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Terrorism Political Crime and the Attentat Clause

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Abstract
It is interesting to understand the Attentat Clause about the extradition of terrorist acts, among others; (1) the formulation of criminal acts of terrorism in criminal law in some countries, and Indonesian criminal law, (2) the basic idea of the attentive clause in Article 5 of Law Number 15 Year 2003 on Combating Terrorism Crime, (3) legal implications Of differences in the arrangement of the attentate clause, between criminal law in some countries and Indonesian criminal law (Article 5 of the Law of the Republic of Indonesia Number 15 Year 2003), particularly about the extradition of terrorist acts.
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1. Introduction

In response to the September 11, 2001 attack on the World Trade Center (WTC) building, the President of the United States launched long war against global terrorism, global war of good against evil. The September 11 attack on the WTC building, changed the views of some of the participating countries in the Rome convention, 1998, especially the United States, which initially viewed that terrorism crimes were sufficiently resolved through the national jurisdiction of each country and did not need to become the jurisdiction of the International Criminal Court (ICC), then changed and it is deemed necessary to become the jurisdiction of the ICC because it is considered that the crime of terrorism is one of the 22 (twenty-two) types of international crimes that become the jurisdiction of the ICC.

As a reaction to the September 11, 2001 attacks on New York and Washington DC, the European Union has issued a Framework Decision, which requires each EU Member State to follow the following procedure.

- Use the definition of terrorism as stated in the Framework Decision.
- Determines that the act of directing or participating in the activity of a terrorist group and other offenses related to terrorist activity is punishable.
- Affirms that the crime of terrorism is subject to an effective, proportional, and restrictive criminal penalty, which is more severe than similar criminal acts.
- Affirms that law enforcement officers can be prosecuted for offenses related to terrorist activity.
- Formulate jurisdiction over terrorist offenses committed in its territory, or in a ship or aircraft registered there, or committed by a citizen or resident of that country, or committed for the benefit of someone living in its territory, or committed against an institution or person from a Member State or a European Union institution located in a Member State, and also establishes jurisdiction over terrorism offenses where he refuses to extradite a person suspected of or proven guilty of an offense against another country.
- Take the right steps to help the victim's family.

The bombings in Bali and Makassar constituted an extraordinary crime that threatened individual safety and public order. Therefore, the application of the principle of retroactivity to the criminal act of the bombing in Bali is an option that must be studied comprehensively for the most essential legal meaning, without neglecting human rights. The legal process must be based on the applicable laws and regulations. Even though it is not intended to establish customary international law norms, especially about retroactive law (retroactive application), international criminal law practice shows that this non-retroactive principle can deviate in efforts to punish perpetrators of crimes against humanity based on the principle of responsibility according to international law developed.

The twenty-two types of international crimes that fall under the jurisdiction of the ICC as stipulated in the 1998 Rome Convention are as follows.

1. Aggression.
2. War Crimes.
3. Unlawful Use of Weapons.
4. Crime Against Humanity.
5. Genocide.
6. Racial Discrimination and Apartheid.
7. Slavery and Related Crime.

8. Torture.
9. Unlawful Human Experimentation.
10. Piracy.
11. Aircraft Hijacking.
12. Threat and Use of Force Against Internationally Protected Persons.
13. Taking of Civilian Hostages.
14. Drug Offenses.
15. International Traffic in Obscene Publications.
16. Destruction and/or Theft of National Treasures.
17. Environmental Protection.
18. Theft of Nuclear Materials.
19. Unlawful Use of the Mails.
20. Interference with Submarine Cable.
21. Falsification and Counterfeiting.
22. Bribery of Foreign Public Officials.

2. Terrorism Before And After The Wtc Explosion

One day after the bombing of the WTC building, namely on September 12, 2001, the United Nations Security Council (DKPBB) issued resolution No. 1368, which stated that acts of terrorism were a threat to international peace and security.

It is well known that in general, acts of terrorism cause many victims, both lives and property, therefore several international conventions on criminal acts of terrorism qualify acts of terrorism as extraordinary crimes against humanity (extraordinary crimes). Therefore DKPBB through its resolution Number 1373 requires all member states of the United Nations (UN) to make the following efforts.

1. Against terrorism.
2. Bringing the perpetrators of terrorism to justice.
3. Review the national criminal law if deemed necessary.
4. Improving the security of regional boundaries.
5. Controlling trade in firearms and explosives.
6. Take immediate action to avoid and suppress all active and passive activities for supporters of terrorism, especially through Resolution 1337, Resolution 1390, and Resolution 1455.
7. Ratify all relevant UN conventions, especially the 1999 convention on Freezing the Finances of Terrorists.
8. Present before the courts, those who finance, plan, support, protect, and commit terrorism.
9. Enhance cooperation with the UN Security Council.

To tackle criminal acts of terrorism, DKPBB has even formed an Anti-Terrorism Committee which accommodates reports from member countries regarding the efforts that have been made in tackling criminal acts of terrorism. The said report concerns the following matters.

