

# Criminal Law Review of Islamic on 6-19 Article Law Number 15 -2003 Crime on Combating Terrorism

A Hasyim Nawawie

State Islamic Institute Tulungagung East Java Indonesia

## ABSTRACT

Terrorism is a transnational crime, organized, and has a wide network that threatens the peace and national and international security. The act is considered as a violation or crime to others, physical or nonphysical, for example murder, accuse, slander and crimes against property and others, are discussed in *fiqh jinayah* known as the Islamic Criminal Law.

Research objectives are: 1) In order to determine Terrorism In Act No. 15 of 2003 in Indonesia; 2) In order to know the Law of Terrorism in Perspective of Islamic Law (*Fiqh Jinayah*); 3) In order to determine Article 6-19 in Act No. 15 of 2003 on Combating Terrorism According to the Perspective of Islamic Law (*Fiqh Jinayah*).

This study is limited to a review of research library books and library associated with the review of events in the community, then connected with Islamic law and concluded.

Conclusion criminal acts of terrorism are: Intentionally using violence or threat of violence; Crime related to aviation; The use of weapons or other dangerous tools intentionally; Intentionally providing or collecting funds for the implementation of acts of terrorism; Deliberately provide help, assistance, ease, means or information for the criminal acts of terrorism; Plot, experiment, plan and / or move others.

Decision astral conjunction Ulema *Fatwa* Committee in Indonesia and the MUI *fatwa* commission meeting decisions that commit terror law is *haram*.

**KEYWORDS:** Overview of Islamic Criminal Law, Terrorism, Law No. 15 of 2003.

## I. INTRODUCTION

Contemporary radical groups in Indonesia comes from groups that are outside the territory of the growing Indonesian massive post-reform, precisely after the collapse of the New Order regime. The Islamic group has a different ideology roots with the government of the Republic of Indonesia, with similar movements in the beginning of the independence of Indonesia, such as the DI / TII. When the New Order regime, these groups seemed to hit the deck facing the state's repressive actions. When the door is opened after the reform openness, this group joined the openness riding as a form of psychological response pending against authoritarian rule, for example, there are some groups of Muslims who commit acts of terror in the name of religion. These terrorist acts had seemed the right reasons, often global disturbance factors against Muslims to trigger actions on global terrorism for example, the Israeli attack on the Islamic countries. Although these actions are met with resistance from security authorities, nonetheless these terrorist acts occurred in some places.

The Indonesian terrorist acts can not be said to be stopped. Some bombing by terrorists could still be heard in some places. Arrest the perpetrators of terrorist acts by the police often we see with the intensity of the arrest of the perpetrators of terror more often, the perpetrators of these terrorist acts as if it never runs out. Terrorism must be eradicated, but to do that, the security forces can not act alone, required a unified national movement that departs from the anti-terrorism public awareness.

Indonesia as the country has a legal obligation to protect human dignity. Similarly, in terms of the protection of citizens from acts of terrorism. One form of protection against the state or its citizens from acts of terrorism is through the rule of law, including efforts to create an appropriate legal instrument. These efforts realized by the Indonesian Government issued Government Regulation in Lieu of Law (Perppu) No. 1 of 2002, which was then approved by the Parliament into Law Number 15 Year 2003 on Combating Criminal Acts of Terrorism. The need for this legislation because the Indonesian government realize terrorism is a crime that is extraordinary (*extraordinary crime*), thus require exceptional handling as well (*extraordinary measures*).

## II. RESEARCH METHOD

Types of research *library research*, approach to the problem is used literature (*library research*), namely research using library facilities such as a book, books, magazines and so on, necessary data is secondary data, ie data used from reading materials, among other official documents, books, reports and other previous research. While the data material is divided into primary legal materials, secondary law.

## III. RESEARCH IMPLEMENTATION

The research was conducted from June to November 2014. Legal Materials collecting literature searches conducted on materials of primary and secondary law. The primary data source material as the primary

reference material. The legal materials, namely books *fiqh jinayah (al-Kutub al-Salafiyah)* and all documents and binding regulations set by the authorities that the Criminal Code, Legislation and other legislation relating to this issue. Secondary data sources are all the documents that constitute the information or the result of a study of crimes related to terrorism, such as magazines, scientific papers about crimes related to terrorism and multiple sources of Internet sites relating to the above issues.

