International Journal of Global Community
Volume IV No. 2 (July), 2021

Criminal Liability of Terrorism Financing Actors

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Abstract

Carrying out terrorism requires funds; without funds, it is very difficult to carry out terrorism. Based on Law Number 9 of 2013 concerning Prevention and Eradication of Criminal Acts of Terrorism Financing, the subjects that can be held accountable for their actions are people and corporations. Cumulative and single systems of sanctions are prescribed by the law, and the types of sanctions include imprisonment, fines and revocation of certain rights. Corporations are only subject to fines and additional penalties. Attempting and assisting criminal acts of financing terrorism have the same punishment as having committed financing of terrorism. The law on prevention and eradication of financing of terrorism raises problems related to the qualification of criminal acts, the absence of specific minimum penalties, the absence of special rules or guidelines for implementing criminal sanctions formulated with the cumulative system, the problem of criminal fines, and the absence of an explanation of the terms relating to the crime of financing terrorism. It is recommended that in applying the criminal provisions of the law on financing terrorism, the principle of prudence and protection of human rights should be applied because many people who donate to religious organizations or recitation groups do not know the purpose and objectives of the donated funds.

Keywords: Funding; Terrorism; Criminal Liability.

Introduction

Based on the Preamble to the 1945 Constitution of the Republic of Indonesia, the State aims to protect the entire nation and homeland of Indonesia. This protection is realized by the efforts to crush all forms of threats against the sense of security of citizens and all attempts to interfere with state sovereignty, including the threat of criminal acts of terrorism and activities that support the occurrence of acts of terrorism.

In addition to ratifying the 1999 International Convention for the Suppression of the Financing of Terrorism, Indonesia enacted Law Number 9 of 2013 concerning the Prevention and Eradication of Criminal Acts of Terrorism Financing (hereafter referred to Terrorism Financing Law). In the general explanation of the law, it is stipulated that in order to prevent all forms of threats and the perpetration of acts of terrorism, especially regarding funding, it is obligatory to make or harmonize laws and regulations related to the financing of terrorism in accordance with the provisions stipulated in the convention.

One of the reasons why the eradication and prevention of terrorism is difficult is that the law on criminal acts of terrorism did not clearly regulate the activities of parties who assist terrorist organizations or perpetrators in carrying out their actions. For terrorist organizations to carry out their actions, they require substantial funds to offset the costs of running their operations, such as the cost of purchasing explosives, training costs, living costs, weapons purchases and transportation costs. One of their sources of funds is financial assistance, which they use in carrying out their actions and as capital in running a business, whose profits are used in further financing of terrorism.

Article 2 paragraph 1 letter b of the Terrorism Financing Law stipulates that terrorism financing can be carried out by individuals, business entities or corporations, financial institutions and religious institutions. Funds related to the financing of terrorism can be sourced from within and outside the territory of Indonesia. Furthermore, in Paragraph 4 of the General Explanation of the Terrorism Financing Law, it is emphasized that terrorism will not succeed without supporting facilities and instruments, including funding, so termination of the funding chain is imperative (PPATK, 2014).

The war on the financing of terrorism is an important step in the fight against terrorism itself. Without support or provision of large amounts of funds, terrorists will find it difficult to carry out their actions. The funding element is the main factor in every act of terrorism, so it is believed that efforts to combat terrorism will not succeed as expected without eradicating the sources of terrorism financing. One of the underlying reasons for enacting the Terrorism Financing Law is that efforts to eradicate criminal acts of terrorism have been carried out conventionally, namely only punishing perpetrators of criminal acts of terrorism.

However, the extent to which the Terrorism Financing Law regulates the qualification of criminal acts and liability for someone suspected of being involved in an act of financing terrorism needs to be studied. This is important

considering that terrorist groups often carry out their actions under the guise of a community activity in raising funds. Also, the community may not realize that the humanitarian/social assistance funds given to certain organizations are actually being used for terrorism activities. This study describes how to actually identify parties who can be qualified as being involved in financing terrorism in Indonesia.