1. Inventory of applicable laws.
2. Law enforcement.
3. Renewal of law.
4. Extradition.
5. Control of financial assets.
6. Customs clearance.
7. Immigration.
8. Illegal firearms trade.

According to Muladi, there are 11 (eleven) reasons for the need to regulate serious crimes, including criminal acts of terrorism, as follows.

1. In order not to cause subjectivity in interpretation and cause problems in extradition, the thinking developed in Anglo-American Law which does not distinguish between political crimes committed based on ideological goals and traditional crimes, can be considered. Criminal law only pays attention to intentions, not motives, therefore, whether the motive is good or bad does not determine guilt.
2. Various international conventions relating to the prevention and eradication of terrorism that have been ratified need to be listed and confirmed as crimes of terrorism.
3. Need to regulate Corporate Liability.
4. It is necessary to regulate a protection scheme for witnesses and victims of crime.
5. It is necessary to regulate the crime of obstruction of justice because this matter is broader than the provisions concerning protection for investigations and investigators.

6. Provisions need to be made that armed struggle (Freedom Fighters) against colonialism, occupation, domination, and foreign aggression are not acts of terrorism. This is important later concerning extradition and the possibility of terrorism being intended as an international crime (principle of universality).
7. Legal interests endangered by terrorism should not only be limited to life, property, personal freedom, and public fear. Following international developments, it is necessary to consider the protection of national integrity and sovereignty, international facilities, foreign diplomats, heads of state and deputy heads of state, public installations, environment, national natural resources, and transportation and communications.
8. By the principles of human rights, in formulating criminal acts one must adhere to the principles of legitimacy and the principle of lex certa (formulation of law must be clear and sharp and credible); and deviations from the applicable procedural law are avoided as far as possible.
9. In addition to repressive measures, it is necessary to regulate comprehensive preventive measures (Counter Terrorism Measures), such as preventing the infiltration of terrorist elements from other countries, cooperation and coordination with friendly countries, developing a system for selection and management of firearms and explosives, border surveillance and entry of foreigners, development of surveillance systems, increased security of vital installations, protection of important persons and diplomats, improvement of intelligence organizations, creation of databases of terrorist elements and networks.
10. Emphasizing the need for university involvement in studying terrorism issues.
11. Arrangements regarding involvement in banned organizations involved in terrorism need to be explored (as in the UK).

The Organization of the Islamic Conference (OIC) Convention on the Eradication of criminal acts of Terrorism (1999) confirms, as follows.

“Believing that terrorism constitutes a gross violation of human rights, in particular the right to freedom and security as well as an obstacle to the free functioning of institutions and socio-economic development as it aims at destabilizing states”.

About Comprehensive Convention on Terrorism, The general commentary of the UN Anti-Terrorism Commission states that “International terrorism possess the most serious threat to international peace and security”.

Besides that, until now International Criminal Law has developed 6 (six) models of international cooperation regarding criminal acts including criminal acts of terrorism, as follows.

1. Extradition.
2. Legal assistance.
3. Transfer of criminal cases.
4. Recognition of foreign criminal decisions.
5. Transfer of convicts.
6. Freezing and confiscation of assets.

Regarding the issue of the convention on criminal acts of terrorism, M. Cherif Bassiouni stated as follows.

> There is no comprehensive convention on terrorism that even modestly integrates much less incorporates into a single text, these thirteen conventions so as to eliminate their weaknesses. The logic of such a comprehensive convention on terrorism is compelling, as is the logic against the current piecemeal approach taken by the separate conventions. Nevertheless, the United States has consistently opposed such a convention since 1972, ostensibly so that it can pick and choose from these disparate norms those that it wishes to rely upon. Above all, the United States does not want to have an effective multilateral scheme that would presumably restrict its unfettered political power to act unilaterally.

As revealed by M. Cherif Bassiouni, there is no complete convention on terrorism, there are even a few blends, or unifies the thirteenth conventions to negate their weaknesses. The logic for creating such a complete convention on terrorism is just as strong as the logic for countering the current phased approach by the existence of separate conventions. Nonetheless, the United States has consistently fought such full-fledged conventions since 1972 to juggle between different rules. Above all, the United States does not want an effective multilateral framework because it might limit its unchallenged political power to act unilaterally.

The definition of a criminal act of terrorism was first discussed in the 1977 European Convention on the Suppression of Terrorism (ECST).

However, the formulation of the definition of a criminal act of terrorism has so far raised the issue of multiple interpretations. Amnesty International acknowledges the problem of understanding the crime of terrorism by stating, that "there is no universally accepted definition of world terrorism in general use or in agreements and laws designed to combat such terrorism" (There is no universally accepted definition of the word

terrorism in general use or in treaties and law designed to combat it).

3. Terrorism Regulation

Romli Atmasasmita states as follows.

