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Indonesian Law Journal



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The Rebellion Indication Towards Sovereign Government in Acts of Terrorism in Indonesia In Transcendental Dimension*

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Abstract:

Every individual is certainly needing a peace and safety on their life. A terror or an intimidation need to be avoided, and becomes a government's obligation to protect them. Terror is still occurred in various parts of the world including Indonesia, and a kind of organized crime. This crime is usually called by terrorism. A view which committing acts of violence and threat to create an atmosphere of terror or fear to the people extensively and cause victims spreadly, by snatching independence or losing life and property, and causing a damage and destruction of life and property of another person. This crime also causes a disruption of national stability. So, the government has an obligation to eradicate and eliminate this criminal group. Unfortunately, terrorism is identifiably referred to a specific Islamic group. Whereas Islam is never taught any violence through this humanity, but a religion which taught to keep and protect life. This paper is aim to analyze is terrorism belonging to rebellion as a kind of criminal, or a basic criminal. By using statute approach and transcendental approach, the writer makes serious effort to find a conclusion of this problem.

Keywords: Rebellion, Terrorism, Sovereign Government.

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Indikasi Pemberontakan Terhadap Pemerintahan Berdaulat Pada Aksi Kejahatan Terorisme di Indonesia Dalam Dimensi Transendental

Abstrak:

Setiap orang pasti menginginkan kedamaian dan keamanan dalam hidupnya. Teror ataupun intimidasi merupakan hal yang harus dihindari, dan menjadi kewajiban negara untuk melindunginya. Terjadinya tindakan kejahatan teror masih terjadi di berbagai belahan dunia termasuk Indonesia, dan merupakan bentuk kejahatan terorganisir. Kejahatan ini biasa disebut dengan terorisme. Sebuah paham yang melakukan tindakan kekerasan dan ancaman guna menimbulkan suasana teror atau rasa takut terhadap orang secara meluas dan menimbulkan korban yang bersifat masal, dilakukan dengan cara merampas kemerdekaan atau hilangnya nyawa dan harta benda orang lain, serta mengakibatkan kerusakan dan kehancuran terhadap nyawa dan harta benda orang lain. Kejahatan ini mengakibatkan gangguan stabilitas nasional. Sehingga pemerintah yang berdaulat berkewajiban membasmi dan menumpas tuntas kelompok pelaku kejahatan ini. Mirisnya, kejahatan terorisme ini kerap diidentikkan kepada kelompok Islam tertentu. Padahal Islam tidak mengajarkan kejahatan terhadap kemanusiaan ini, tetapi agama yang menjaga dan melindungi kehidupan. Penelitian ini mencoba menganalisis apakah terorisme termasuk ke dalam perbuatan kejahatan pemberontakan atau hanya kriminal biasa. Dengan melakukan pendekatan hukum (*statute approach*) dan pendekatan transendental akhirnya penulis berupaya mencari titik akhir sebagai hasil kesimpulan dari permasalahan ini.

Kata Kunci: Pemberontakan, Terorisme, Pemerintahan Berdaulat

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Introduction

Terrorism is still being scary phantom over the world particularly in Indonesia. It can be proven by a lot of acts of terrorism that have occurred in Indonesia over the last ten years. Even the closest acts of terrorism were in the form of suicide bombings that happened in several places in Indonesia. Moreover, the nature of actions, actors, strategic purposes, motivations, expected results and achievements, targets and terrorism methods are increasingly widespread and varied. According to this fact, then terrorism is a crime against peace and security of mankind.³

Terrorism is a threat and intimidation for the security of state, because terrorism effect the greatest danger to human rights. The targets of terrorism are randomly or indiscriminately which tend to sacrifice an innocent people, have a tendency to create negative synergies between national terrorism organization and international organization, and the possibility of cooperation between organization of terrorist and organized crime either national or international.⁴ Thus, terrorism is obviously an international wickedness that needs to be eradicated planned and sustainable, so that the people' rights can be protected and upheld.

In order to anticipate the criminal offense of terrorism, according to the opening description of constitution of Republic of Indonesia 1945, then Indonesia have a duty and responsibility to maintain a safe, peaceful and prosperous life, and participate actively maintaining world peace. Consequently, the government is obliged to maintain and enforce sovereignty and protect every citizen from any destructive threats either come from inside or outside country.⁵

In overcoming and anticipating the terrorism, government has responded by issuing some of regulation arranged criminal offense of terrorism namely: The Law Number 15 of 2003 concerning the enactment of substitute government regulation of The Law Number 1 of 2002 about Eradication of Terrorism, and The Law number 16 of 2003 concerning the enactment of substitute government regulation of The Law Number 2 of 2002 concerning an enactment of government regulations.

³ Mulyanah W. Kusumah, *Terorisme dalam Perspektif Politik dan Hukum*, Jurnal Kriminologi Indonesia, Vol. 2, No. 3 Desember (2002), p.22.

⁴ Hamzah Junaid, *Pergerakan Kelompok Terorisme dalam Prespektif Barat dan Islam*, Jurnal Sulesana, Vol. 8, No. 2, (2013), p.119.

⁵ Ahmad Mukri Aji, *Pemberantasan Tindak Pidana Terorisme di Indonesia (Analisis Terhadap UUU No. 15 dan 16 Tahun 2003)*, Jurnal Cita Hukum, Vol. 1, No. 1, Juni (2013), p.58.

Yet, after these regulations were passed and published, a series of terrorism cases continued to occur and develop in Indonesia. From acts of terrorist bombing, killings of police officers considered by them (terrorist) as *anshorut thoghut*, to acts of terrorism in May 2018. There were about five cases of terrorism that occurred during May. One of it was terror in Mako Brimob West Java which killed five police officer and one terrorist member, next the bomb that occurred in three churches in Surabaya, and other terror incidents.⁶ Even though in the end of cases were successfully handled by law enforcers, the case still became the spotlight and seemed to prove that the prevention of terrorism crimes had not been successful in this country.