Management of Legal Materials collected in a systematic way to describe further analyzed to look for answers to the problems that are formulated logically and can be drawn conclusions.

Legal Materials Analysis primary data, secondary data and supporting data are described according to the classification of the type taken related to the material and comparison, then analyzed qualitative data obtained is then compiled systematically and subsequently analyzed qualitatively to achieve clarity issues that will be discussed.

Data analysis method is descriptive and analytic. Descriptive method is to explain a phenomenon or a fact to provide data as accurately as possible about the symptoms or the facts. being analytical is an attempt to locate and systematically organize the data for later research conducted for the study of meaning, so as to obtain an overview and foundation settlement.

#### **IV. RESULT AND DISCUSSION**

Law on Combating Terrorism No. 15 of 2003 in lieu of Law No. 1 of 2002 shows the government's seriousness in tackling acts detrimental to the livelihood of the community of nation and state, a special criminal law. As special legislation, Act No. 15 of 2003 regulating material and formal at the same time, so there is an exception from the general principles stipulated in the Code of Penal (Penal Code) or the Code of Criminal Procedure (Criminal Procedure Code).

Terrorism is the deeds that meet the elements of a criminal offense in accordance with the provisions of Government Regulation in lieu of this Act, means any act that there are elements in accordance with the provisions of this Act, The act can be said to crimes of terrorism, if there is no element in accordance with the provisions contained in this law, can not be said with criminal acts of terrorism in the context of law in Indonesia. Understanding the law is in line with the understanding that presented Santoso (2003), namely the rule of law which binds to an act that meet certain requirements to a result in the form of criminal.

The first form of terrorism is the deliberate use of violence or threat of violence is contained in articles 6 and 7. Article 6 reads Anyone who intentionally using violence or threats of violence lead to an atmosphere of terror or fear of the widespread nature or cause mass casualties, by way of seizing independence or the loss of life and property of others, or cause damage or destruction of the object -obyek vital strategic or environmental or public facilities or international facilities.

Article 7 reads Anyone who intentionally using violence or threats of violence intended to create an atmosphere of terror or fear of the widespread nature or cause mass casualties, by way of seizing independence or the loss of life and property of others, or cause damage or destruction against vital objects are located or to the environment or public facilities or international facilities.

The act of intentionally using violence or threat of violence, the word "violence" in this case is every act of abuse of physical force with or without the use of means of unlawfully and pose a danger to the body, life, and liberty of people, including people make unconscious or helpless. While the definition of the word "threat of violence" in this case is any action that intentionally done to give the sign or warning about a situation that is likely to be able to cause a fear of people or society at large.

The second act of terrorism related to the flight, reads every person who destroys, makes unusable or damage the building for air traffic safety or thwart efforts for securing the building, the act is classified as a criminal act of terrorism, there are eighteen offenses categorized terrorism associated with the flight that is : 1) destroying, making unusable or damage the building for air traffic safety or thwart efforts for securing the building; 2) causing destruction, can not wear or damage to the building for safety of air traffic, the failure of the attempt to secure building; 3) intentionally and unlawfully destroying, damaging, taking, or moving signs or tools for aviation security, or frustrate the operation of the mark or the equipment, or put up signs or the wrong tool; 4) due to negligence cause signs or tools for aviation security shattered, broken, drawn or moved or cause installation of a sign or a tool for aviation security erroneous; 5) intentionally or unlawfully destroying or can not wear make aircraft that are wholly or partially belongs to someone else; 6) intentionally and unlawfully injure, destroy, make unusable or damage the aircraft; 7) due to negligence causes harm aircraft, destroyed, can not be worn, or damaged; 8) with the intent to benefit themselves or another person unlawfully, on the insurer result in a fire or explosion, accident destruction, damage or make the aircraft could not wear the insured against hazards or insured cargo or wages that will be accepted for the carriage of cargo, or for the benefit of the charge has been received bail; 9) an aircraft with acts against the law, seize or retain deprivation or controlling an aircraft in flight; 10) an aircraft by force or the threat of violence or threats in any other form, seize or retain control deprivation or control of an aircraft in flight; 11) perform together as a continuing plot, carried out with

