

# Rechtsidee

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# **The Completion of Terrorism According to the Indonesian Positive Law**

## *Penyelesaian Terorisme Menurut Hukum Positif Indonesia*

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### **Abstract**

In positive law, completion of terrorism in Indonesia solved through Penal Policy/Policies of criminal law by issuing and publishing various legal products, a Substitute Regulation of Law (Perpu) No. 1 of 2002 regarding the eradication of criminal acts of terrorism, reinforced into Law Act No. 15 of 2003 the Government is also issuing Substitute Regulation of Law (Perpu) No. 2 of 2002 regarding the enactment of the Substitute Regulation of Law (Perpu) No. 1 in 2002 reinforced into Law Act No.16 of 2003 and Law Act No. 9 of 2013 regarding the prevention and eradication of criminal acts of Terrorism Financing, until forming the anti terror units from both the Indonesian army forces, police or non governmental institutions. Police (Densus 88) as the main actor of law enforcement and disruption network of terror along with the Attorney General and justice system.

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## Introduction

Terrorism is a humanity and civilization crime that's being a terror and an enemy of all nations and religions. That's why, the war against terrorism being a commitment from all the nations and religions in the world. In his book "Intelijen Bertawaf", Prayitno Ramelan says, in the development, terrorism has built the organization and has a global network with groups of international terrorism and also cooperation each other in operational infrastructure or supporting infrastructure aspects. Terror, terrorist or terrorism is a group of words, that's being a bad dream, without exception for the Indonesian government. Terror means an attempt to create fear of a person or a group. The actions doing by terrorist always haunt in mother earth of Indonesia. Many terrors doing by terrorist on behalf of the religion and declaim people outside the group as a heathen or Kafir. In their actions, not seldom the terrorist used a high explosive bomb likes TNT, C-4 and Semtek.

In many parts of the world terrorism has remained for a very long time, a weapon of the weak against rulers and governments who are economically, politically, and even militarily stronger.

The crumble of the World Trade Centre (WTC) building in New York on September 11 due to the terrorist attacks are now seen by many people as defining the moment that ending the era of post cold war. Indeed, the tragedy of September 11 brought the fundamental implications towards to the situation and international political scene. For the United States (US), the tragedy is the decisive blow for the supremacy of super powers, that demanding a response in the form of "against the terrorism." For other countries, in addition to awake them that a serious threat against humanity can take the form of a never previously unimaginable, the tragedy of WTC and the U.S. response to terrorism is the beginning of a political order of a harmonious world characterized by the growing non-traditional threats (particularly in the form of terrorism) and the U.S hegemonism as the sole superpower. Since then, terrorism appears as a security threat of the non traditional post cold war countries that able to create damage or threat to the Government of the countries in the world. As though a form of terrorism has emerged since a long time, but the damage of 9/11 tragedy could be an indicator towards the existence of new threats to the stability of the world security

More analysis after WTC crumble, on September 11 2001 ago Chalk said, :

*"International attention on the threat of Islamic extremism in ASEAN has increased significantly since al-Qaeda launched attacks against the United States on September 11. Not only is this part of the high global awareness of terrorism in General, but also reflects the fact that militant groups based in the region known have good relations passed through previous training camps under the Taliban allegations or have links established by Osama bin Laden and his global terror network.*

According to Chalk, that the movement of terrorism in Southeast Asia increased after the Al-Qaeda attacks on September 11, 2001. The most interesting from Chalk's analysis in his writing is that Al-Qaida attacks became a stimulus for similar terrorism movement in various areas including Southeast Asia. Since Al-Qaeda attacks crumble the twin World Trade Center building (WTC) in New York and most of the Pentagon building in Washington, D.C. on September 11th, 2001 global terrorism issue become an attention all political actors in the world both State and non-State. This tragedy, then marked a new chapter, which is a global terrorism threat became real threats against national security of a country that was tagged with the emergence of the Patriot Act as a new United States policy on the fight against terrorism.