A Feral Motivation of Terrorism Action

Exploring and preventing the occurrence of terrorism, is principally cannot be separated from the main issues, specifically what motives are used by the perpetrators to commit acts of terrorism. One of the motives for the appearance and development of terrorism is generally due to a sense of disappointment of long-standing unfair treatment and hopeless change. While in the case that happened in Indonesia had other motives underling someone to carry out terror activities that is the existence of negative religious beliefs and fanaticism, which ended up by a consideration that government or doctrine of other religions was wrong.⁷ This theory is proven by looking the existence of several religious fanatical organizations in the name of Islam that emerged in Indonesia, which believed that their doctrine were the most correct and blamed and made enemies outside their group. There is even evidence that these organizations are linked with the International Religious Fanatical Organizations called ISIS (*Islamic State of Iraq and Syiria*), and the fact is this organization has expanded and captured several regions in Indonesia.

This case will not only reviewed on Indonesian Criminal Law, but also it's necessary to be studied on Islamic Law. It means that transcendental studies of terrorism issues are very interesting to be used as discussion object. The reason is terrorism cases that occur are based on the name of Islam, where they ideologically pledge allegiance to ISIS, which in its doctrine has the concept of *Takfiri* (Point out another people as *kafir*) on people who contradict with them,

⁶ <https://www.idntimes.com/news/indonesia/margith-juita-damanik/5-kasus-teror-di-Indonesia-selama-mei/full>, the article has been accessed on May 30 2018, at 08.30

⁷ Cipi Perdana, *Rekontruksi Pemidanaan Pelaku Tindak Pidana Terorisme di Indonesia*, Jurnal JHIus Quia Iustum, Vol. 23, No. 4, Oktober (2016), p.674.

even justifies any blood people, including Muslims who disagree with their doctrine.⁸ So that their behavior violates the meaning of jihad in Islam, which ultimately results in acts of terror that threaten and intimidate state security

This act of terrorism in the name of Islam could make Islamophobia in Indonesia, as happened in Europe. Conversely, Islam itself is a religion of peaceful and does not force as taught by the Prophet Muhammad. Under these circumstances, there are two basic things become a refutation in Islam, those are; first, one of the fundamental principles stated in the holy Qur'an concerning religious freedom is "*There is no compulsion in religion*". (Surah Al-Baqarah (2): 256). Therefore, in Islamic perspective, the issue of faith is a matter that concerns one's free will and personal beliefs, "*Then whoever wants (to believe) let him believe, and whoever wants (infidels) let him disbelieve*" (Surah Al-Kahf (18): 29).⁹

Secondly, as a religion that is good and religion completes blessed by Allah, Islam is clearly damaging to humans kill other humans with intentions and without reason in *shar'i* justification. This is according to Alquran in Surah Al-Isra' verse (33) which means: "*and do not kill the soul that Allah has forbidden (to kill), but with a right (reason), and whoever is wrongfully killed, then surely We have given authority to his heirs, but do not the heirs exceed the limit in killing, actually he is the one who gets help.*"

This confirms that in Islam there is no justification for killing without clear *shariah* reasons such as punishment for the perpetrators of *Qishash*, and the implementation must be under a legitimate government. So if there is an action that justifies the act of murder on the grounds that is not as a group, it is contradict to what the Alquran declares. Specifically in Islamic law there is no study of rules and penalties relating to criminal acts of terrorism, but there is a term rebellion (*al-baghyu*) in Islam. Then, can acts of terrorism be included in the crime of Rebellion (*al-baghyu*)? What are the indications of rebellion from this terrorism crime?

Terror and Intimidation as a Threat of National Security.

The definition of terrorism now is still a debate, so that there is no definition of appropriate terrorism that can be universally accepted. Terrorism is a term with a difficult definition, making it difficult of similarity defining. One

⁸ <https://ibnuabbaskendari.wordpress.com/2017/06/09/kesesatan-kelompok-isis/>, the article has been accessed on May 30 2018, at 15.16

⁹ Mahmuod Hamdi Zaqaouq, *Islam Dihujat Islam Menjawab Tanggapan atas Tuduhan dan Kesalahpahaman*, Penerjemah: Irfan Mas'ud, (Ciputat: Penerbit Lentera Hati, 2008), p.47.

reason due to terrorism is an object that can be seen from multi-perspectives, such as politics, sociology, criminology, international relations, psychology and so on.¹⁰ So, the definition of terrorism depends on which perspective to interpret it.

The term of terrorism is derived from Latin word “*terrere*” means making fear, so terrorism is defined as a Systematic use of terror as a means of gaining some political end.¹¹ Understanding of terrorism was began to be discussed in The European Convention on The Suppression of Terrorism (ECST) in Europe in 1977, there was an expansion of the paradigm’s meaning of *Crimes against State* to become *Crimes against Humanity*, which included criminal offense to create a situation that caused in individuals, groups and society in an atmosphere of terror.¹² Terrorism is categorized as a part of a widespread and systematic attack, the attack is aimed directly at the civilian population, especially directed at the souls of innocent people.¹³

As written on article 6 of the Law number 15 year 2003 about the stipulation of government regulation substituted of constitution number 1 year 2002 concerning Eradication of terrorism stated that terrorism is that everyone deliberately uses violence or threats, creates an atmosphere of terror or fear of people extensively or cause mass casualties, by seizing independence or loss of people’s life and property, or causing damage or destruction to vital strategic objects or the environment or public facilities or international facilities, will be punished to death penalty, or life imprisonment for a minimum of 4 (four) years and a maximum of 20 (twenty) years.¹⁴

The current modern phenomenon occupy terrorism as the focus of attention of various international organizations, any circles and countries. Action which raised in the name of terrorism have threatened and intimidated the state’s security. So that in fact, terrorism can pose a danger to life and economy. In addition to more complex risk, terrorism can also be caused, including:¹⁵

¹⁰ Ari Wibowo, *Hukum Pidana Terorisme*, (Yogyakarta : Graha Ilmu, 2012), p.57.