Methodology

This research employed doctrinal research methodology. The problem was analyzed by considering legal principles and referring to legal norms contained in legislations. The primary legal materials used in this research are Law Number 5 of 2018 concerning Amendments to Law No. 15 of 2003 concerning Eradication of Criminal Acts of Terrorism and Law Number 9 of 2013 concerning Prevention and Eradication of Criminal Acts of Terrorism Financing. Secondary legal materials were also used, i.e. materials that provide an explanation of primary legal materials, such as the results of seminars or other scientific meetings and opinions from legal experts relevant to the object of the study of this research. In addition, tertiary legal materials were utilized, i.e. supporting legal materials that provide guidance and explanations of primary and secondary legal materials, such as general dictionaries, magazines and scientific journals relevant to this research.

Result and Discussion

Terrorism is an activity that involves violence and has a harmful effect on human life. It violates criminal law and is clearly intended to intimidate the civilian population, influence government policy, and influence the administration of a state by kidnapping and killing (Muladi, 2002: 7). In the modern world, according to Adjie Suradji (2005:10), many acts of terror are aimed at the middle and upper classes, government officials or rich people.

According to James Adams in Syafaat (2003:59), terrorism is the use or threat of physical violence by individuals or groups for political purposes, either for the sake of or against existing power, if the acts of terrorism are intended to shock, paralyze or intimidate a target group that is larger than the immediate victims. This threat greatly affects the security of the state because terrorism is an organized crime that can take lives regardless of the victim and create fear in the wider community as well as eliminate a person's independence and damage property.

To prevent and eradicate criminal acts of terrorism to the maximum extent, it is necessary to employ systems and mechanisms to trace the flow of funds. This is because it is impossible for a criminal act of terrorism to be carried out without funds. Terrorism will not succeed without financial support. Therefore, it is necessary to break the terrorist financing chain according to the law. The criminalization of terrorism financing is absolutely necessary because the financiers are also perpetrators of terror acts. Trapping people or corporations

who become funders is very important in supporting the success of countering terrorism. The scope of terrorism financing in the Terrorism Financing Law includes acts that are carried out directly or indirectly in the context of providing, collecting, giving, or lending funds to other parties with the knowledge that they will be used to commit acts of terrorism.

The term terrorism financing arises because of terrorist acts in various parts of the world. The existence of terror cases raises a fundamental question of how a terrorist act is funded because it requires a large amount of money, from recruiting members to carrying out operations. In relation to this, Sutan Remy Sjahdeini (2007: 287) stated as follows:

> In various theoretical regulations, there are several terms that are often used, namely financing of terrorism and terrorist financing. If interpreted freely, financing of terrorism is the financing of terrorists, while terrorist financing is in the financing of terrorism. The difference between these two terms is that terrorism financing is aimed at financing terrorist acts or terrorist activities, while funding to terrorists is meant for daily training purposes and the needs of terrorists while in training camps (more directed at perpetrators of terrorist crimes).

Article 4 of the Terrorism Financing Law stipulates as follows:

> Any person who knowingly provides, collects, gives, or lends funds, either directly or indirectly, with the intention of being used in whole or in part to commit a criminal act of terrorism, a terrorist organization, or a terrorist shall be punished for committing a criminal act of financing terrorism with a maximum imprisonment of imprisonment 15 (fifteen) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

Article 6 of the Terrorism Financing Law confirms that suspicious financial transactions related to terrorism financing are as follows:

a. Financial transactions with the intention of being used and/or known to be used to commit a criminal act of terrorism; or
b. Transactions involving Any Person based on a list of suspected terrorists and terrorist organizations.

There is a regulation in the Terrorism Financing Law stating that perpetrators who fulfill the element of financing terrorism cannot be separated from discussions about criminal acts and can be held criminally responsible. Criminal liability is intended to determine whether a suspect or defendant is responsible for a crime that occurred or not, in other words, whether the defendant will be convicted or released. For a defendant to be convicted, it must be proven that the act committed is against the law and that the defendant has the ability to be held accountable. This ability shows the error of the act in the form of

intentionality or negligence, meaning that the action is reprehensible and the accused is aware of the action taken (Roeslan Saleh, 1982: 75-76).

According to Tri Andrisman (2009: 91), errors can be divided into 3 (three), namely:

1. Ability to be responsible;
2. Deliberately *(dolus/opzet)* and negligent *(culpa/alpa);* and
3. There is no excuse for forgiveness.

Indonesian criminal law adheres to the principle of guilt, which is the basis for applying criminal liability to perpetrators who violate the provisions of criminal law. This means that in order to convict the perpetrator of an offense, in addition to proving the elements of the act that caused the reproach, regarding the perpetrator, there must be an element of error (intent). Mistakes are related to the state of the soul of the maker and the inner relationship between the maker and his actions. The state of the soul of a person who commits an action is what is commonly referred to as the ability to be responsible, while the inner relationship between the actor and his actions involves intentionality, negligence and forgiveness (Muladi and Dwidja Priyatno, 2010:60).

