half, Urwah became one of the architects of the deadly attack. Likewise with Afif alias Sunakim, the perpetrator of the Sarinah attack in 2016. Initially, Afif only participated in military training in Aceh in 2010. After his release, Afif became the main perpetrator of the attack earlier this year.

With the development of crime and criminalization, in the modern school, the penal system began to focus on the perpetrators and their deeds (daad-dader strafrecht), especially the type of punishment that was applied not only criminal punishment but also actions. penalty. The criminal aspect is one of the aspects that attracts public attention to efforts to eradicate terrorist crimes. The growth of terrorist networks and the phenomenon of recidivism, as well as law enforcement, raises serious questions about whether the current criminal policy is still appropriate or whether there is a significant need for criminal law reform, as also expressed by the Chairman of the Huda. law, anti-terrorism law has become a necessity.

In Law No. 15 of 2003 concerning the Stipulation of Regulations in Lieu of Law No. 1 of 2002 hereinafter referred to as the Law on the Eradication of Terrorism Crimes, Article 13 stipulates: "Every person who deliberately provides assistance or assistance to the perpetrators of the crime of terrorism, with:

1. Giving or lending money or other goods or property to perpetrators of terrorism crimes;
2. Concealing the perpetrators of terrorism crimes; or
3. Concealing information about the crime of terrorism, punishable by imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years".

Based on Article 13, any person who deliberately gives or lends money or other goods or property to the perpetrator or criminal act of terrorism can be criminalized, subsequently provide assistance or Ease of hiding the perpetrators of terrorism crimes can also be criminalized. In addition, hiding information on terrorism crimes can also be punished. Any person who deliberately provides assistance or convenience to the perpetrator of a criminal act in the form of assistance is punished with a minimum prison sentence of 3 years.

Problem Formulation

From the description mentioned above, problems can be drawn that can be used as a problem formulation to be analyzed, namely:

1. How is the Regulation of Terrorism in Laws and Regulations in Indonesia?
2. What are the Provisions of Criminal Sanctions for Perpetrators of Terrorism Crimes in Indonesia?

Methods

The type of research used is juridical-normative research, because it prioritizes the conception of law as law in doctrine which is entirely under the auspices of the conceptual approach of research (Soekanto, 2010). This study uses 2 (two) approaches, namely: a. Juridical-normative approach, which is an approach to understanding the law from the philosophical rules of the rule of law along with the basis for justifying the enactment of a rule of law (Lubis, 2004).

The thinking method used is the deductive thinking method, which is a way of thinking by drawing conclusions from something that is general in nature and that conclusion is aimed at something that is special; (Sedarmayanti & Syarifudin, 2002). b. Policy approach, which is an approach in decision-making that is oriented towards the goals to be achieved. (Basuki, 1989). A policy approach is needed related to the policy of implementing sanctions against perpetrators of terrorism crimes in Indonesia. The policy approach includes the interrelated understanding between a goal-oriented approach, a rational approach, and a values-oriented approach (Arif, 1994).

The data used in this study is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal material is in the form of the 1945 Constitution of the Republic of Indonesia, the Criminal Code (KUHP), and Law Number 15 of 2003 concerning the Eradication of Terrorism Crimes. Secondary legal materials in the form of books, journals, research results related to criminal and criminal law, criminal sanctions and action sanctions, and other materials that.

Studying the reform of the criminal law. Meanwhile, tertiary legal materials are the Great Dictionary of the Indonesian Language, legal dictionaries, and encyclopedias as well as other supporting materials. The data collection technique that will be used in this study is carried out by means of a literature study (Soekanto, 2006).

The processing, analysis and construction of normative legal research data can be carried out by analyzing legal rules and then constructing them into categories on the basis of basic understandings of the legal system.