On July 22, 2011 a series tragic tragedy happened in Norway that killed around 90 people. The attack happened in Norway occurs in two places at the same time, the first bomb exploded in Oslo, near Government offices. The second attack exploded on the Otoeya island, where the summer camp held by AUF, the Youth Division of the Labor Party, that held by Government of Norway at that time. Anders Behring Breivik who did the great murder in Europe after the bomb exploding in Madrid in 2004.

According to Communications Director I2, Rustika Herlambang received in the release Kompas.com, Sunday (27/12/2015). the issue of international terrorism being a crime of the most widely proclaimed online media worldwide throughout 2015. International terrorism is reported as much as 104,061 times or 78.2 percent from six different topics that into the International Crime category, the six such topics, namely international terrorism, drug trafficking, human trafficking, cyber crime, human smuggling, and weapons smuggling. In the Intelligence Media Management (IMM) radar machine, global issues involving the leaders of big countries, like the United States, France, Israel, Australia, and the United Kingdom. "Along 2015, the international media give attention on the radical movement of the Taliban, ISIS, Boko Haram, Al-Shahab, and others radicalism," According to him, the issue of international terrorism is becoming a very massive issue in online media, especially in Western Europe and the United States. It is also led the issue of international terrorism became a big issue in the media to the entire world. Moreover, after the attack in Paris in November, there have been cases of armed attacks the civilians in the United States. This incident is indicated to the global terrorist network, and became a political issue in the land of Uncle Sam.

In the last decade, Indonesia has a lot of the terrorism attacks that not only claimed the loss of life and cause material losses, but also spread the worry and fear atmosphere among the public society. Currently, Indonesia

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government has been declared terrorism, not just as a threat to the security and safety of citizens, but also the national security.

Based on the data from Wikipedia many terrorism cases happened in Indonesia, some of them are Christmas Night Bomb, December, 24, 2000 bombs exploded on Christmas night in some towns in Indonesia, 16 persons died, 96 persons wounded and 37 cars destroyed. Australian International School bomb, Jakarta, November, 6, 2001, a homemade bomb exploded in Australian International School (AIS) yard. Then, First Bali Bomb, October, 12, 2002, three bombs explosive shaking the Bali town, Most of 202 Australians died and 300 persons wounded. At the same time, in Manado, North Sulawesi, a homemade bomb also exploded in Filipina General Consulate office, no victims. JW Marriott Bomb, August, 5, 2003, a bomb destroyed half of JW Marriott Hotel, as many as 11 persons died and 152 persons wounded. Second Bali Bomb, October, 1, 2005. A bomb back to explode in Bali. At least 22 persons died and 102 persons wounded because the explosive that happened at R.AJA's Bar and Restaurant, Kuta Square, Kuta Beach and also at Nyoman Caafée Jimbaran. And a bomb with shootout in Jakarta, January, 14, 2016, an explosive and shootout happened at around Sarinah Plaza, MH Thamrin street, Central of Jakarta. Quoted from the book "Kejahatan Terorisme Perspektif Agama, Ham, Dan Hukum" a bomb tragedy at Sari Club and Peddy's Club Kuta, Legian, October, 12, 2002 is a decent terror classed as the greatest crime from a series of terror that exists in Indonesia.

## Issues

After World Trade Center (WTC) tragedy and the first Bali bombing as a tipping point in the country, the Indonesian Government getting pressure, both from within and outside the country, to accomplish the terrorism effectively. So that raises a problem how to accomplish the terrorism according to the Indonesian positive law?

## Research Method

The research methodology used in this research is the method of research conducted with normative approach, namely by conducting an analysis of the problem through approaches to the principles and theories of law and refers to the legal norms contained in the legislation, where data collection is done by library research that is conducting research by using data from various sources of reading such as legislation, books, journals and internet assessed, relevant to the problems to be discussed in this research.

### THE COMPLETION OF TERRORISM ACCORDING TO THE INDONESIAN POSITIVE LAW

During the decade after the reform in 1998 recorded Indonesia experienced some huge bomb terror, ranging from BEJ bomb to JW Marriot Hotel and Ritz-Carlton Hotels bombs. Most of them was a suicide bomb, that the terrorist sticks the bombs on his part of the body so that it can strike the goal effectively, the stakes certainly lives because the body will be crushed along with the exploded bomb.