¹¹ Iwan Suherman, *Tinjauan Hukum Islam Terhadap Aksi Terorisme di Indonesia (Analisis Fatwa MUI No. 3 Tahun 2004 Tentang Terorisme)*, Skripsi Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, 2008, p.9.

¹² Abdul Wahid, dkk, *Kejahatan Terorisme Presfektif Agama, Ham dan Hukum*, (Bandung : PT Refika Aditama, 2004), p.23.

¹³ Hery Firmansyah, *Upaya Penanggulangan Tindak Pidana Terorisme di Indonesia*, Jurnal Mimbar Hukum, Vol. 23, No. 2, Juni (2011), p.379.

¹⁴ The Law Number 15 year 2003 concerning determination of Government Regulation as a substitute Constitution Number 1 year 2002 about the eradication of terrorism becomes a constitution.

¹⁵ Ari Wibowo, *Hukum Pidana Terorisme*, p.76-77

- a. Social life and society become depressed, insecure, and always haunted by concerns in carrying out activities. This condition can lead to violations of the rights of individuals and groups in society.
- b. Damaging the political pillar, because politics is used as a tool or medium to commit crimes by certain parties and arbitrariness by the authorities.
- c. Economic life becomes chaotic because market sentiment tends to follow national and international political behavior and events. The occurrence of terrorism in a region indicates that the security of an area is not safe, so market confidence decrease.
- d. Terrorism results in the development or easing of cultural values to be depleted because as if the culture of society dissolves in an anarchic atmosphere.
- e. Religious life becomes in the shadow of power and oppression. Religion which ideally should be a way of liberation from oppression is precisely the existence of religiously motivated terrorism to the contrary.

There are still many other dangers from this terrorism crime against society. So, it is not surprising that most legal experts put it into the category Extra Ordinary Crime.

The Legal Platform and Criminal Accountability for Terrorism Crimes

The stipulation concerning criminal acts of terrorism are regulated in the Law number 15 year 2003 about the Stipulation of Government Regulation replaced law number 1 year 2002 about Eradication of Criminal Acts of Terrorism into Law. Legal platform and Criminal Accountability for Terrorism Indonesia has also issued Law number 6 of 2006 concerning the Ratification of the International Convention Against Terrorist Bombing and the Convention on the Suppression of Financing Terrorism as a manifestation of concrete support in preventing and eradicating Terrorism.¹⁶

Criminal accountability in terrorism crimes is closely related to the hierarchy of terrorism organizations.¹⁷ This is because the level or hierarchy occupied by the perpetrators of terrorism determines the weight of the sentence to be received. The explanation of these hierarchies and their accountability is as follows;

¹⁶ Aziz Syamsudin, *Tindak Pidana Khusus*, (Jakarta: Sinar Grafika, 2011), Cet. Ke-2, p.87.

¹⁷ Abdul Wahid, dkk, *Kejahatan Terorisme Perspektif Agama, Ham dan Hukum*, p.96.

The first hierarchy, is the highest hierarchy in a terrorist organization consisting of terrorists who hold operations control, including making plans and setting goals, supervisors of a terrorist organization. The threat of punishment that can be imposed on each of them is the death penalty based on the Law number 13 year 2003 *jo* Government Regulation substituted Law number 1 year 2002, while the article that can be imposed is Article 6,13,14, and 15 of the Law number 15 in year 2003 *jo* Government Regulation replaced Law number 1 of 2002.¹⁸

The second hierarchy is occupied by active cadres as an implementer of terrorist acts. The threat of punishment that can be imposed according to the Law number 15 of 2003 *jo* Government Regulation changed Law Number 1 of 2002 is the death penalty, while the article that can be imposed is Article 6, 14, and 15 of the Law number 15 of 2003 in conjunction with the Replacement Government Regulation Law Number 1 of 2002.¹⁹

The third hierarchy, occupied by active supporters, their main task is to maintain the continuity of active cadre activities in the area. The threat of punishment that can be imposed is 15 years imprisonment, while the article that can be imposed is Article 6, 7 *jo*. Article 11, 13, of Law Number 15 of 2003 *jo*. Government Regulation substituted Law number 1 of 2002.²⁰

The fourth hierarchy, usually occupied by passive supporters, those who do not directly become members but are usually used and utilized by members of the terrorists without them knowing.²¹

Terrorism Damage Sharia Objectives (*Maqashid Sharia*)

Terrorism action carried out in the world especially in Indonesia are always identified with Islam. This opinion is not without basis if we see the fact that the motive of the perpetrators of the average terrorist act is fanaticism of Islamic Doctrine. Consequently, there arises Islamophobia or fear of Muslim who study their teachings.

Seeing the actions carried out by terrorists with motives in the name of the Islamic Studies, shows that there is an error in understanding religious teachings. Whereas in the teachings of Islam itself there is no justification for

¹⁸ Abdul Wahid, dkk, *Kejahatan Terorisme Perspektif Agama, Ham dan Hukum*, p.96.

¹⁹ Abdul Wahid, dkk, *Kejahatan Terorisme Perspektif Agama, Ham dan Hukum*, p.96.

²⁰ Abdul Wahid, dkk, *Kejahatan Terorisme Perspektif Agama, Ham dan Hukum*, p.97.

²¹ Abdul Wahid, dkk, *Kejahatan Terorisme Prespektif Agama, Ham dan Hukum*, p.97.

intentional killing of souls (*Qatl amd*). This is clearly illustrated in the discussion of the purpose of the Islamic religion which one of them is guarding the soul. So it is important to know the discussion about guarding the soul in Islam so that terrorism is no longer identified with the Islamic Studies.

The *Muhaqqiqin* Ulama agreed that the aim of the Shari'a in Islam is to uphold and give benefit to the human, both in the life of the world and the hereafter.²² In realizing the benefit for a human, it needs protection for every individual who is material and moral. It is from this goal that human rights are born which have been regulated in Islamic law in a comprehensive and in-depth manner fourteen centuries ago.