premeditation, resulting in serious injuries a person, resulting in damage to the aircraft so as to endanger the flight, carried out with a view to seizing independence or continue the deprivation of personal freedom; 12) intentionally and unlawfully commit acts of violence against a person in an aircraft in flight, if the act could endanger the safety of such aircraft; 13) intentionally and unlawfully damaging an aircraft in service or causes can not fly or jeopardize flight safety; 14) intentionally and unlawfully placing or causing placed on an aircraft in service, by any means, tools or materials that could destroy an aircraft that made him unable to fly or cause damage to the aircraft that could jeopardize the security of the flight; 15) perform together two (2) or more persons, in furtherance of a conspiracy, do with a planned in advance, and result in serious injuries for one of the acts referred to in number 12, number 13, and number 14; 16) testified that he knew was false and therefore the action was endangering the safety of aircraft in flight; 17) in the airplane perform acts that could endanger the safety of an aircraft in flight; 18) in the airplane perform acts that may disrupt order and discipline on board the aircraft in flight.

Elements or forms of criminal acts of terrorism were third is use of Weapons or Other Dangerous Devices In Accidentally, which is regulated in Article 9 reads as follows: Any person who unlawfully enter into Indonesia, make, accept, try to obtain, submit or tries surrender, control, carry, or have had a stockpile him in hers, storing, transporting, concealing, use, or issued to and / or from Indonesia something firearms, ammunition, or something explosives and other materials that are harmful to the intent to commit criminal acts of terrorism. Next quote Article 10 as follows: Shall be punished with the same punishment as referred to in Article 6. Any person who intentionally using chemical weapons, biological weapons, radiological, microorganisms, radioactive or its components, giving rise to a climate of terror, fear of the widespread, inflict mass casualties nature, harm to health, there is chaos on the lives, safety, and rights of people, or damage, destruction to vital objects are located, the environment, public facilities, or facilities International.

Article 9 and Article 10 describes the deliberate use either a dangerous weapon with the intent of committing criminal offenses of terrorism and dangerous consequences, the perpetrators will be charged with a penalty with article 9 and 10 in Law No. 15 of 2003. Element of intent or unintentionally is what affects the criminal sanctions to be imposed, what is meant by an explosive in this article are all the ingredients that can explode, all types of ammunition, bombs, incendiary bombs, mines, hand grenades, explosives or all of the chemical or other materials used to cause an explosion. This is described in Article 1 paragraph 12 of Law No. 15 of 2003.

The element of the crime of which can be regarded as a criminal act of terrorism fourth is intentionally providing or collecting funds for the implementation of acts of terrorism; In this classification addresses of anyone who willfully provides or collects wealth with the intention to be used or should know will be used in part or in whole to commit criminal acts of terrorism then threatened with criminal.

The element of the crime of terrorism as criminal offenses fifth intentionally provide help, assistance, means or information for the criminal acts of terrorism; Actions deliberately intended to provide help, assistance, appliance or statement made by any person here either carried out in the territory of the Republic of Indonesia or outside the territory of the Republic of Indonesia. The above forms of criminal offenses set forth in Article 13, Article 15 and 16. It should be understood that the intentional conduct the above actions have different penalties in terms of a culprit, in the sense that the actors in the territory of the Republic of Indonesia or outside the territory of the Republic of Indonesia is different in terms of severity of punishment.

The element of the crime of terrorism as a criminal act sixth plot, experiment, plan and / or move others: is an act which is threatening the tranquility and peace that must be wiped out, because this is very detrimental to the action, even under the Act 15 2003 action like this means against the law and there are legal consequences that can not be underestimated by anyone, basically covered by Article 14 and Article 15 of Law 15 of 2003.