But to be sure, the bombs terror has broken humanity sense of Indonesian society. As hundreds of victims suffering from that event. Not only that, the terror gives a big negative influence, fear everywhere socially, a sense of no trust interferes Indonesian society to each other.

It's not an exaggeration if we say the terror as crimes against humanity, as a denial of the existence of human, with all the complexities of the life. According to Golose the word "terror" derived from the Latin Language "Terrorem" that means extraordinary fear. According to B.J. Habibie, an Indonesian Former President, terrorism is an act of terror or violent acts carried out systematically and unpredictability that committed against the Country, the organizers of Government both Executive and legislative even to the citizens of the social and political elite terrorists.

While the Laquer after reviewing more than a hundred definitions of terrorism, concluded the presence of elements of the most prominent of these definitions, namely that the main character of terrorism was used violence/threats of violence while politically motivated terrorism is often done because of the encouragement of religious fanaticism. Mulyana W Kusumah in his book "Terorisme Dalam Perspektif Politik dan Hukum", explains that terrorism more become a scourge for modern civilization clearly. The nature of the actions, actors, goals, strategic motivation of the expected results as well as achievements, targets and methods of terrorism increasingly wide and varied. Thus, it is clear that the terror is not a usual destructive, violent crime, but it's already become a crime against the peace and security of mankind ( Crimes against peace and security of mankind ). According to Wilkinson, as quoted by Gunawan Permadi, there are three different types of terrorism in general:

1. Revolutionary Terrorism, namely the use of systematic violence with the end goal to bring about a radical change in the political order;
2. Subrevolusioner Terrorism is the terrorists use of force to cause a change in public policy without changing political order;
3. Repressive Terrorism, namely the use of violence to suppress the terrorists or chaining individuals or



groups from other forms of behavior that is not considered acceptable by the State.

The effort of eradicating terrorism is global in nature and extraordinary of all the people in the world, including Indonesian people.

In anticipating the terrorism many various effort done by a government institution to restrict the space as well as preventing and anticipating the movement of terrorism, start from through Penal Policy/Policies of criminal law by issuing and publishing various legal products, a Substitute Regulation of Law (Perpu) No. 1 of 2002 regarding the eradication of criminal acts of terrorism, reinforced into Law Act No. 15 of 2003 the Government is also issuing Substitute Regulation of Law (Perpu) No. 2 of 2002 regarding the enactment of the Substitute Regulation of Law (Perpu) No. 1 in 2002 reinforced into Law Act No.16 of 2003 and Law Act No. 9 of 2013 regarding the prevention and eradication of criminal acts of Terrorism Financing, until forming the anti terror units from both the INDONESIAN ARMY FORCES, police or non governmental institutions..

The complete process of the criminal cases based on the laws in force in Indonesia is currently done in a Criminal justice system. The Criminal Justice System has now become a term that denotes a work mechanism in anticipating the crime using basic systems approach. The term criminal justice system according to Ramington and Ohlin as quoted by Romli Atmasasmita is as follows: The criminal justice system can be interpreted as the use of an approach systems towards the mechanism of administration of criminal justice, and criminal justice as a system is the result of interaction between the legislation, administrative practices and social behaviour or attitude. The meaning of the system itself contains the implication of an interaction process that are prepared rationally and efficient way to deliver specific results with all of its limitations. Marjono Reksodipoetro gives the limitation that the criminal justice system is a system of controlling crimes consisted of the Police, Prosecution, Courts and Penitentiary institutions. Based on what Marjono suggested that the components or subsystem in the criminal justice system is the Police, Prosecution, Courts and Penitentiary institutions.

Next Marjono also suggest out that the purpose of the criminal justice system is to prevent the public being crime victims, resolves the crimes so that the society feel satisfied that justice has been upheld and to keep the guilty not to repeat his deeds. Muladi suggested that the criminal justice system is a justice network using material criminal law, formil criminal law, or law implementation. But this institution should be seen in the social context.