The benefit of safeguarding these human rights seems to be the reason for the imposition of law (*taklif*) for every *Mukallaf* people (who has been able to account for his actions). As-Syatibi said; "The imposition (*taklif*) of the Shari'a benefits its return to the maintenance of goals in beings, and these goals are *dharuriyat* (primary), *hajiyat* (secondary), and *tahsiniyat* (complementary)."²³

From the above objectives, the most important is a *dharuriyat* (primary) goal. What is meant by *dharuriyat* is that Shari'a is a pillar to uphold various benefits of the world and the hereafter. If the pillars of the Shari'a are not enforced and implemented, then the benefit of the world and the hereafter will be lost and will not be realized.²⁴ For the purpose of this *dharuriyat* (primary) benefit, As-Syathibi explained that the imposition of law which is the obligation of a servant to carry out the Shari'a will return to the five forms of maintenance, namely; protection of religion (*Hifdz Addin*), protection of the soul (*Hifdz Annafs*), preservation of offspring (*Hifdz Annasl*), protection of property (*Hifdz Almaal*), and protection of reason (*Hifdz Alaql*).²⁵

It is clear, then, that Islam puts great importance on the benefit of safeguarding and guaranteeing the rights of every individual. The first and foremost right that is considered by Islam is the right to life, namely the right which is sanctified and the nobility must not be destroyed.²⁶ This is consistent with the legal system in Islamic criminal law, all of which will return to one major theme, namely the protection of the soul (*Hifdz Annafs*). Because caring for the

²² Yusuf Al-Qardhawi, *Membumikan Syari'at Islam*, (Surabaya; Dunia Ilmu, 1997), p.57.

²³ Abu Ishaq As-Syathiby, *Al-Muwafaqaat Fi Ushul As-Syari'ah*, (Darul Fikri Al-Arabi), juz ke-2, p.8.

²⁴ Yusuf Al-Qardhawi, *Membumikan Syari'at Islam*, p.58.

²⁵ Abu Ishaq As-Syathiby, *Al-Muwafaqaat Fi Ushul As-Syari'ah*, p.8-10.

²⁶ Ahmad Al-Mursi Husain Jauhar, *Maqashid Syariah*, (Jakarta, Amzah, 2013), p.22.

human soul is one of the main objectives of the five goals of the Shari'a which are revealed by Allah.²⁷

Therefore, Islam strongly prohibits its adherents from killing each other (eliminating souls) of fellow human beings, unless there are several things that require removing one's soul. But it must remain in the corridor of religious justification. As a religion that is good (*haq*) and religion completes that is blessed by Allah, Islam is very damaging to humans who commit murder to other human beings with intentions and without reason in *shar'i* justification. This is in line with the word of Allah (swt), in Surat al-Israa (17): 33 as follows: "And do not kill the soul that Allah has forbidden (to kill), but with a right reason. And whoever is wrongfully killed, then We have given authority to his heirs, but the heirs will not exceed the limit in killing. In fact he is the one who gets help."

In the above verse, the killing of the human soul is a prohibited act, namely the word "do not kill", where there is the word "no" which indicates an absolute prohibition. In the rule of *ushul fiqh*, it is explained: "Basically the prohibition is an obstacle unless there is a proposition that allows it."²⁸ So, it is clear that the killing of the human soul is prohibited. In Islamic law, murder of the human soul will be subject to legal sanctions.

Not only that, the order of life that is governed by Islam is very firm in maintaining the life of every soul, because protecting and protecting the soul from various threats means that it has maintained the existence of human life, so that the order of life can run properly and correctly in shari'a. This is confirmed by Islam by describing the person who killed one soul as if he had killed all human beings, and the person who preserved the life of one soul seemed to preserve all human souls. This information is contained in the Surah al-Maidah verse (32):

"Therefore, We set (a law) for the Children of Israel, that: Whoever kills a human being, not because he (killed) another person, or not for making damage on the face of the earth, as if he had killed a whole human being . And whoever nourishes the life of a human being, as if he has kept all human life. And indeed Our messengers had come to them with (clear) explanations, then many of them afterwards truly went beyond the limits of doing damage on earth. "

Imam Abu Manshur Al Mathuridi, a kalam scholar from the *Ahlu Al-Sunnah* clerics interpreted this verse by stating: "Whoever considers the legal

²⁷ Muhammad Amin Suma, dkk, *Pidana Islam di Indonesia Peluang, Prospek, dan Tantangan*, (Jakarta; Pustaka Firdaus, 2001), p.91.

²⁸ Abdul Hamid Hakim, *Mabadi Awwaliyyah fi Ushul Al-Fiqh wa Al-Qawaa'id Al-Fiqhiyyah*, (Jakarta; Maktabah Sa'adiyah Putra), p.8.

murder of one life without the right reason which has been forbidden by Allah, then as if he has legalized the murder of all humans. He has become an infidel because he has legalized the murder of one life that has been forbidden by God. Because whoever disbelieves in one verse of the Alquran, it means he has disbelieved in all the verses of the Alquran. This verse can also mean other things, namely the opinion that the murder sentence is equivalent to the murder of all humans. Another meaning is that it requires everyone to collectively prevent the occurrence of murder. If he does it or participates in the plot, then it is as if he has committed murder on all humans. It also shows that this verse comes down as a law that applies to all Muslims and non-Muslims, if they do damage like murder on earth."²⁹

Therefore, Islam provides a very severe punishment for every person who commits an act of crime against the human soul (murder) intentionally and unjustly with appropriate punishment or known as the *Qishah* sentence, because in the sentence there is a preventive effort in guarding the human life order. This is confirmed in the Quran *al-Baqarah* (2): 179; "And in *qishaash* there is a guarantee of survival. O people who understand, that you may fear."