Laws governing the eradication of criminal acts of terrorism can have legal implications for both national and international interests. Therefore the laws governing the eradication of criminal acts of terrorism need to pay attention to the two main references and one complementary reference as follows.

1. The laws governing the eradication of criminal acts of terrorism refer to international legal standards, as follows.
   a. International Convention on the Prevention and Punishment of Terrorism (1937).
   b. Chicago Convention on the Determination of the Jurisdiction of Aircraft (1944).
   c. Tokyo Convention on Crimes and Other Acts Conducted in the Cabin of Airplanes (1963), entered into force on December 4, 1969.
   d. The Heque Convention against the Suppression of Unlawful Seizing of Airplanes (1970), entered into force on 14 October 1971.
   e. The Montreal Convention on the Extermination of Unlawful Acts Against the Safety of Civil Aviation (1971), entered into force on January 26, 1973.
   f. New York Convention Concerning the Prevention and Punishment of Crimes Against Persons Possessing International Immunity (1973), entered into force on 20 February 1977.
   g. New York Convention on Hostages (1979), entered into force June 3, 1983.
   h. Vienna Convention on the Physical Protection of Nuclear Materials (1980), entered into force on 8 February 1987.
   i. New York Convention on the Law of the Sea Particularly Relating to Piracy at Sea (1980).
   j. Rome Convention Against Unlawful Acts Against the Safety of Maritime Navigation (1988), entered into force on March 1, 1992.
   k. Montreal Convention on Plastic Explosives for Detection Purposes (1991).
   l. Convention against Bombings by Terrorism (1997).
   m. Convention Against the Funding of Terrorism (1999).
   n. United Nations Convention on Transnational Organized Crime (2000).
   o. DKPBB Resolution No. 57/219, adopted by the UN General Assembly on the Protection of Human Rights and Human Freedoms When Eradicating Terrorism.
   p. Resolution 54/164 of the UN General Assembly stated "all measures to counter terrorism must be in strict conformity with the provisions of international law, including international human rights standards" (all measures to counter terrorism must be in strict conformity with the provisions of relevant international law, including human rights standards).
   q. UN Security Council Resolution No. 1333 of 19 December 2000 concerning Prevention of the Supply of Weapons, Aircraft, and Military Equipment to Afghanistan.
   r. DKPBB Resolution No. 1373 concerning Freezing Assets of Al-Qaeda terrorists in 2001.
   s. UN Security Council Resolution No. 1368 of 12 September 2001 concerning Statements of UN Sympathy for the victims of the 11 September 2001 tragedy.
   t. UN Security Council Resolution No. 1438 dated October 15, 2002, expressed UN condolences and sympathy to the Indonesian government and people and reaffirmed steps to eradicate terrorism.
2. The laws governing the eradication of criminal acts of terrorism refer to the legal system and laws that apply in Indonesia as follows.
   a. The Criminal Code (KUHP).
   b. Law Number 9 of 1974 concerning the Ratification of Agreements Between the Governments of the Republic of Indonesia and the Governments of Malaysia Concerning Extradition.
   c. Law Number 2 of 1976 concerning Ratification of the 1963 Tokyo Convention, The Haque Convention 1970, and the 1971 Montreal Convention.
   d. Law Number 10 of 1976 concerning the Ratification of the Extradition Agreement between the Republic of Indonesia and the Republic of the Philippines and the Protocol.
   e. Law Number 2 of 1978 concerning Ratification of the Agreement between the Republic of Indonesia and the Government of the Kingdom of Thailand concerning Extradition.
   f. Law Number 1 of 1979 concerning Extradition.
   g. Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP).
   h. Law Number 15 of 2003 concerning Eradication of Criminal Acts of Terrorism.
3. Complementary references that need to be considered in drafting laws that regulate the eradication of criminal acts of terrorism are laws and regulations on terrorism that apply in

several other countries, among others; USA, UK, Australia, Canada, Greece, Italy, Singapore, and Germany.

Therefore, according to Romli Atmasasmita, the complete text of the law on terrorism needs to be supported by a comparative study of laws with several of these countries.

The importance of comparative law about harmonization of law, Michael Bogdan states as follows.

Comparative law is of central importance in connection with the harmonization of the law, i.e. with intentionally making the legal rules of two or more legal systems more alike, as well as with the unification of law, i.e. the intentional introduction of identical legal rules in two or more legal systems.

Based on comparative legal studies and legal studies of the rules governing the issue of criminal acts of terrorism, the following conclusions can be drawn.