Result and Discussion

4.1 Regulating Terrorism Crimes in Laws and Regulations

The state is the highest legal institution in a region that with all its power apparatus, has the ability to enforce a rule and force all residents living in it not to violate any regulation that has been promulgated earlier (Abdullah, 2005). The state has a philosophy and supreme law that is the foundation of its establishment, every applicable rule and law must be in harmony with and animate the principle of the highest law. Terrorism in Indonesia is included in the criminal sanctions. Criminal sanctions are the imposition of a punishment on a person who is found guilty of committing a crime or criminal act through a series of judicial processes by a specially given power or law. With the imposition of criminal sanctions, it is hoped that people will not commit criminal acts again. Criminal sanctions contain the following elements and characteristics: (Ali, 2015).

1. The crime is essentially an imposition of suffering or misery or other unpleasant consequences;
2. Punishment that Given with deliberate by person or body who has power (the

authoritative);

3. The crime is imposed on a person who have committed a criminal act according to the law;
4. The crime is a statement of reproach by the state against a person for violating the law.

Examination of terrorist suspects are expected to provide information without neglecting the essences of democracy within laws that guarantees constitutional rights of individual. A Difficulties in dealing with terrorists because of unresolved different stand point between a terrorist group and the state government. (Juanrico,2015) (The examination of suspected terrorists is expected to provide information without ignoring the essence of democracy in laws that guarantee the constitutional rights of individuals. Difficulties in dealing with terrorists due to unresolved differences of opinion between terrorist groups and state governments).

In terms of efforts to prevent terrorist attacks in various tragedies that occurred, the government issued Regulation No. 1 of 2002 which was later promulgated into Law No. 15 of 2003 concerning the Eradication of Terrorism Crimes. International terrorism is an organized crime, so the Indonesian government increases vigilance in maintaining the integrity of the Unitary State of the Republic of Indonesia. (Muladi,Jakarta)

Many things cause the emergence of terrorism and it is very close to the daily life of the community that the State does not understand. Terrorism does not always arise on the basis of religion. Terrorism is not Islam and Islam is not terrorism. The emergence of terrorism among Muslims is a misunderstanding of the essence of religious teachings themselves. So it does not look at the integrity of Islam comprehensively, but an understanding that is piecemeal. This misunderstanding develops into the abuse of religion.

In Law No. 5 of 2018 concerning Terrorism Crimes Chapter III Article 6 it is written: Any person who deliberately uses Violence or Threats of Violence that creates an atmosphere of terror or fear against people widely, causes mass casualties by depriving others of their liberty or loss of life and property, or causes damage or destruction to Strategic Vital Objects, the environment or Public Facilities or international facilities shall be sentenced to imprisonment for a minimum of 5 (five) years and A maximum of 20 (twenty) years, life imprisonment, or the death penalty. (Friedman,2009)

With the use of sentences that create an atmosphere of terror or fear of people widely or cause mass casualties and sentences that cause damage or destruction to strategic vital objects or the environment or public facilities or international facilities in the formulation of Article 6, it is clear that the criminal act of terrorism as referred to in Article 6 is a material offense, That is, a crime that is considered completed with the occurrence of consequences that are prohibited and threatened with criminal offense by law.

So, to declare that the criminal act of terrorism as referred to in Article 6 has been committed, it must have really arisen There are consequences in the form of an atmosphere of terror or fear of people widely or causing mass casualties or consequences in the form of damage or destruction to strategic vital objects or the environment or public facilities or international facilities.

Article 7 of Law No. 8 of 2018 regulates the crime of terrorism as a formal offense, article 7 states: Any person who knowingly uses force or threats of violence with intent to create an atmosphere of terror or fear against people at large or causes mass casualties by depriving others of their liberty or loss of life or property, or causing damage and destruction to strategic vital objects, or the environment or public facilities, or international facilities, punishable by a maximum sentence of life imprisonment. (Atmasasmita, Romli,2002)

The meaning of the sentence "to cause terror" above is a sentence that indicates that an act of terrorism is a formal offense, namely a crime that is considered to have been completed

by committing an act that is prohibited and threatened with criminal offense by law, there is no need to wait until the consequences are caused that are prohibited and threatened with criminal offense by law. In addition, the Law on the Eradication of Terrorism also contains regulations regarding the concept of participation. This can be seen in Article 13 which states: (Wibowo, Ari,2012)