Regarding the criminal responsibility of the perpetrators of terrorism financing, one of the measures to eradicate criminal acts of terrorism is punishing the perpetrators, in addition to tracing the flow of funds because it is impossible for terrorism to be carried out without the availability of funds obtained through several methods (Purwanto, 2010: 8-9) as follows:

1. Obtaining financial support from the state and subsequently channeling these funds to terrorist organizations;
2. Coming from individuals who have enormous wealth, such as Osama bin Laden;
3. Commit various crimes that can generate money, such as kidnapping for ransom, robbery etc.;
4. Requests for donations from the public in the form of zakat or donations for religious activities on behalf of religious organizations or institutions;
5. Withdrawal of funds from each member/community, sale of art goods, bazaar or social activities.

The form of fundraising that is prohibited in the Terrorism Financing Law is essentially the provision of financial support for terrorism, for those who facilitate, plan or commit terrorism. The prohibitions are as follows:

1. Any person who knowingly provides, collects, gives, or lends funds, either directly or indirectly, with the intention of being used in whole or in part to commit a criminal act of terrorism, a terrorist organization, or a terrorist shall be punished for committing a criminal act of financing terrorism with a maximum imprisonment of imprisonment 15 (fifteen) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah) (Article 4).

2. Everyone who conspires, attempts, or assists to commit a criminal act of financing terrorism shall be punished for committing a criminal act of financing terrorism with the same sanctions as referred to in Article 4. (Article 5).
3. Any person who intentionally, plans, mobilizes, or orders another person to collect, give, or lend funds either directly or indirectly, with the intention of being used or reasonably suspected of being used, in whole or in part, to commit a criminal act of terrorism shall be punished with the death penalty or imprisonment for life or imprisonment for a maximum of 20 years (Article 6).
4. In the event that the criminal act of financing terrorism as referred to in Article 4, Article 5, and Article 6 is committed by a Corporation, the penalty shall be imposed on the Corporation and/or the Controlling Personnel of the Corporation. (Article 8 paragraph 1).

Based on the foregoing, it is known that the criminal act of financing terrorism is any act of a person or corporation in the context of providing, collecting, giving, or lending funds, either directly or indirectly, with the intention of being used and/or known to be used to carry out terrorism activities, terrorist organizations, or terrorists. Terrorism cannot be carried out without funds, so it is clear that the crime of financing terrorism is a crime that precedes the occurrence of a criminal act of terrorism.

The criminal accountability system in the crime of financing terrorism is explained as follows:

1. Responsible Subjects

In Law No. 9 of 2013 concerning the Prevention and Eradication of Criminal Acts of Terrorism Financing, the subject of being criminally responsible is expanded not only to individuals but also to corporations. Subjects that can be held to account for their actions are as follows:

1. People (helpers/participants); Article 4, Article 5, Article 6 and Article 7
2. Corporations; Article 8

2. Criminal Liability Based on Error (Intent)

In the Terrorism Financing Law, the inclusion of the element of intent in order to indicate error is contained respectively in Article 4, Article 5 and Article 6 as follows:

1. …"intentionally providing, collecting, giving, or lending funds…"
2. … "deliberately plotting, attempting, or assisting to commit a criminal act of financing terrorism…" and
3. … deliberately planning, organizing, or mobilizing another person to commit a crime…"

"Intentional" according to Wirjono Prodjodikoro (2003:65-68) is divided into three types, namely:

1. Deliberate purpose (*opzet als oogmerk*):
   In intentional purposes, it can be said that the perpetrator really wants to achieve the result which is the main reason for the criminal threat.
2. Deliberate realization of certainty (*opzet bij zekerheids-bewustzijn*):
   This kind of intentionality exists when the perpetrator by his actions does not aim to achieve the result that is the basis of the delict, but he knows very well that the result will surely follow the action.
3. Deliberate realization of possibility (opzet bij mogelijkheids-bewustzijn):
   This intentionality is considered to have occurred if in the idea of the perpetrator, there is only a small probability that there will be an unintended consequence.