Qishash's meaning is to equate to giving criminal sanctions to the perpetrators as well as the actions that have been committed by him. *Qishah* law is one form of punishment that has been set by Allah in Islamic law, and its implementation has been carried out at the time of the Prophet Muhammad SAW.³⁰ The *qishash* arrangement according to Wahbah Zuhaili is also stipulated based on the Qur'an, Sunnah, Ijma', and reason.³¹

The assertion of the importance of protecting the soul is very clear in the teachings of Islam. This reason denied the crime in the form of murder carried out by terrorists in the name of Islamic teachings. Murder is a matter that is strictly forbidden in Islam, whether done against Muslims or non-Muslims, then the perpetrators who does and correct the action of terrorism especially on the form of murder is already been an infidel through Islamic thoughts.

²⁹ Muhammad Tahir Al-Qadri, *Fatwa Tentang Terorisme dan Bom Bunuh Diri*, (Jakarta: Lembaga Penelitian dan Pengkajian Islam, 2014), p.143-144.

³⁰ Abdu Ar-Rahman Al-Juzairy, *Kitab Al-fiqhi 'Ala Madzaahab Al-Arba'ah*, (Beirut, Daar Al-Fikr, 1991), Jilid Ke-5, p.246.

³¹ Wahbah Az-Zuhaili, *Al-fiqh Al-Islamy Wa Adillatuhu*, (Jakarta, Gema Insani, 2011), jilid ke-7, p.599.

The Involvement of *Jamaah Anshorud Daulah (JAD)* in the Action of Terrorism in Indonesia

Jamaah Anshorud Daulah (JAD) is an organization affiliated to International organization ISIS (*Islamic State of Iraq Syria*) which lately become IS (*Islamic State*). On the explanation of As'ad Said Ali, vice former of BIN (Badan Intelijen Negara) that JAD (*Jamaah Anshorud Daulah*) is the federation of the Islamic defender of East and West Indonesia, fragment of *Jamaah Islamiyah*, and also the group of Al- Muhajirun, which was formed by ex-member of *Hizbut Tahrir Indonesia*.³²

It is different from Ali Imron's confession (planner and agent former of the action of terrorism in Indonesia) that there are differences between both JI (*Jamaah Islamiyah*) and JAD (*Jamaah Anshorud Daulah*), such are; First, JI (*Jamaah Islamiyah*) was affiliated by Al- Qaeda, while JAD (*Jamaah Anshorud Daulah*) were the crony of ISIS. Second, JI were doing the series of action triggered by riots towards Muslims, such as the church bomb because of the riots in Ambon and Poso, then the Bali bomb caused by the United States of America's attack towards Afghanistan, whereas JAD did not have such those motives on doing their actions. Third, the basic difference between both of them is on the faith. JI's faith is based on *ahlussunnah wal jamaah*, while JAD is based on *Takfiri Theory* (which allow the blood of the people excluding their thoughts) as upheld by ISIS.³³

Jamaah Anshorud Daulah is led by terrorism former convict named Aman Abdurrahman. The series of action that happened because of the JAD (*Jamaah Anshorud Daulah*) was apparently manipulated by Aman Abdurrahman. Aman was prosecuted of some terrorism cases in Indonesia and sentenced to death by the Judge of The National Court of South Jakarta on Friday, 22nd of June 2018.³⁴ On the 16th of April 2014, Aman was online vowed to the leader of ISIS, Abu Bakar Al- Baghdadi, on his sentence, he said, "this is from your brothers, and your loyal servant, who announced the loyalty and promise to our leader, *Amirul Mukminin*, Abu Bakar Al- Baghdadi...."³⁵ From that, Aman Abdurrahman was estimated as the leader of ISIS (*Islamic State of Iraq Syria*) in Indonesia.

³² Mahardika Satria Hadi and Muhammad Muhyidin, *Negara Harus Mencegah Radikalisme (the intervie of As'ad Said Ali vice former of BIN)*, Tempo. 19th of March 2015, p.9.

³³ suryamalang.tribunnews.com/2018/05/19/ali-imron-beberkan-perbedaan-jamaah-islamiyah-ji-dan-jamaah-ansharut-daulah-jad?page=2, the article was accessed on 23rd of June 2018, at 19.19 Western Indonesia Time

³⁴ <http://m.detik.com/news/berita/4077726/aman-abdurrahman-divonis-hukuman-mati>, the article was accessed on 22nd of June 2018, at 18.13 Western Indonesia Time

³⁵ Maman and Evan, *Jejak Abu Sulaiman*, Tempo. 26th of January 2016, p.1.

Based on the explained data above, had already converged the facts that the ideology adopted by JAD (*Jamaah Anshorud Daulah*) is the same ideology that adopted by ISIS (*Islamic State of Iraq Syria*), then to see more clearly to the ideology of JAD, will need more explanation to the ideology of ISIS.

The Correlation between *Islamic State Of Iraq Syria (ISIS)* and the group of *Jamaah Anshorud Daulad (JAD)*

ISIS (*Islamic State of Iraq Syria*) was the translation of the organization of *Ad- Daulah Al- Islamiyah fi Al- Iraq wa As- Syam*. However, *Associated Press* and *The United States of America* called it as *Islamic State in Iraq and the Levant (ISIL)*.³⁶ In Bahasa Indonesia, they are called by *Negara Islam Iraq dan Suriah (NIIS)*, and the organization already becomes *Islamic State (IS)* nowadays.