Law Terrorism in Perspective of Islamic Law. Quote the explanation of the Imam and al-fuqaha of Madzhahib Arba'ah (four madzhab), just illustrates that there is sufficient agreement known with regard to rebel against the government's ban on Muslims. Legal conduct is unlawful terror qoth'i well done by individuals, groups, or states, the law forbidden for any reason, especially if done in the land of peace (dar al-shulh) and Muslim countries like Indonesia; Decision astral conjunction Ulema Fatwa Committee in Indonesia and the MUI fatwa commission meeting decision that the law does terror is haram, because of the nature of terrorism is destructive (ifsad) and anarchists / chaos (faudha) and aim to create a sense of fear and / or destroy the other party do without rules and objectives without limits.

Overview of Islamic Criminal Law (Fiqh Jinayah) Against Article 6-19 of Law No. 15 of 2003, six criminal offenses in the above form has many similarities with jarimah qat 'al-tariq when compared with jarimah-jarimah another, among the reasons is that jarimah qat 'al-tariq always contains the action of the use of force and the ability more so than likely be able to beat anyone who tried to block the action. But do not rule out other forms of jarimah also have the same criteria as the sixth classification above, include the following jarimah jarimah diyat and qisas or ta'zir.

Jarimah action form *qat 'al-tariq* there are four kinds: first, to spread fear without taking possessions nor

kill. Second, do away with without taking possessions. Third, take any possessions with no killing. Fourth, take possessions diserati with murder. As for the perpetrators terms *jarimah qat 'al-tariq* does not have a lot of (good many actors as well as the amount of strength and ability to defeat), male nor there must be armament. So if *qat 'al-tariq* done by one person even though women and have more power and can beat the crowds then offenders can already be regarded as perpetrators of *qat' al-tariq*

## V. CONCLUSION

Terrorism desired by Act 15 of 2003 that the works which meets the elements of the offenses contained in the law, it is stated in Article 1, Paragraph 1 of Law 15 of 2003, that is to say all the works that are elements in accordance with the provisions of this Act, then such actions can be said with criminal acts of terrorism, whereas if there is no element in accordance with the provisions contained in this legislation, it can not be said with criminal offenses terrorism. While the nuclear charge Act 15 of 2003 to discuss terrorism, as in other chapters as Chapter IV discusses only criminal offenses relating to terrorist acts alone.

Elements of the crime of terrorism there are six in terms of forms of the crime, among others: Intentionally using violence or threat of violence; Crime related to aviation; The use of weapons or other dangerous tools intentionally; Intentionally providing or collecting funds for the implementation of acts of terrorism; Deliberately provide help, assistance, ease, means or information for the criminal acts of terrorism; Plot, experiment, plan and / or move others.

Decision astral conjunction Ulema *Fatwa* Committee in Indonesia and the MUI *fatwa* commission meeting decisions that commit terror law is *haram*.

Seen from the point of view of Islamic criminal law, the six forms of criminal offenses above has much in common with *jarimah qat 'al-tariq*. *Jarimah* action form *qat 'al-tariq* there are four kinds: *first*, to spread fear without taking possessions nor kill. *Second*, do away with without taking possessions. *Third*, take any possessions with without killing. *Fourth*, take possessions accompanied with murder. As for the condition of the perpetrator *jarimah qat' al-tariq* does not have a lot of (good many actors as well as the amount of strength and ability to defeat), male and nor should there weapons. If *qat' al-tariq* carried out by one person even though women and have more power and can beat the crowds then offenders can be said as the perpetrator *qat' al-tariq*.