1. There is no single definition of terrorism that is shared by countries that are members of the Organization of the Islamic Conference (OIC), as well as countries that are members of the European Union and other Western countries.
2. The definition of terrorism according to OIC countries, the European Union, the United States, and Australia generally includes political motives, religious background, and/or ideology, as elements or elements of criminal acts of terrorism.
3. The norms are formulated extensively and there are no administrative and civil sanctions. Criminal sanctions are the only sanctions that must be imposed on perpetrators of terrorism, except for Singapore's Anti-Terrorism Law.
4. The human rights of suspected perpetrators of terrorism are limited even in-laws in several countries, especially the Canadian Anti-Terrorism Law (2000), "the right to remain silent", was abolished. "the right to counsel" was abolished by the UK Anti-Terrorism Act (2001), as well as the United States. Singapore and Malaysia's Anti-Terrorism Laws impose "preventive detention" for a maximum period of two years without trial.
5. Anti-terrorism laws from several other countries are not suitable for use in Indonesia due to cultural, ethnic, ideological, and religious considerations.

About efforts to tackle criminal acts of terrorism, there are at least 5 (five) facts that form the basis for the need for regulatory policies on criminal acts of terrorism, as follows.

1. Until now terrorism has not been recognized as an international crime which is the jurisdiction of the International Criminal Court (ICC) as stipulated in the 1998 Rome Statute.
2. International conventions on the prevention and eradication of criminal acts of terrorism have not yet become effective.
3. Until now there has been no international agreement regarding the definition of terrorism so the United Nations deems it necessary to hold a comprehensive definition of the definition of criminal act of terrorism.
4. Criminal laws and regulations that have been in effect so far are inadequate for countering criminal acts of terrorism.
5. The government needs instruments to protect state sovereignty while at the same time supporting the UN Security Council Resolution on eradicating criminal acts of terrorism.

As already mentioned, even though at the signing of the Rome Statute in 1998, the United States did not agree that criminal acts of terrorism would qualify as serious human rights violations that entered the jurisdiction of the International Criminal Court (ICC), but after the events of September 11, 2001, the United States instead urges that criminal acts of terrorism be qualified as gross human rights violations and fall under the jurisdiction of the ICC.

The reason that there is a legal vacuum, namely that the crime of terrorism is not regulated in the existing positive criminal law, based on Article 22 of the 1945 Constitution, the Government of the Republic of Indonesia stipulates Government Regulation instead of Law (Perpu) Number 1 of 2002, which was then approved by the House of Representatives The people were stipulated into Law Number 15 of 2003 concerning Eradication of Criminal Acts of Terrorism.

Based on Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, criminal acts of terrorism have been criminalized globally.

As it is known that criminalization in criminal law can be carried out with 3 (three) systems as follows.

1. Evolution by amending the articles of positive criminal law.
2. Compromise by including new criminal acts in positive criminal law, and
3. Global by creating a completely new material criminal law and formal criminal law.

About the making of laws and regulations and the effectiveness of criminal justice, John Kaplan stated that one of the aspects that must be fulfilled is a threat of criminal action that is rational (executable) and proportionate according to the needs of legal subjects ("…that one of the aspects that should be fulfilled for the provision of good legislation and the effectiveness of legislation is reasonable (may be implemented) and

proportional (according to the need of juridical subject) penal justice").

Another principle that is needed in drafting laws on eradicating criminal acts of terrorism is the principle of legal synchronization both about national criminal law and international criminal law, so that there is harmonization.

> As emphasized in the elucidation of Article 8 of the RUU-KUHP it states:
> In the society of a country, some laws regulate the behavior of members of society to uphold peace and order in that country. This is also true in the international community. The State of Indonesia is a member of the international community, therefore it is appropriate that Indonesian law also participates in enforcing international law. This means that if the provisions of Indonesian national law are contrary to international law which is recognized by Indonesia, then Indonesian national law is not enforced. With Indonesia's participation in international conventions, it means that the application of Indonesian criminal provisions as referred to in the provisions of this article is limited by international law.

The need to pay attention to the principles of international law and human rights standards for every legislation that regulates the eradication of criminal acts of terrorism is also mandated by Resolution 54/164 of the UN General Assembly, and Resolution 57/219 which has been adopted by the General Assembly Session United Nations on Protection of Human Rights and Fundamental Freedoms While Countering Terrorism (Protection of Human Rights and Fundamental Freedoms When Carrying Out the Eradication of Terrorism), which states, that "all actions to counter terrorism must be in strict conformity with the provisions of relevant international law, including international standards. human rights" (all measures to counter terrorism must be in strict conformity with the provisions of international law, including international human rights standards). All the actions intended in Revolution 54/164 of the UN General Assembly include preventive actions in the form of enacting laws and regulations or legislation.

Based on this description, it is clear that Indonesia's national criminal law, especially the law that regulates the eradication of criminal acts of terrorism, must pay attention to the principles adhered to in international criminal law and criminal law in force in other countries.

In this connection, Romli Atmasasmita stated that the policy of drafting laws and regulations that have an international aspect adopts the substance of international conventions that have been recognized by the Indonesian government, and international conventions that have not been recognized but contain a philosophy, spirit and spirit that are in line with Pancasila. and the 1945 Constitution, and in line with the needs of the Republic of Indonesia.