The root of ISIS cannot be separated from Abu Musab Al- Zarqawi, who was originally part of this militant group, before finally Abu Musab Al- Zarqawi was formed an organization called *Tahwid wa al- Jihad*. After Al- Zarqawi was vowed and joined Osama bin Laden on 2004, Al- Zarqawi changed the name of the organization to *Tanzim Qa'idat al- Jihad fi Bilad al- Rafidayn* or was known by Al- Qaeda. On 2006, al- Zarqawi announced the formation of *Majlis Syura Mujahidin* that was led by Rasyid Baghdadi through a record, which aimed to anticipate the dissension between all the fighters scattered around the remote area of Iraq. A month after his statement, al- Zarqawi was murdered in the war, whose position was finally changed by Abu Hamzah al- Muhajir (a figure of Al- Qaeda).³⁷

On the last 2006, most of the troops of *Majlis Syura Mujahidin* made a decision to build a Country of Islam in Iraq under the leadership of Abu Umar Al- Baghdadi. On the 19th of April 2010, Abu Hamzah al- Muhajir and Abu Umar al- Baghdadi was murdered because of the great air attack from the United States of America. Ten days after the incident, *Majlis Syura Mujahidin* held a meeting and chose Abu Bakar Al- Baghdadi as the next leader. From here was the pioneer of the raise of ISIS, that was on 2011- 2014, war happened between the Basyar Assad army and the troops on the opposite side who against the master including

³⁶ Abdul Wahid, "ISIS: Perjuangan Islam Semu dan Kemunduran Sistem Politik Komparasi Nilai- Nilai Keislaman ISIS dengan Sistem Politik Kekinian," *Episteme Journal*, Vol. 9, Number 2, December (2014), p.407-408.

³⁷ Ahmad Nuryani, dkk, "Jihad ISIS dalam Prespektif Ulama Islam," *Public Thought Journal*, Vol. 3, Number 1, January (2015), p.9.

the groups of the Islamic defenders in Iraq, which one of those was *Jabhah Nusroh*, the delegation of Al- Qaeda in Syam under the leadership of al- Jawlaany.³⁸

On the 9th of April 2013, Abu Bakar Al- Baghdadi announced that the troops of *Jabhah Nusroh* was a part of Iraq Islamic Country, and changed the name of *Jabhah Nusroh* with *Islamic State of Iraq Syria* (ISIS), nevertheless they got rejection from al- Jawlaany as the leader of *Jabhah Nusroh* and got the support from other leaders of al-Qaeda. On November 2013, Aiman Zawahiri declared that ISIS was not a part of Al- Qaeda. This caused by the difference of the ideology, when Al- Qaeda considered ISIS is a member of contemporary *khawarij* group because they had very extreme rule to the people excluding their groups and called them as apostate, and they often do the violence to the civilian and the Islamic defenders troops as well as in Iraq and Suriah.³⁹

On the 29th of June 2014, the spokesman of ISIS proclaimed Abu Bakar Al- Baghdadi as a *khalifah*, and changed the name of ISIS to *Islamic States* (IS). From this, ISIS perceived every person who were not willing to admit Abu Bakar Al- Baghdadi is an infidel, because they against the maintenance of The Country of Islam and the application of Islamic Shari'a.⁴⁰

The ideology used was the doctrinal ideology of *Salafi Jihadi*, which raised a hard line orientation on the radical ISIS group. It was different from the more compromising doctrine of *Salafi Jihadi* Al- Qaeda. As for the derivatives from ISIS's (*Islamic State of Iraq Syria*) or IS's (*Islamic State*) theory and ideology are;⁴¹

First, Takfiri Theory, a theory or concept which was consider any other different group or thoughts to an infidel. This theory which generalizes ISIS and *khawarij*, so that ISIS is considered as neo- *khawarij al- muhakkimah*. This *takfiri theory* does not care about the right of life for the people who are not included in their group, this thought is caused by affirmation of dominated primitive Islamic thoughts, which is rigid, anti-dialog, discriminative, and sorting who are Muslims and who are not (the infidels). *Second*, giving priority to the violence and cruelty, for the non- ISIS society and the regime of government who against

³⁸ Ali Musri Semjan Putra, MA., *ISIS Dalam Tinjauan Ahlussunnah*, online article was accessed from dzikra.com/wp-content/uploads/2014/09/, on 24th of June 2018, at 08.30 Western Indonesia Time, p. 1-2.

³⁹ Ali Musri Semjan Putra, MA., *Kesetatan Ideologi ISIS*, majalah As-Sunnah, Ed. 06/XVIII/2014, p.5-7.

⁴⁰ Ali Musri Semjan Putra, *ISIS Dalam Tinjauan Ahlussunnah*, p.3.

⁴¹ Muhammad Haidar Assad, *ISIS Organisasi Teroris Paling Mengerikan Abad Ini*, (Jakarta; Ufuk Press, 2014), p.145-150.

ISIS. *Third*, justifying every kind of acculturation of cultural values and local wisdom with Islamic theory as a deviate or bid'ah. On this basis, ISIS act like they want to fight against the digression. *Fourth*, forcing the ideology of IS (*Islamic State*) under the leadership of Abu Bakar Al- Baghdadi, by requiring every Muslims to revoke their vow to the leaders of their countries. *Fifth*, giving priority to the *Jihad* values (on the perspective of ISIS), which *Jihad* is a doctrine to be in a physical war, so it is giving the impression that Islam is a radical and sword religion (suggesting war).

The Refusal of Islam to the Terrorism

Terrorism is a new thing happens in Islam, which the consequences and the responsibility of the action is not specifically arranged in the law of Islam. This is because on the Islamic law, the distribution of criminal act based on the punishment is divided to three parts, they are; *Hudud*, *Qishash*, and *Ta'zir*.⁴² The certainty of the criminal acts of *Qishash* and *Hudud* have already fixed in Islam. For *Qishash* is only on murder, while *Hudud* is including seven criminal acts, those are; *Zina* (sexual acts before marriage), *Qadzaf*, *Syurb al- Khamr* (drinking alcoholic beverages), *Hirabah*, *Sariqoh* (robbing), *Riddah*, and *al- Baghyu* (rebellion).

The terrorism terms in Islamic law are so variative, even according to 'Abd al- hay al- Farmawi, similar terrorism terms is mentioned up to eighty times, such as *al- baghy* (rebellion), *al- thugyan* (arbitrariness and transgress the accepted bounds) as is written on QS. Al- Hud verse 112, *al- zhulm* (cruelty), on QS. Al- Furqan verse 19, *al- I'tida'* (doing things beyond the limit) on QS. Al- Baqarah verse 190 and QS. Al- Maidah verse 87, *al- qatl* (murder) on QS. Al- Maidah verse 32, *al- harb* (war) on QS. Al- Maidah verse 33-34.⁴³ In this, there are the closest three technical term with terrorism, those are; *al- Irhab/ Irhabiyyah*, *al- Hirabah*, *al- Baghyu*.