It is intended to achieve justice in accordance with what was desired by society. According to Romli Atmasasmita, with the promulgation of Law Act No. 8 of 1981 regarding criminal procedure, making the Indonesian criminal justice system has embraced the akusator system and affected by Due process model. *Due Process model konsep* strongly uphold the rule of law, in criminal cases, no one was and put their self above the law. Akusator system is an operating system with a witness and the evidence..

*Due process model konsep* uphold *Presumption of innocent principle*. According to this concept any examination at the investigation level, prosecution, or examined in the Court should follow the formal procedure as established by law in the criminal justice system itself that as process of criminal law enforcement. Therefore the criminal justice system is very closely related to the criminal legislation itself, either criminal law or material or formal criminal law (criminal procedure).

*According to Law Act No. 15 , 2003 regarding the eradication of criminal acts of terrorism. Chapter I General provisions article 1, paragraph (1), the crime of terrorism is the deeds that meet the elements of a criminal offence in accordance with the provisions of this act as to any deeds categorized into criminal acts of terrorism and sanctions, set in chapter III (criminal acts of Terrorism), that individuals are convicted for committing criminal acts of terrorism, where if:*

Article 6 , Any person who intentionally uses violence or violence threat make an atmosphere of terror or fear to the people widely or raise bulk casualties, by seizing the freedom or eliminate the lives and property of others or causing destruction of strategic vital objects or environmental or public facilities or international facilities are convicted by death penalty or life imprisonment or imprisonment for a minimum 4(four) years old and maximum for 20 (twenty) years.

Article 7 , a person who intentionally uses violence or violence threat intended to cause an atmosphere of terror or fear to the people widely or raise bulk casualties, seizing the freedom or eliminate the lives and property of others or causing destruction of strategic vital objects or environmental or public facilities or international facilities are convicted by life imprisonment for a life time .

Article 8, convicted for committing criminal acts of terrorism with the same crime as stipulated in article 6, for any person who:

1. Destroy or cause the buildings cannot be used or damage the buildings for air traffic security or defeat the efforts to safeguarding the building;
1. Cause a destroy or cause the buildings cannot be used or damage the buildings for air traffic security or defeat the efforts to safeguarding the building;

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2. intentionally and unlawfully destroy, damage, retrieve, or move a sign or a tool for safeguarding aviation, or defeat a work from a sign or the tool, or put up a wrong sign or the wrong tools;
3. because of a negligence cause a sign or a tool for safeguarding aviation destroy, damage, retrieve, or move or put up a wrong sign or a wrong tool for safeguarding aviation;
4. intentionally and unlawfully, destroy or damage an airplane that were entirely or partly belongs to someone else;
5. intentionally and unlawfully endanger, destroy, damage or wreck the airplane;
6. because of a negligence causie the airplane in danger, destroy, damage or wreck;
7. intentionally to benefit yourself or others unlawfully, for insurance surety cause a fire or explosion, ruin accident, damage or causing the airplane covering by insurance against the danger or insured cargo and wages will be accepted for the transport, or for the benefit of the cargo has been received bail;
8. acts against the law on the airplane, seizeor retain the deprivation or control the airplane in flight;
9. intentionally uses violence or violence threat or other forms of thread on the airplane, seize or retain the deprivation or control the airplane in flight;
10. perform together as a continuation of the bad conspiracy that premeditated, cause wounded people, damage on airplane so can endanger its flight, doing by intended to seize another person's freedom;
11. intentionally and unlawfully uses violence to anyone on the airplane, if it could endanger its safety;
12. intentionally and unlawfully damage the airplane on service or cause a failure that make it could not fly or endanger the flight security;
13. intentionally and unlawfully placed inside the airplane that on service, in any way, tools or materials that could destroy the airplane and could not fly or cause a damage that endanger the flight security;
14. perform together, 2 (two) persons or more as a continuation of the bad conspiracy that premeditated, cause wounded people as stipulated in letters l, m, and n;
15. gives the false statements and because of that, it could cause the airplane's security in danger;
16. do something on the airplane that could cause the airplane's security in danger;
17. do something that could interfere disciplines and order on the airplane.