In other words, national criminal law is obliged to maintain its synchronization with international criminal law and other countries' criminal law, so that there is harmonization.

> In this case, P.A.F Lamintang stated that:
> "...every criminal law of any country in the world is obliged to respect the generally recognized international legal principles". This is intended so as not to create legal implications from deviations from national criminal law against international criminal law principles, especially in the application of law involving international interests or the interests of other countries.

One of the principles of international criminal law that should also be adhered to in-laws on criminal acts of terrorism is the principle of non-extradition of political criminals. This principle is indirectly violated by Article 5 of Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism which regulates the Attentat Clause, which stipulates that:

> "Criminal acts of terrorism regulated in this law are excluded from political crimes; criminal acts related to political crimes; criminal acts with political motives; and criminal acts with political aims; hindering the extradition process".

4. Terrorism Political Crime And Attentat Clause

The word "except" in Indonesian means "not included" or in international law is known as the "Attentat Clause". This means that criminal acts of terrorism do not qualify as:

1. Political crime.
2. Criminal acts related to political crimes.
3. Criminal acts with political motives.
4. Criminal acts with political objectives, which impede the extradition process.

About the extradition of perpetrators of political crimes, Jan Remmelink stated that "when dealing with the issue of extradition of perpetrators of political crimes, we will be faced with the problem of the relativity of meaning, the substance of political crimes".

> Likewise, Keith R. Fisher stated that:
> "Extradition … poses many legal hurdles. First, any obligation of international extradition is regarded by national courts as subject to treaty. The same is true in multinational judicial bodies, such as the International Court of Justice: Country B has no ogligation to extradite one of its residents to Country

> A in the absence of an extradition treaty. Second, such treaties are generally bilateral… Third, the crime in question must constitute an extraditable offense, i.e., one for which extradition is proper. Fourth, even if Country B is a party to an extradition treaty, the underlying offense for which Country A seeks to prosecute must generally also be characterized as an offense under the municipal laws of Country B… Fifth, even a demand for extradition that satisfies all of the above criteria may be denied on the grounds of one or more domestic public policy exceptions, perhaps the most often invoked of which is the political offense exception".

R. Fisher stated that extradition raises various legal obstacles. First, domestic courts consider international extradition obligations as something that must be stated in the treaty. It is the same with multinational judicial bodies, such as international courts: Country B has no obligation to extradite any of its nationals to Country A in the absence of an extradition treaty. Second, agreements like this are usually bilateral. Third, the crime in question must be an extraditable offense, namely a crime where the perpetrator can be extradited. Fourth, even though country B is a party to the extradition treaty, the crime that country A wants to sue should usually also be regulated as a crime in the law of country B. Fifth, an extradition request that meets all of the above conditions can even be rejected based on one or more exceptions to the policy. domestic public. Usually, the most frequently used exceptions are exceptions based on political crimes.

In the elucidation of Article 5 of Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, it is explained that:

> This provision is intended so that the crime of terrorism cannot take refuge behind a political background, political motivation, and political goals, to avoid investigation, prosecution, examination in court, and punishment of the perpetrators. This provision is also to increase the efficiency of the effectiveness of extradition agreements and mutual legal assistance and criminal matters between the government of Indonesia and the governments of other countries.

The message implied in Article 5 and the elucidation of Article 5 of Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, is that:

1. Qualification as a political crime can be used as an excuse to avoid extradition.
2. The qualification as a political crime can be used as an excuse to avoid investigation, prosecution, or punishment.
3. Qualification as a political crime can hinder the extradition process;
4. Qualification as a political crime can be used to avoid the trial process.
5. The attendant clause is meant to make extradition more effective and efficient.

Deviations occur because international criminal law and criminal law in several countries generally qualify acts of terrorism as political crimes and that means that the principle of non-extradition of political criminal applies to the perpetrators.

As also stated by I Wayan Parthiana, not many countries, and not many international conventions have eliminated the political dimension of the crime of terrorism about extradition.

The question is whether by excluding criminal acts of terrorism from political crimes, the extradition of perpetrators of criminal acts of terrorism is indeed more effective and efficient, bearing in mind that not many countries have abolished the political dimension of criminal acts of terrorism.

The principle of non-extradition of political criminals was first included in the Belgian Extradition Act in 1833.

Based on this principle, the state may not surrender the requested person if the crime for which the request is based is a political. Political crimes are excluded from the types of crimes that can be used as a basis for extradition. The person requested may submit a defense against a request for extradition of himself if the crime he committed and is used as the basis for the request is a political crime.

Article 5 paragraph (1) of Law Number 1 of 1979 concerning Extradition states that extradition is not carried out against perpetrators of political crimes. The elucidation of Article 5 paragraph (1) of Law Number 1 of 1979 concerning Extradition states that:

> Not handing over a person who has committed a political crime is related to the state's right to grant political asylum to political fugitives. Because the definition of a political crime is too broad, restrictions are made as regulated in paragraph (2). The crime regulated in paragraph (4) is a purely political, but because the crime is considered to have shaken society and the state, for extradition purposes it is not considered a political crime. This is an "Attentat-Clause" which is also adopted by Indonesia.