The definition of "intentional" in the provisions of the Terrorism Financing Law is in line with the understanding put forward by Wirjono Prodjodikoro, who stated that a perpetrator knows or is aware while committing terrorism financing. If someone lends funds to a person without knowing that the receiver is a terrorist, then the element of willfulness no longer exists. So those who lend funds or donate funds but do not know that the person receiving the funds is a terrorist will not be held criminally responsible.

3. Types of Sanctions and their Formulation Systems

In providing a deterrent effect to a criminal as a consequence of his actions, the provisions of law are formulated regarding sanctions in the form of imprisonment and fines against perpetrators of crimes and violations of criminal law. In particular, the purpose of criminal law is to prevent criminal acts from being committed. This prevention is realized through the explicit provision of sanctions in the form of suffering, misery or anything that is uncomfortable to parties who have been proven to have committed criminal acts.

The types of sanctions contained in the Terrorism Financing Law are basic criminal sanctions in the form of imprisonment, fines and additional penalties, which provide opportunity for additional types of criminal sanctions. For more details, see the table below:

Types and Formulation Systems of Sanctions

Article	Formulation System	Types of Sanctions		
		Prison	Fines	Additional
Article 4	Cumulative	15 Years	Rp. 1,000,000,000	-
Article 5	Cumulative	15 Years	Rp. 1,000,000,000	-

Article 6	Single	20 Years	-	-
Article 8	Single	-	Rp. 1,000,000,000	Freezing, Revocation of business license, Dissolution, Confiscation of assets, Takeover, Announcement of court decisions.

Chapter III Article 4 to Article 8 of Law Number 9 of 2013 concerning the Prevention and Eradication of the Crime of Financing of Terrorism does not stipulate the existence of special minimum criminal sanctions but only stipulates maximum sanctions. The prison sentence with the lowest penalty is 15 years (Articles 4 and 5) and the highest penalty is 20 years (Article 6). Articles 4 and 5 regulate the provisions of imprisonment and fines, which can be imposed jointly or cumulatively. Article 6 and Article 8 stipulate a single system of sanctions, namely imprisonment or a fine. Meanwhile, additional penalties can only be imposed on perpetrators of corporate crimes as stipulated in Article 8, in the form of revocation of certain rights or dissolution of the corporation.

The Criminal Code (KUHP) uses two systems for formulating criminal sanctions, namely a single formulation system, where imprisonment is the only type of criminal sanction, and an alternative formulation system, where there are alternatives to choose from, imprisonment or other types of sanctions. The sanction varies with the severity of the crime, from the heaviest to the lightest. In the Terrorism Financing Law, alternative sanctions are not found; sanctions for criminal acts of terrorism financing fall under the cumulative and single systems of sanctions. Such provisions deviate from the provisions of sanctions in the Criminal Code. Criminal sanctions that are formulated cumulatively certainly do not give the judge the freedom to choose only one form of sanction to be imposed on the defendant, because the cumulative criminal sanction is imperative. Cumulative criminal sanctions are rigid, so there is no other choice for judges in imposing sanctions for perpetrators other than imposing the two forms of sanctions. Since each crime of financing terrorism has different characteristics from the others, the sanctions imposed should also be different in form and weight.

According to the author, the criminal sanctions in Article 5 should be single (no fines) because the perpetrators only attempted and assisted the criminal act, while the criminal sanctions in Article 6 should not be single because of the element of intent; therefore, the criminal sanctions in Article 6 should be heavier than those of Article 5. The criminal liability for attempted and assisted terrorism financing is regulated by Article 5, while the criminal liability for intentionally carrying out the criminal act of terrorism financing is regulated by Article 6 of the Terrorism Financing Law.

In criminal law in Indonesia, an attempt *(poging)* is an unfinished or incomplete offense or criminal act. Attempts to commit a crime are threatened with punishment if the intention of the actor has been manifested at the start of the act but the act is not completed only because of factors that do not depend on his own will. Article 5 of the Terrorism Financing Law expressly states that a criminal act of attempt or assistance in committing a criminal act of financing terrorism shall be punished as committing a crime of financing terrorism. Regarding the provisions of Article 53 of the Criminal Code, if the criminal act has not been completed, the punishment will be different from that of the completed criminal act; the punishment will be reduced by 1/3 (one third) in comparison to the punishment for the completed criminal act. However, for the crime of financing terrorism, it is not necessary to prove whether the funding is realized or not; it is already a criminal act of financing terrorism, and is punished with the same sanctions as those of the criminal act of committing terrorism financing.