Basically, in Arabic literature the word 'terrorism' is more identical and in accordance with the word "*al- Irhab'*", which means creating the fear, horrified, nervousness, and shock.⁴⁴ This is the same with QS. Al- Anfal verse 60, that is:

"and be ready to face them by any power you have and from the horses that are prepared for the war (with that preparation) you deter the enemies of Allah and

⁴² Ahmad Wardi Muslich, *Hukum Pidana Islam*, (Jakarta; Sinar Grafika, 2005), p.x.

⁴³ Kasjim Salenda, *Terorisme dalam Prespektif Hukum Islam*, Journal of Islamic Study Ulumuna, Vol. XIII, Number 1, June (2009), p.83.

⁴⁴ Ahmad Mukri Aji, *Pemberantasan Tindak Pidana Terorisme di Indonesia (Analisis Terhadap UU No. 15 dan 16 Tahun 2003)*, Jurnal Cita Hukum, Vol. 1, No. 1, Juni (2013), p.59.

your enemy also the people except them although you do not know them, but Allah knows everything. Everything that you give in the way of Allah will undoubtedly be rewarded enough and you will not be in detriment.”

In this verse, there is a sentence “be ready to face them”, which is used in Alquran to against “the enemies of Allah”. The similar thing was explained by Quraish Shihab on his interpretation, that the people on that verse are not to the general public and the innocent people, but to the enemies of Allah and all human beings who wants to create damages in the earth.⁴⁵ Therefore, if we pay attention to the Political Islamic acts, fundamentalist view, and the radical acts. Is often used to fight the enemies of Allah.⁴⁶

Furthermore, according to the punishment to the criminal acts of terrorism in Islam, there should be different views between the scholars of Islam. Some of contemporary Islamic scholars grouped terrorism to the *jarimah al-Hirabah* (robbing). This is basically because of *al-Hirabah* is a criminal action which disturb the stability of state security and make restless to the general public in the country. Besides, the conformity of the action of terrorism into *al-Hirabah*, those are;⁴⁷ *first*; inflict the fear on the street, but not taking the luggage and no murdering. *Second*; Taking wealth but not murder the victim. *Third*; Killing the victim but not taking the wealth. *Fourth*; taking the wealth and killing the victim at once. In the other hand, some other contemporary Islamic scholar grouped terrorism to the *jarimah al- baghyu* (rebellion), because the terrorism is identical with the suspect who deviate from their obedience to the real government. But, not every rebellion is categorized as terrorism. Need deeper explanation that *al- Baghyu* (rebellion) is categorized as terrorism if it is done by violence, taking everybody to panic, and damage to all people’s living order.⁴⁸

The consideration on the analysis of this case is by looking at the terrorist’s motives and the doer of the terror acts, based on their understanding and obedience to the leader of ISIS (*Islamic State of Iraq Syria*), so the author took the second opinion where the terrorism is grouped to *jarimah al- baghyu* (rebellion), following the opinion of Badr Nashir who stated that *al- Baghyu* (rebellion) is a part of terrorism.⁴⁹ This opinion should be related to those

⁴⁵ M. Quraish Shihab, *Tafsir al-Mishbah: Kesan, Pesan dan Kereseriusan al-Qur’an*, (Jakarta; Lentera Hati, 2002), Vol. V, p.461.

⁴⁶ Ahmad Tholabi Kharlie, *Islam Versus Terorisme* (Suatu Pendekatan Tafsir Hukum), Miqot Journal, Vol. XXXII, Number 1, January-June (2008), p.90.

⁴⁷ Ahmad Wardi Muslich, *Hukum Pidana Islam*, p. 111

⁴⁸ Kasjim Salenda, *Terorisme dalam Prespektif Hukum Islam*, Journal of Islamic Study Ulumuna, Vol. XIII, Number 1 June (2009), p.97.

⁴⁹ Kasjim Salenda, *Terorisme dalam Prespektif Hukum Islam*, p.90

elements of *al- Baghyu* (rebellion), therefore the author would discuss some points related to *al- Baghyu*, including doing the rebellion in Islam.

The Rebellion Indication in Terrorism

Al- Baghyu or rebellion according to the literature is looking up or demanding on something,⁵⁰ in the other hand, the word *al- baghyu* according to *al-Urf* is asking for something that is not allowed or violating rights, as well as because of sin or the cruelty.⁵¹ According to the terminology, *al- baghyu* is defined by the Islamic scholar of the theory of Islam in various editors. The Malikiyah scholar defined it as; "refuse to submit and obey the leader of the government by coupling to overthrow."⁵² Whereas Hanafiyah scholar defined it as; "Rebellion is the disobedience towards the head of government at the wrong way."⁵³

While according to Syafiiyyah and Hanbaliyyah scholars, *al – baghyu* is defined as; "Rebellion is an insubordination from a strong group and leader who is obeyed, towards the leader of government at the wrong way."⁵⁴ According to those definitions of rebellions, explained the different important requirements of rebellion things, but not on the principal elements.

The Legal Foundation of giving the punishment to the Rebel (*Al- Baghyu*)

The rule of giving the punishment to a rebel is written in Alquran that said:

"Then if there are two categories of them believe, and they are in the war, you should bring them into peace! But if one of them broke the promises between both of them, you should war on the other until they back to Allah. If they already back to Allah's rule, bring both of them into peace in the name of justice, and you should be equitable; Actually, Allah loves the people who are justice and equitable." (QS. Al- Hujurat verse 9)

⁵⁰ Ahmad Wardi Muslich, *Hukum Pidana Islam*, p.109

⁵¹ Dzajuli, *Fiqh Jinayah Upaya Menanggulangi Kejahatan dalam Islam*, (Jakarta; PT Raja Grafindo, 1997), p.106.