## REFERENCES

- 'Abidin, Ibnu Al-Syami, 1386 H. *Radd Al-Mukhtar 'ala Al-Durr Al-Mukhtar 'ala Tanwir Al-Abshar*, Dar Al-Fikr, Beirut.
- Abu Zakaria Yahya al-Nawawi, *Majmu' Sharh al-Muhadzab*, Dar al-Fikr, Beirut.
- Ali, Zainuddin, 2007, *Islamic Criminal Law*, Sinar Grafikasi, Jakarta.
- Al-Mawardi, Imam, *al-Ahkam al-Sultaniyah*, Maktabah Mustafa al-Halbi, Mesir.
- Al-Qadri, Muhammad Tahir, 2010, *Fatwa About Terrorism and Suicide Bomb*, LPPI, Jakarta Pusat Indonesia.
- Anshari, Zakaria Al-, *Manhaj Al-Thullab*, Dar Al-Kutub Al-Ilmiyyah, Beirut, tt.
- Bujairami, Sulaiman Bin Muhammad Al-, *Hasyiyah al-Bujairami 'ala al-Khatib*,.
- Bungin, Burhan, *Qualitative Research Methodology: Actualization Methodological Direction for Variety Varian Contemporary*, Jakarta: Raja Grafindo Persada, 2007.
- Chirzin, Muhammad, 2006, *Controversy Jihad in Indonesia*, Pilar Media, Yogyakarta.
- Dasuqi, Muhammad bin Ahmad bin 'Arafah Al-, *Al-Hasyiyat Al-Dasuqi 'ala Al-Syarh Al-Kabir*, Dar Al-Fikr, Beirut, tt.
- Hakim, Rahmat, 2000, *Islamic Criminal Law: Fiqh Jinayah*, Pustaka Setia, Bandung.
- Hubaira, 'Aun Al-Din Yahya, *Al-Ifshah 'an Ma'ani Al-Shihah fi Al-Fiqh 'ala Al-Madzhab Al-Arba'ah*, Dar Al-Wathan, Riyadh, tt.
- Mudzakir, 2008, *Assessment Law On Legal Protection for victims of terrorism, the National Law Development Agency of the Ministry of Justice and Human Rights*, Jakarta.
- Muhajir, Noeng, 1988, *Qualitative Research Methodology*, Roke Sarasin, Yogyakarta.
- Muslich, Ahmad Wardi, 2004, *Introduction to Islamic Criminal Law and Principle: Fiqh Jinayah*, Sinar Grafika, Jakarta.
- Muzadi, Hasyim, 2010, *Terrorism is the enemy of Islam*, (LPPI) Institute for Research and Islamic Studies, Jakarta Pusat Indonesia.
- Nawawie, Muhyi Al-Din Yahya bin Syaraf Al-, *Raudhat Al-Thalibin wa 'Umdah Al-Muftiyyin*, Al-Maktab Al-Islami, Beirut, tt.
- Santoso, Topo, 2003, *Grounding Islamic Criminal Law: Enforcement of Shari'a in Discourse and Agenda*, Gema Insani Press, Jakarta.
- Shamsuddin, Muhammad Al-Ramli, *Nihayah al-Muhtaj Ila Sharh al-Minhaj*, Mesir: Maktabah Mustafa al-Halbi, tt.
- Soeharto, Irawan, 2000, *Social Research Methods: A Field Research Techniques Social Welfare and Social*

- Studies*, Remaja Rosdakarya, Bandung.
- Soekanto, Soerjono, 1986, *Introduction to Legal Research*, UI-Press, Jakarta.
- Surakhmad, Winarno, 1994, *Introduction to Scientific Research: Basic Methods, Techniques*, t.np, Bandung.
- Syafi'I, Rachmat, 1999, *science Ushul Fiqh for IAIN, STAIN, PTAIS*, Bandung, Pustaka Setia.
- Tongat, 2008, *Basics of Criminal Law Indonesia: In Perspective Updates*, Malang: UMM Press.
- Undang-undang Republik Indonesia Number 15 of 2003 On the Eradication of Terrorism*, the Department of Justice and human rights. Jakarta, 2003.
- Wahid, Abdul dkk, 2004, *Crime Terrorism: Perspectives Religion, HAM and Law*, PT. Refika Aditama, Bandung.
- Wardi Muslich, Ahmad, 2004, *Introduction to Islamic Criminal Law and Principle: Fiqh Jinayah*, Sinar Grafika, Jakarta.
- Yazid, Abu, 2005, *Fiqh Realitas, Response Ma'had Aly To the contemporary discourse of Islamic Law*, Pustaka Pelajar, Yogyakarta.
- Zakaria, Ahmad, 2007, "Source Code Website As Evidence In Terrorism In Indonesia (Studi Kasus Website Anshar.net)" Faculty of Law, University of Indonesia.