Any person who deliberately provides assistance or convenience to the perpetrator of a criminal act of terrorism, by: a. giving or lending money or goods, or other property to the perpetrator of a criminal act of terrorism; b. concealing the perpetrators of terrorism crimes; or c. concealing information about terrorism crimes convicted of terrorism shall be sentenced to imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years. Article 13 regulates the punishment for terrorism crimes in the event of participation in the form of assistance in committing terrorism crimes. Law No. 5 of 2018 qualifies the criminal acts of terrorism as follows:

1. Material delinquency contained in Article 6.
2. Formal delik contained in Articles 7 to 12.
3. The assistance delicacy contained in Article 6 letter g.
4. Delic inclusion in Article 13 and Article 15.

The crime of terrorism is the result of the accumulation of several factors, not only by psychological factors, but also by economic, political, religious, sociological, and many others. Therefore, it is too simplistic to explain an act of terrorism based on only one cause, such as psychological. Ethnic, religious and ideological conflicts, poverty, modernization pressures, political injustice, lack of communication channels of funds, traditions of cruelty, the birth of groups-Revolutionary groups, the weakness and incompetence of the government, the erosion of trust in the regime, and the deep divisions between the government and the political elite are also the causes of the birth of terrorism. (Atasasmita dan Tim,2012)

Regarding the Elements of the Crime of Terrorism, according to Pompe in the Poernomo quote mentioned that, there are three elements of a crime, namely: a. Unlawful elements, b. Elements of error, and c. Elements of danger, disturbance, and harm to others, other parties or society in general. An act is categorized as a delicacy if it meets the following elements:

1. There must be human deeds;
2. The human act must be in accordance with the formulation of the article of the relevant law;
3. The act is against the law (there is no excuse for forgiveness);
4. Accountable (Prakoso1998)

Meanwhile, according to Moeljatno, it states that:

1. Behavior and consequences
2. Ikhwal or circumstance that accompanies the act.
3. Additional circumstances that are criminally aggravating
4. Objective unlawful elements
5. Subjective elements of unlawful

Furthermore, according to Satochid Kartanegara, it was stated that: The element of delicacy consists of objective elements and subjective elements. Objective elements are elements that exist outside of humans, namely in the form of:

1. An action;
2. A consequence and;
3. Condition (*circumstance*)

All of them are prohibited and threatened with punishment by law. Subjective elements are elements of the argument which can be in the form of:

1. Ability (*accountability*);
2. Guilt.

Meanwhile, it explains that the elements of delik consist of two types, namely:

1. Objective Elements, which are elements that exist outside the perpetrator (*dader*) which can be in the form of:
 - a. Deeds, both in the sense of doing and in the sense of not doing. Examples of objective elements in the form of "acts" are acts that are prohibited and threatened by law. These acts can be called, among others, the acts formulated in Article 242, Article 263 and Article 362 of the Criminal Code. In the provisions of Article 362 of the Criminal Code, for example, the objective element is in the form of an "act" and at the same time is an act that is prohibited and threatened by Law is the act of taking.
 - b. As a result, which is an absolute requirement in material deliction. Examples of objective elements in the form of an "effect" are consequences that are prohibited and threatened by law and are absolute requirements in delik, including consequences as referred to in the provisions of Article 351 and Article 338 of the Criminal Code. In the provisions of Article 338 of the Criminal Code, for example, an objective element in the form of a "consequence" that is prohibited and threatened by law is a consequence in the form of the death of a person.
 - c. Certain circumstances or problems that are prohibited and threatened by law. An example of an objective element in the form of a "situation" that is prohibited and threatened by law is the situation as referred to in the provisions of Article 160, Article 281 and Article 282 of the Criminal Code. In the provisions of Article 282 of the Criminal Code, for example, the objective element in the form of "circumstances" is in a public place.