⁵² Abdul Qadir Audah, *At-Tasyri' Al-Jina'i Al-Islamy Muqaranan Bi Al-Qanun Al-Wad'iy*, (Beirut; Mu'assasah Al-Risalah, 1992), cet. 11, series. 2, p.673-674.

⁵³ Abdul Qadir Audah, *At-Tasyri' Al-Jina'i Al-Islamy Muqaranan Bi Al-Qanun Al-Wad'iy*, p.673-674.

⁵⁴ Abdul Qadir Audah, *At-Tasyri' Al-Jina'i Al-Islamy Muqaranan Bi Al-Qanun Al-Wad'iy*, p.673-674.

“Oh, you who are believed on Allah, obey Allah and the Messenger, and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best way and the best in result.” (QS. An- Nisaa: 59)

The law correlation between those two verses is stalwart, in surah An-Nisaa verse 59, Allah command the obligation to bent down and obey Allah and His Messenger, also *Ulil Amr* (the head of government). In every obligation, there are consequence of the law breaker, so the rebellion towards Allah, His Messenger and *Ulil Amr* (The head of government) is kind of violation or criminal act in Islam. Afterwards, Surah *Hujurat* verse 9 explained the mechanism of solution towards a problem of rebellion.

The setting of criminal act of rebellion is also arranged on hadits, that is: “From Fujrah bin Suraih r.a, he said, “I heard Rasulullah stated, ‘Whoever attack you, whereas they are in an agreement with you, while they aim to broke the unity, then kill them.’”⁵⁵

Rebellion elements

There are some elements of rebellion, such are:

First, the rebellion towards the legal Head of the governments. Efforts to dismiss the head of government from their job is one element of *al- baghyu*. This is pointed by disobeying the rule and do not want to do the obligation as the civilization with the incorrect reasons. But the Islamic scholars state that the rebellion which is appeared because of the government who point the civilization to do the bad things cannot grouped as *al- baghyu*.⁵⁶ Second, which is done by power. The rebellion according to Imam Malik, Imam Syafi’i, and Imam Ahmad begins since the power is used obviously. When it is just the beginning of power accumulation, then the action is not categorized as rebellion yet, but categorized as *ta’zir* because it is considered as a trial. However, Abu Hanifah regards it as a rebel, because the existence of the bad intention to be in a war and rebel against the government.⁵⁷ Third, there is an effort of government’s overthrow. The last element is the existence of the act of the criminal that is led to the overthrow of

⁵⁵ Muhammad bin Isma’il Al-Kahlani Al-Shan’ani, *Subul Al-Salam*, (Mesir; Syarikah Wa Mathba’ah Musthafa Al-Baby, Al Halaby, 1960), Juz III, p.261.

⁵⁶ Nurul Irfan, *Hukum Pidana Islam*, (Jakarta; Amzah, 2016), p.62.

⁵⁷ Ahmad Wardi Muslich, *Hukum Pidana Islam*, p.115.

the government by doing the violence and broke the arrangement of people's life, such murdering, seizing, rapping, and robbing.⁵⁸

From the elements above, the terror act which is done by the group of JAD in their movement is pointed to the action of rebellion or disturbing the national stability. So that it can be categorized as *ak- baghyu* and given the *hudud* punishment.

The Responsibility of Rebellion

The responsibility towards rebellion, both criminal and civil is divided into two parts. This is caused by the difference of condition of the criminal acts. The distributions are:

First, responsibility before and after the rebellion. The rebels are given the responsibility of all criminal acts they have done before and after the rebellion. All actions which is done before and after the rebellion, both criminal and civil will be given the punishment which is appropriate. If the criminal acts are murder, robbery, and rebellion, then the punishment is in accordance to the criminal acts which is done.⁵⁹

Second, the responsibility at the time of rebellion. The criminal act that is directly related with the rebellion, such as break the public services, killing the government official, robbing the wealth of the country, and taking the charge of country services, not only given the punishment as the regular criminal acts, but also for the criminal acts towards rebellion, that are death sentence, except for the amnesty. However, the mechanism should be suitable with the intention to do the extermination to stop the rebellion and deactivate it. If they give up, then the extermination should be stopped and their soul and wealth safety is guaranteed. The next step is, the government is allowed to forgive or give the punishment.⁶⁰ If they do not give up, they will be given the death sentence.

Wahbah Az-zuhaili gives another different explanation about the responsibility of rebels, that the rebels will not be given the punishment to compensate. This is because the group of the rebels is a group which opposes and do not want to obey by using violence and it is based on the interpretation of accepted Alquran understanding. If they should pay the fine because of their

⁵⁸ M. Nurul Irfan, *Hukum Pidana Islam*, p.71.

⁵⁹ Abdul Qadir Audah, *At-Tasyri' Al-Jina'i Al-Islamy Muqaranan Bi Al-Qanun Al-Wad'iy*, p.697-698.

⁶⁰ Ahmad Wardi Muslich, *Hukum Pidana Islam*, p.117.

actions, and the responsibility, it will make them do not want to get back to the real legal government administration.⁶¹

Conclusion

Based on the analysis that have been explained by the author above, can be concluded that terrorism cases which is happened in Indonesia, whether in Thamrin Street, Sarinah, and other places could be included to the actions of rebellion (*al-Baghyu*), because it is compiled with the elements of rebellion in that actions of terrorism, as well as these things below: *First*, rebellion to the head of the government of the country. This is proved by the concept and the radical religion thoughts of the criminal, following the concept of ISIS (*Islamic State of Iraq Syria*), which is caused the terrorism case. *Second*, it is done by the power or the existence of the actions. Looking at this terror from the terrorist, so it can be stated that the elements has already fulfilled. *Third*, it is counted as criminal action (like murdering, seizing, rapping, and robbery). The terrorism which is done by killing other people, that is by using the suicide bombing and doing the shooting gun action to the police.

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⁶¹ Wahbah Az-Zuhaili, *Al-fiqh Al-Islamy Wa Adillatuhu*, p.426.

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