**Article 9**, a person who unlawfully enter into Indonesia, create, receive, acquire, try to submit or attempt to submit, control, bring him supplies, has or had in his possession, store, transport, hide, use, or release to and/or from Indonesia something firearms, ammunition, explosives or something and other dangerous materials with intent to commit criminal acts of terrorism, are convicted by death penalty or life imprisonment or imprisonment for a minimum 3 (three) years and maximum for 20 (twenty) years.

**Article 14**, a person who plans and/or motivates the other persons to conduct criminal acts of terrorism as intended in Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, and Article 12 are convicted by death penalty or life imprisonment.

**Article 15**, a person who commits bad conspiracy, to attempt, or support to conduct criminal acts of terrorism as intended inArticle 6, Article 7, Article 8, Article 19, Article 10, Article 11, and Article 12 are convicted by the same penalty as this crime performer.

**Article16**, a person who outside the Indonesia territory that provide assistance, simplicity, facility, or description for the occurrence of the terrorism, are convicted by the same penalty as this crime performer as intended inArticle 6, Article 7, Article 8, Article 19, Article 10, Article 11, and Article 12.

**Article 19**, The provisions regarding the special minimal criminal punishment as intended in Article 6, Article, Article 9, Article 10, Article 11, Article 12, Article 13, Article 15, Article 16 dan the provisions regarding death penalty or life imprisonment as stipulated in Article 14, is not applicable for performer of terrorism that under 18<sup>th</sup> (eighteen) years old.

The Indonesian Government has recorded to execute 66 people sentencing by death penalty in around 1979 - 2015. The 66people involved in the drugs , murder,bombing, political crime, and terrorism cases. Based on The Commission for missing persons and victims of violence (Kontras), the last execution for the death penalty was on 18<sup>th</sup> of January as many as 6 persons that became third largest after 1986 1986 (10 persons) and 2008 (10 persons). The following list of people sentencing by death penalty in terrorism case who already executed:

1. Execution in 1983, Imron bin Mohammed Zein, a mastermind of hijacking the Garuda DC-9 airplane routing from Jakarta to Medan (1981);
2. Execution in 1985, Salman Hafidz, Kosekta Cicendo 8606 Attack (1981);
3. Execution in 1991, Azhar bin Muhammad, terrorism;
4. Execution in 2008, Imam Samudra, Bali Bombs 2002;
5. Execution in 2008, Amrozi, Bali Bombs 2002;
6. And Execution in 2008, Ali Gufron alias Mukhlas, Bali Bombs 2002.

The terrorism completion in Indonesia is different with the others countries, here the comparison :

Indonesia	Singapura	Malaysia
Have Law Act No. 15 of 2003	The Singapore criminal law does not	the repression of terrorism through

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regarding the eradication of criminal acts of terrorism. On the other side, the Law Enforcement against to terror performer in Indonesia viewed as a success story in the world for counter-terrorism. Indonesia is currently in the phase of drafting new regulations to improve compliance with international standards. • Have no Internal Security Act /ISA and no preventative detention powers that could be used for terrorism. Police (Densus 88) as the main actor of law enforcement and disruption network of terror along with the Attorney General and justice system.	specify the acts of terrorism, but criminalize the elements of planning, preparation, and implementation (murder, kidnapping, etc). The highest punishment is death penalty. • Singapore often use Internal Security Act (ISA)/Internal Security ACT to prevent and punish terrorism Act. There are preventative detention clause where the Internal Security Department can detain someone suspected terrorists without adjudication if set up as a national security threat. From detention side, there are special detention facilities for suspected terrorists (not mixed in with the regular inmates). The authorities to capture using the ISA is an Internal Security Department that has arresting power and the similar investigation due to Singapore Police. Singapore Police enforce only the ordinary criminal law.	law enforcement approach is dominant in Malaysia and become a Malaysia Government's focus to counter the terrorism. Malaysia Government's focus is on prevention (preventative detention, similar to Singapore). • There are a number of reprehensive legislation that can be used to prevent and suppress the development of terrorism: Internal Security Act (ISA) / Internal Security Law Act similar to Singapura, Pers and Publication Law Act, Emergency Condition Law Act, Sedition Act, State Secret Law Act. Malaysia Criminal Law Act has its own section to criminalize terrorism and antiterrorism laws being special devised. However, the most often used is Internal Security Act / ISA that presses terrorism effectively because it has a preventative detention clause. • Malaysian Police lead in law enforcement against terrorism.
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**Table 1.**