4.2 Criminal Sanctions for Perpetrators of Terrorism Crimes in Indonesia

So many terrorism perpetrators who have been sanctioned with imprisonment do not discourage the perpetrators from continuing to commit terror as a form of revenge for their group that has been criminalized. Subjectively, perpetrators who have been subject to criminal sanctions after serving a sentence (*recidive*) are unable to provide a corrective effect both to themselves and to their group. The radical traits that exist in the perpetrators' beliefs and thoughts are still firmly embedded, even though they have served their sentences. Prison sentences are not able to have a subjective rehabilitation and resocialization effect for the perpetrator after serving his sentence. In practice, prison is used as a turning point for terrorism convicts to act more recklessly.

Since the second Marriot Hotel bombing in 2009, acts of terrorism in Indonesia have involved former terrorism inmates. The second time is involvement, due to the increase in roles and actions. For example, Urwah, one of the perpetrators of the 2009 Marriot Hotel bombing. When he was first arrested, Urwah played a role in hiding information about the whereabouts of Noordin M. Top. In the second action, Urwah became one of the designers of the deadly attack. Likewise with Afif alias Sunakim, the perpetrator of the 2016 Sarinah bombing. Initially, Afif was only involved in military training in Aceh in 2010. After his release, Afif became the main perpetrator of the attack earlier this year.

When examining the causal relationship between terrorism crimes committed by recidivists and by people who have close ties to previous perpetrators, it raises questions and debates about whether the purpose of punishment has been a topic of conversation from time to time and a central issue in criminal law has been achieved in practice. Because crime or punishment is always related to actions carried out by the state based on the law, which of course can be a means of preventing and overcoming crime itself.

The development of criminal and criminal justice in modern legal schools, the penal

system began to be oriented towards the perpetrators and deeds (*daad-dader straafrecht*), which is the type of sanctions that are applied not only criminal sanctions but also criminal sanctions.

It also includes sanctions for actions. The criminal aspect is one of the aspects that is in the public spotlight on efforts to eradicate terrorism crimes. Law Number 15 of 2003 concerning the Eradication of Terrorism Crimes lists individuals and corporations as the subjects of criminal acts that can be accounted for in a criminal act of terrorism. The provisions of the delicacy in Law Number 15 of 2003 begin with the words of each person. In criminal law, the concept of "accountability" is a central concept known as the doctrine of error. In Latin, the teaching of error is known as *mens rea* which is based on an act that does not cause a person problems, unless the person's mind is evil.

In English, the doctrine is formulated with *an act does not make a person guilty, unless the mind is legally blameworthy*, based on this principle, there are two conditions that must be met to be able to punish a terrorist, namely there are outward acts that are forbidden/criminal acts (*actus reas*) and there is an evil / reprehensible attitude (*mens rea*). Law Number 15 of 2003 concerning the Eradication of Terrorism Crimes in the formulation of terrorism crimes almost always contains elements of intentional or forgetfulness. There are three forms of criminal sanctions imposed on terrorism perpetrators, namely the death penalty, imprisonment, and fines for corporate actors. The pattern of criminal law threats is one of the mirrors that is very trusted to be given to a civilization that reflects fundamental values at this time. In the history of criminal law, especially regarding its sanctions, it would be difficult to believe that human beings are really very cruel creatures. How unlikely, the types of crimes known from the east to the west and from the north to the south of the planet all depend on *retribution* and the way they are carried out is very inhumane.

The Government of Indonesia has established 3 (three) paradigms that are considered suitable in the context of a developing political culture, namely: *first*, the protection of the sovereignty of the territory of the unitary state of the Republic of Indonesia; *second*, is the protection of the human rights of citizens of the Republic of Indonesia, both those living in the country and abroad; and *third*, is the protection of the human rights of suspects/defendants of terrorism crimes which is already a universal right and therefore should not be ignored. (Hamzah,1995)

J.E. Sahetapy has warned that "Criminal imposition (*een straffleggen*) must be tried to be in accordance with and balanced with the values of legal awareness, which values move according to the development of space, time and circumstances that require the imposition of a special nature, as a reaction to the act of rape that is imposing a penalty. (Sahetapy,2007)

In other words, to measure the extent to which a type of criminal sanction can meet the purpose of punishment determined by the legal system

criminal offence. This is considering that crime is essentially only a "tool" to achieve goals. Various theories of punishment that emerged in his time have formulated different penal goals. (Hamzah,1995) However, one thing that is noteworthy is that the development of criminal theory shows a shift in the philosophy of punishment from a philosophy of "punishing" to a philosophy of "coaching", including in Indonesia.