Based on these exceptions, a purely political crime is qualified not a political crime. Article 5 paragraph (4) of Law Number 1 of 1979 concerning Extradition states that "murder or attempted murder of heads of state or family members is not considered a political crime". As already mentioned, Article 5 of law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, also regulates attentat clauses that exclude criminal acts of terrorism from political crimes, even though according to international criminal law and criminal law in

several other countries, criminal acts of terrorism are qualified as a political crime. This means that there are differences in the qualifications for criminal acts of terrorism between national criminal law and international criminal law and criminal law in several other countries. Which differences can have legal implications.

As an example of several cases where requests for extradition were refused because the crime on which the extradition was based was a political (non-extradition of political crime), as follows.

1. In 1891 England refused to hand over Castion (Swiss citizen) to Switzerland because a British court ruled that Castion's crime of shooting a member of the Swiss parliament was a political.
2. In 1968 Indonesia asked Austria to hand over Tan Tjong Hoa, an Indonesian citizen who had embezzled customers of the Indonesian National Economic Bank. Indonesia requested extradition based on the principle of reciprocity (reciprocity) because the two countries were not yet bound by an extradition treaty, but Austria refused Indonesia's request to extradite Tan Tjong Hoa because the crime committed by Tan Tjong Hoa was not an ordinary crime that could be requested for extradition but a political crime. After all, Tan Tjong Hoa is a descendant of China.
3. The case of Taufiq Rifqi, an Indonesian citizen who was arrested and detained by the Philippines on suspicion of committing terrorism in the Philippines.
4. In 2000 a German court annulled Metin Kaplan's asylum status, rejected Turkey's request to extradite Metin Kaplan, and sentenced him to four years in prison on charges of inciting people to commit murder. Metin Kaplan was deported to Istanbul Turkey after the Germans received assurances that he would not be tortured.
5. The case of Imam Hambali alias Riduan Isamuddin alias Encep Nurjaman, an Indonesian citizen, and Omar Al-Faruq, who were accused of being perpetrators of terrorism and were arrested by Thai and US intelligence and then detained in the United States.

The request for extradition by Indonesia was rejected by the United States because according to United States law terrorism qualifies as a political crime and according to United States law the perpetrators of terrorism fall under the jurisdiction of a military court so the principle of not extraditing subjects subject to the jurisdiction of military courts applies, and between Indonesia and the United States no extradition agreement.

The legal process against Faturrahman Al Ghozi (Indonesian citizen) by the Philippine government is a concrete example of the application of the jurisdictional provisions contained in Article 3 of Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism. It should be noted that Faturrahman Al Ghozi is an Indonesian citizen and he was arrested on January 15, 2002, in the Qiapao District of Manila, in a joint operation by the police, army, and immigration bureau of the Philippines. The Philippine government then carried out legal proceedings against him and finally in March 2002, he was sentenced to 17 years in prison. He was proven to have committed immigration violations (passport forgery) and possessed 1 ton of illegal explosives which were used to carry out bombings on several buildings and assets of foreign companies, especially those belonging to the United States in the Philippines. In the end, Fathur Rohman Al-Ghozi was shot dead by security forces in the South Philippines on October 12, 2003, after escaping from prison in July 2003. As is known, Fathur Rohman Al-Ghozi was also accused of being one of the international terrorist figures in Southeast Asia under the leadership of Osama Bin Laden (Al Qaeda).

When referring to the territorial principle, active national principle, and passive national principle, the Indonesian government has jurisdiction to try Faturrahman Al Ghozi. In reality, in the Faturrahman Al Ghozi case, the Indonesian government could not try him even though the Indonesian government had an extradition agreement (UU No. 10 of 1976) with the Philippine government. Related to this issue, Yusril Ihza Mahendra (former Minister of Justice and Human Rights) commented that in the handling of the fugitive Fathur Rohman Al-Ghozi case, the extradition agreement made between the Government of Indonesia and the Philippines is no longer valid. Even though Indonesia and the Philippines chose an extradition treaty, it could not be implemented in this case because Al-Ghozi's status is a fugitive from the Philippine authorities. So if he is caught (in Indonesian jurisdiction), he must be returned to the Philippines because he is still serving a sentence in the Philippines.