As mentioned earlier, once an attempt is made to finance terrorism, the perpetrator is considered to have committed an act of financing terrorism and is given the same sentence as a person that has committed the criminal act of terrorism financing. However, since the Terrorism Financing Law does not explain the meaning of attempt, then by default, what applies is the definition of attempt in Book I of the Criminal Code. One of the reasons why the sanctions for intentional offenses is equal with those of attempted offenses and assistance in the Terrorism Financing Law is that the law does not include the qualification of offenses in the form of crimes and violations.

Conclusion

Law Number 9 of 2013 concerning the Prevention and Eradication of Criminal Acts of Terrorism Financing expands the subjects that can be held to account for their actions, namely people and corporations. The systems for formulating criminal sanctions in this law are the cumulative and single systems, and the types of sanctions include imprisonment, fines and additional penalties. Corporations are subject to fines and additional penalties. The length of imprisonment and amount of fines are prescribed by a special maximum system of sanctions. Attempting and assisting the crime of financing terrorism shall be sentenced with the same punishment as having committed the financing of terrorism.

The Terrorism Financing Law raises several problems, including the problems of qualifying criminal acts; the absence of special minimum penalties; the absence of special rules or guidelines for implementing criminal sanctions formulated with the cumulative system; the absence of explanations for articles relating to the crime of financing terrorism, such as special provisions that formulate the meanings of the terms conspiracy, providing, collecting, giving, or lending funds, either directly or indirectly, as an attempt, or assistance to commit a criminal act of financing terrorism.

Recommendation

It is recommended that in the application of the criminal provisions of the Terrorism Financing Law, law enforcers need to apply the principle of prudence and protection of human rights because in the criminal provisions, there are no explanations of many terms, such as evil conspiracy, provide, feed propose, give, or lend funds, either directly or indirectly, attempts, or assistance to commit a crime of funding. This should be done because most people do not understand the criminal provisions of the Terrorism Financing Law since in general they donate to religious organizations or recitation groups without knowing the intent and purpose of donated funds.***

References:

Adjie Suradji. 2005. Terrorism. Jakarta. Sinar Harapan Library.

PPATK E-Learning Module. 2014. *Pengenalan Anti Pencucian Uang dan Pendanaan Terorisme. Bagian 3. Pendanaan Terorisme* (Introduction of Anti-Money Laundering and Financing of Terrorism. Section 3. Terrorism Financing). Jakarta. INTRAC.

Syafaat, Muhammad Ali. 2003. *Terorisme, Definisi, Aksi dan Regulasi* (Terrorism, Definition, Action and Regulation) Jakarta. Imparsial.

Muladi. 2002. *Demokrasi Hak Asasi Manusia dan Reformasi Hukum di Indonesia* (Human Rights Democracy and Legal Reform in Indonesia). Jakarta. Habibie Center.

Muladi and Dwidja Priyatno. 2010. *Pertanggungjawaban Pidana Korporasi* (Corporate Criminal Liability). Jakarta. Prenamedia Kecana.

Purwanto. 2010. *Membongkar Dana Teroris* (Dismantling the Terrorist Fund). Jakarta. Independent Development Creation.

Roeslan Saleh. 1982. *Pikiran-pikiran Tentang Pertanggungjawaban Pidana* (Thoughts on Criminal Liability). Jakarta. Indonesian Ghalia.

Sutan Remy Sjahdeini. 2007. *Seluk Beluk Tindak Pidana Pencucian Uang dan Pembiayaan Terorisme* (Circumstances of Money Laundering and Financing of Terrorism). Hit II. Jakarta. Graffiti Main Library.

Tri Andrisman. 2009. Principles and General Rules of Indonesian Criminal Law. Lampung. Lampung University.

Wirjono Prodjodikoro. 2003. *Asas-Asas dan Aturan Umum Hukum Pidana Indo*nesia (Principles of Criminal Law in Indonesia). Bandung. Aditama Refika.

Law Number 5 of 2018 concerning Amendments to Law No. 15 of 2003 concerning Eradication of Criminal Acts of Terrorism.

Law Number 9 of 2013 concerning Prevention and Eradication of Terrorism Financing Crimes.

Law Number 6 of 2006 concerning Ratification of the International Convention for the Suppression of the Financing of Terrorism.