If associated with the constitutional the eradication of terrorism as a form of protection to citizens that mandated by Constitution of Indonesian Republic in 1945 (UUD 1945). Indonesia is a law country, because of this, Indonesian government has a duty and a responsibility to maintain a safe life, a peaceful and prosperous as well as actively maintaining world peace. That's why not only through a penal system but also the role from Indonesian young generation in anticipation of terrorism becomes a major force which through their liveliness in Pancasila Primary Education through the education curriculums provided by schools, colleges, or institutions of society in which based on Pancasila which is contained religious values of civilized and in accordance to the Indonesian culture of tolerance and peace continuously in the level of education. From the young generation's participation in this Pancasila primary education, they could learn how to implement Pancasila in their life not only learn it as a knowledge. They will learn that a differentiation is beautiful, not as a big mistake. Like Indonesian's motto "Bhineka Tunggal Ika" that means, although it varies but remains one also. They will more understand about what the meaning of Pancasila and start to implement it to their life. And of course, this thing could change their comprehension and viewpoint that learning Pancasila as a knowledge only..

To interpret the meaning of Pancasila principles as the view of the life should begin with understanding the nature of Pancasila as the overall and the fact Pancasila principles.

In first principle of Pancasila, Believe in one supreme God, this principle gives the freedom to everyone to embrace the religion according to beliefs and their trust respectively. The second principle, Justice and civilized in humanity, is a form of appreciation of the human dignity as Human Rights (HAM). The third principle, The unity of Indonesia, The unity of Indonesia, which upholds unity above all personal and group interests. The fourth principle, The democracy led by the understanding among honorable representatives of the parliament house, reflect any decision making based on deliberation in consensus, in reaching consensus everyone has the right to speak his opinion and each deliberation to reach consensus should be covered by the spirit of family. And the fifth principle, Social justice for all of the people of Indonesia, develop a fair attitude to others, respect the rights of others, doing activities in order to manifest the progress evenly and social justice. Even not only by joining the Pancasila primary education, but also the young generation could socialize teaching Pancasila primary education in society both in cities and villages. This socializing conducted by young generation will help to give the comprehension about Pancasila as a unifier nation. So, not only young generation could participate in this way but also the whole society.

## Conclusion

In positive law, completion of terrorism in Indonesia solved through Penal Policy/Policies of criminal law by issuing and publishing various legal products, a Substitute Regulation of Law (Perpu) No. 1 of 2002 regarding the eradication of criminal acts of terrorism, reinforced into Law Act No. 15 of 2003 the Government is also issuing Substitute Regulation of Law (Perpu) No. 2 of 2002 regarding the enactment of the Substitute Regulation of Law (Perpu) No. 1 in 2002 reinforced into Law Act No.16 of 2003 and Law Act No. 9 of 2013 regarding the prevention and eradication of criminal acts of Terrorism Financing, until forming the anti terror units from both the INDONESIAN ARMY FORCES, police or non governmental institutions. Police (Densus 88) as the main actor of law enforcement and disruption network of terror along with the Attorney General and justice system.

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*According to Law Act No. 15 of 2003* Eradication of criminal acts of terrorism. Chapter I General provisions article 1, paragraph (1), the crime of terrorism is the deeds that meet the elements of a criminal offence in accordance with the provisions of this Law Act. About deed categorized into criminal acts of terrorism and sanction, provided in the provisions on Chapter III (Terrorism Criminal Act). This can be seen in Article 6, Article 7, Article 8, Article 9, Article 14, Article 15, Article 16 and Article 19. Indonesia is currently in the phase of drafting new regulations to improve compliance with international standards.

Indonesia have no *Internal Security Act /ISA* and no preventative detention powers that could be used for terrorism, it's different with Singapura and Malaysia, use Internal Security Act (ISA)/Internal Security ACT to prevent and punish terrorism. There are preventative detention clause where the Internal Security Department can detain someone suspected terrorists without adjudication if set up as a national security threat.

## References