Likewise with the case of Hambali alias Riduan Isamudin or Encep Nurzaman, an Indonesian citizen who has now been detained by the United States because he was claimed to be the leader of the Al Qaeda organization (for the Southeast Asian region). Hambali is claimed by the United States as Secretary General of Rabitatul Mujahidin (the group of Southeast Asian jihadist groups under the control of Al Qaeda). The main suspect for this Southeast Asian terrorist kingpin was arrested on August 11, 2003, in the Ayutthaya area, about 70 kilometers north of Bangkok-Thailand. He is currently being held by the US in an undisclosed place, partly because of his alleged involvement in the September 11 terror attacks in New York and Washington. Hambali can also be tried using our national laws without having to be detained and tried by the United States government. Hambali could be tried by an Indonesian court if he was truly involved in a series of bombings in Indonesia from 2000 to 2002, including the Bali bombings, on October 12, 2002, and the Marriot Hotel, on August 5, 2002.

When referring to Article 3 of Law Number 15 of 2003 concerning Eradication of Criminal Acts of

Terrorism, then other countries also have jurisdiction to try perpetrators of criminal acts of terrorism from foreign nationals if the terrorism crime is not a citizen of that country; aimed at government facilities; concerning important assets owned by the state or; may threaten the safety of the citizens of the country concerned, both in the country concerned and in other countries.

In the Hambali case, besides the government not yet having an extradition treaty with the United States, Hambali is one of the most wanted terrorist figures by the United States after the September 11 2001 tragedy. In the United States the crime of terrorism is political while in Indonesia it is The crime of terrorism is not a political crime, and the crime of terrorism falls under the jurisdiction of the military court, so it cannot be extradited to Indonesia even though Indonesia also has jurisdiction to try Hambali because he is an Indonesian citizen who is suspected of being involved in several bombing cases in Indonesia. The Indonesian government can only carry out political diplomacy to gain greater access to the alleged involvement of this high-profile terrorist kingpin in several bombing cases that occurred in Indonesia.

5. Article 5 Of Law Number 15 Of 2003 And The Attentat Clause In International Law

These cases show that if there is legal equality for a crime, extradition is difficult. What if there are legal differences regarding a crime, such as a crime of terrorism which according to Article 5 of Law Number 15 of 2003 concerning Eradication of Criminal Acts of Terrorism does not qualify as a political crime, but according to international criminal law and criminal law in several other countries (the United States United Kingdom, Australia, Canada, Greece, Italy, Singapore, Germany) qualifies as a political crime.

As also written by Lilik Mulyadi who stated that Article 5 of Law Number 15 of 2003 contains controversy. Controversy occurs because almost all countries, including the United States and England, still recognize political motives, political intentions, and political goals as one of the elements of criminal acts of terrorism.

As written by Romli Atmasasmita, extradition constraints include judicial and procedural constraints. Also what Tong Djoe mentioned, after meeting with President Susilo Bambang Yudhoyono, was that an extradition treaty between Indonesia and Singapore could be agreed upon by the two countries, but in practice, the problems that arise could be procedural, namely regarding evidence. Because extradition for criminals can be done if it is supported by strong evidence.

In the event of double jurisdiction and there is more than one country requesting extradition, the following provisions shall apply.

a. Prioritizing the requesting country which is bound by an extradition treaty with the requested country.
b. Prioritizing the requesting country that submits the extradition request first.
c. Give priority to the requesting country that submits a request based on the most serious crime.
d. Prioritizing the requesting country where the perpetrator is a citizen.

Even though the purpose of the attendant clause adhered to by Article 5 of Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism is to make the extradition of perpetrators of terrorism more effective and efficient, when reviewed it creates legal implications. The principle au dedere aut judicare, which states that a country that does not extradite suspects should ensure jurisdiction to try that person according to its law, is now a basic principle of anti-terrorism instruments and was reaffirmed in UN Security Council Resolution 1373 (2001).

The issue of extradition about the confusion of political crimes was also expressed by Jacqueline Ann Carberry who stated:

> "In extradition jurisprudence, much controversy has surrounded the political offense exception. Persons accused of terrorism often argue that they are engaged in political activities, and as such, are not to be extradited according to the political offense exception. Lack of consistency between treaties in defining a political offense further complicates the issue. Since international law does not obligate states to extradite, treaties establish this duty. Confronted with this escape hatch for terrorists, governments have begun to alter the category of extraditable offense. For example, the Supplementary Extradition Treaty of 1985 between the United States and the United Kingdom excluded a number of offense from the political offense exception, regardless of the fact that some were, in reality, political. The list of excluded offense includes politically motivated crimes of murder, kidnaping, hostage-taking, and the making of explosives.
>
> Traditionally, the political offense exception has served many objectives: to avoid one country taking sides in the internal affairs of another country; to protect the political offenders from a potentially impartial trial; and to recognize that political dissent may be legitimate.
>
> However, the ongoing struggle to define political offense creates unnecessary confusion and hinders international cooperation in the extradition of terrorists. Political offense are often categorized as either pure political offenses or relative political offenses. There is general agreement in the international community that pure political offenses are those directed exclusively at the states and, as

such, merit the exception. However, the relative political offense category creates a gray area that presents serious uniformity problem. Relative political offenses are those which have a hybrid nature and are handled differently between states.