Regarding the sanction of action, Roeslan Saleh stated that if the crime in its attempt to achieve its goal is not only by imposing a penalty, but also by using actions, so, in addition to criminal punishment, there are also action sanctions. It is aimed solely at specific prevention. The intention of this action is to maintain the security of the community against people who are a little dangerous and will commit criminal acts. (Saleh,1983)

This school of legal determinism considers that action for the perpetrator is necessary by considering the psychological factors of the convicted of terrorism which is based on a psychiatric factor, namely the belief in committing a crime. Therefore, a process of mental

rehabilitation called deradicalization is needed. It is time for this policy to be considered in the implementation of the implementation of penalties against perpetrators of terrorism crimes in Indonesia. This is because the perpetrators of terrorism crimes are almost dominated by religious motives that require a *recovery* of the soul and the resocialization of the perspective of beliefs in society.

The study of values contained in Pancasila, the first precept, namely the One Godhead, according to Notonagoro, is *causa prima*, recognition and belief in God Almighty is practiced by almost the entire Indonesian nation. For this reason, the threat and implementation of crimes must be guided by the precepts of the One Godhead. To see how important the values derived from Pancasila are used as a basis or foundation in national and state policies, including legislative policies on criminal sanctions against terrorism, the extent of the relationship will be examined (position) Pancasila in the life of society, nation and state in Indonesia.

Noor MS Bakry further stated that Pancasila balances individual nature and social nature in the life of society, nation and state. So that Pancasila is a balance point that can bring together the school of individualism and the school of collectivism to establish a modern state that takes a middle path with the monodualistic school or often called an integralistic state". (Bakry,1994)

The Religious Perspective is basically a treatise delivered by God to the prophet as a guide for humans and perfect laws for humans to use in organizing real life ordinances and regulating relationships with and responsibility to Allah, himself as a servant of Allah. (Agus,2006) Terrorism is in fact interpreted at the will of certain countries to strike organizations, as well as individuals who are allegedly terrorists according to their version of whom. Prohibited terror is terror that disturbs the security of the wider community. Killing innocent people as a reward for sins they did not commit sheds blood, destroys houses, and disturbs the honor of innocent people without feeling the slightest guilt.

Conclusion

The legal provisions governing the Land Bank as a land provider are set out in Article 126(1) and (2) of the UUCK in conjunction with Article 16 of Government Regulation No. 64 of 2021, one of which is for agrarian reform amounting to 30%. Based on the analysis, the percentage of land provision is too small compared to investment interests and violates the mandate of Article 33(3) of the 1945 Constitution, which states that land should be used to the greatest extent possible for the prosperity of the people in the form of equitable and welfare-oriented land as the primary objective of agrarian reform. Such land provision is also deemed contrary to the theory of the welfare state, which requires every regulation to serve as a guideline for the state to create the welfare of the people. The provision and redistribution of land in asset restructuring activities within the framework of agrarian reform have been regulated in detail in Presidential Regulation No. 62 of 2023, along with its subsidiary regulations in the form of technical guidelines and other government instruments. However, this is not the case with the provisions for the provision and distribution of land for agrarian reform by the Land Bank, which have not been regulated in a rigid manner, thereby failing to provide legal certainty. The Land Bank, as an institution that provides land for the government to implement agrarian reform, raises institutional issues. This is because before the establishment of the Land Bank based on the UUCK and Presidential Regulation No. 64 of 2021, there were already several state institutions that had the authority to carry out the provision and distribution of land within the framework of agrarian reform, namely the Ministry of State (ATR/BPN) and the Agrarian Reform Task Force (GTRA). Such a situation, from the perspective of legal utility theory, is ineffective and even has the potential to cause conflicts of norms/antinomy (conflict of norm) and overlapping authority.

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