Great Britain and the United States demand the crime be incidental to and form part of political disturbances. Courts in Switzerland, on the other hand, selected a predominant motive or proportionality test.

This more restrictive approach demands that the crime not only involve a political agenda, but also that the crime must have been necessary to satisfy the proportionality prong. Therefore, the political nature of the criminal offense must exceed components of a common crime. In contrast, France balances the perpetrator's motive against the egregiousness of the crime. The more serious the crime, the greater the need for extradition.

As stated by Jacqueline Ann Carberry, in extradition jurisprudence, the chaos of political crimes has caused a lot of controversy. People accused of terrorism often argue that they are carrying out political activities and therefore should not be extradited according to the exception of political crimes. The lack of consistency in treaties in determining what constitutes a political crime further complicates this problem. Since international law does not oblige states to extradite, this obligation arises as a result of a treaty. Faced with a way out for terrorists, governments have begun to change the category of extraditable offenses. For example, the 1985 Additional Extradition Treaty between the United States and the United Kingdom eliminated some of the offenses from the political exceptions, although in reality some of them were political. The list of crimes that are no longer included as political exceptions includes politically motivated crimes such as murder, kidnapping, taking hostages, and manufacturing of explosives.

In history, political criminal exceptions have many purposes: so that a country can avoid taking sides in other countries affairs; protect political actors from a possibly unfair trial; and recognize that political resistance may be legitimate. However, the ongoing struggle to determine political offenses creates unnecessary confusion and hinders international cooperation in the extradition of terrorists. Political crimes are often categorized as pure political crimes or relative political crimes. There is an agreement within the international community that purely political crimes are crimes in which the state is the exclusive target and therefore should be excluded. However, the category of political crimes relatively creates a gray space so there is a serious problem of uniformity. Political crimes are relatively hybrid crimes and are handled differently by countries.

Another obstacle to the extradition of perpetrators of criminal acts of terrorism, especially from the United States, is that according to United States law, criminal acts of terrorism fall under the jurisdiction of military courts, so they comply with the principle of not extraditing subjects subject to the jurisdiction of military courts.

Therefore it is necessary to review whether the arrangement of the attendant clause as stipulated in Article 5 of Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism is sufficiently reasonable, that is, so that the extradition of terrorist perpetrators is more effective and efficient, or it creates legal implications. Likewise, I Wayan Parthiana stated that a significant issue to study about criminal acts of terrorism is the political dimension.

Research on the extradition of perpetrators of criminal acts of terrorism according to national criminal law and international criminal law, to the best of the author's knowledge, has never been carried out. Loebby Loqman has conducted his dissertation research which examines three issues, namely: (1) the extent to which the relationship between actions regulated in Law no. 11/PNPS/1963 with the actions regulated in Chapter 1 Book II of the Criminal Code, namely concerning Crimes Against State Security; (2) What are the criteria that an act is considered as an act of subversion; and (3) whether the criteria so that an act will be regulated in a special criminal law.

I think that the problems studied by Loebby Loqman are different from the problems examined in this study. The difference is that the problems studied by Loebby Loqman are more focused on crimes against state security and special criminal law. Loebby Loqman's research is a study of the systematic regulation of criminal acts against state security in countries that adhere to the Anglo-Saxon legal system, countries that adhere to the Continental European legal system, and countries that adhere to legal systems other than Anglo-Saxon and Continental European.

Likewise, the research conducted by Paul M.A Walewski entitled Combating International Terrorism: A Studi Of Whether The Responses By The UK and US to The Events of 9/11 Are Compatible With Respect For Fundamental Human Rights (The War on International Terrorism: An Examination of Whether the British and American Responses to 9/11 Are Consistent with Respect for Human Rights). Research by Paul M.A. Walewski is more focused on the British and American response to the events of 9/11 (International Terrorism) about standards of respect for human rights. The main problem studied by Paul M.A. Walewski is whether all the British and American actions and responses to criminal acts of terrorism still respect human rights or violate human rights.

When examined based on the problems studied, this dissertation research is different from the two studies

that have been mentioned. The difference is that this dissertation research is more focused on the issue of differences in the qualifications of terrorism crimes as political crimes; background history of adherence to the attentat clause; and the implications of adhering to the attentat clause as stipulated in Article 5 of Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism against the extradition of perpetrators of criminal acts of terrorism.

Interesting issues for further study about the attentat clause concerning the extradition of perpetrators of criminal acts of terrorism, among others; (1) How is the formulation of the crime of terrorism in criminal law in several countries, and in Indonesian criminal law? (2) How is the basic idea adhered to in the attentat clause in Article 5 of Law Number 15 of 2003, concerning the Eradication of Criminal Acts of Terrorism? (3) What are the legal implications of differences in the arrangement of attentat clauses, between criminal law in several countries and Indonesian criminal law (Article 5 of the Law of the Republic of Indonesia Number 15 of 2003), especially about the extradition of perpetrators of criminal acts of terrorism?

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