Juridical Study Of Women As Perpetrators Of Criminal Acts Of Terrorism

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Abstract

The issue of terrorism has now become a global phenomenon because of the impact it causes. The new mode of acts of terrorism makes women as perpetrators who in the previous perspective are considered more passively placed as subjects or executors and even become the main actors of acts of terrorism. The main issues that the authors discuss are what are the reasons for women as perpetrators and what forms of sanctions are given to women as perpetrators of criminal acts of terrorism. The research method used by the author is juridical-normative, doctrinal legal research conducted, or aimed at written regulations or other legal materials with notes in order to find answers by analyzing or comparing one with another. Based on the results of this study, the reasons for women as terrorism offenders are due to various factors such as environmental factors, social conditions, economic conditions, feelings left behind, psychological factors, social media exposure, gender mainstreaming, and ideological misunderstandings. Whereas the form of sanctions given to women as perpetrators of criminal acts of terrorism is the same as sanctions given to male perpetrators. The only difference is the role or qualifications taken in carrying out these acts of terrorism. As a group that is obliged to obtain guarantees of human rights, women are therefore obliged by the state to guarantee the rights of women suspects without ignoring legal norms and the rights of suspects.

Keywords: Terrorism, Perpetrators, Women, Reasons, Sanctions

I. Introduction

Terrorism is a crime against humanity and civilization also this is one of the serious threats to the sovereignty of the country because terrorism is an international crime that threatens danger to national security, peace, and welfare society. So in this case it is necessary to eradicate in a planned and sustainable manner so that the rights of every community can be protected and upheld.

The issues of terrorism have now become a global phenomenon, especially after the attack on the World Trade Center (WTC) and The Pentagon building in New York City, the United States which is considered the most destructive terrorist attack in world history because it caused substantial victims. This event later became a momentum for the development of terrorism issues at the international level and turned the global outlook into a threat of terrorism. In the aftermath of that event, Indonesia was confronted with acts and terrorist attacks that were quite sequential. There have been dozens of acts of terrorism that have occurred, including such as the explosion of Paddys
Cape and Sari Club on Legian street Kuta, Bali known as the Bom Bali I on October 12, 2002. The incident killed more than two hundred people and injured hundreds of others.

Responding to various terrorist attacks that have caused concern among the people of Indonesia, the Government has taken strategic steps in tackling terrorism, including the issuance of Government Regulation instead of Law No. 1 of 2002 concerning Eradication of Terrorism Criminal Acts, then in the following year's DPR session, Law No. 15 of 2003 concerning the Stipulation of Government Regulation instead of Law No. 1 of 2002 concerning Eradication of Terrorism Criminal Act became law.

Law Number 15 the Year 2003 was formed with various considerations including namely, that the series of bombings that occurred in the territory of the Unitary Republic of Indonesia (NKRI) had resulted in the loss of lives regardless of the victim, has resulted in a loss of life without seeing victims, causing widespread public fear, and damaging property. Thus arises a very broad impact on social life, economy, politics, and international relations. Besides terrorism as a transnational crime, organized and has a wide network that threatens national and international peace and security.

In addition there was also a bombing that occurred in J.W. The Mariot Hotel on 5 August 2003 and in 2009 was repeated in conjunction with the Ritz-Carlton, the bombing of the Australian Embassy on 9 September 2004, the Bali Bombing 2 on 1 October 2005, the Sarinah attack in 2016 until the recent bombing at Surabaya in 2018. The bombing incident in Surabaya involving the family proved that the role of women in the radical movement was no longer individual but as the main actor who had power.

The new model of terrorism is making women as perpetrators. Terrorists are no longer dominated by men, but some have been entered by women who from the previous perspective are considered more passive. This means that before using women as perpetrators using a feminist approach, terrorist acts carried out with a masculine face and using a patriarchal approach. Women’s involvement in terrorism is not new anymore. Long before women are involved as perpetrators in acts of terrorism, in fact they have long been targeted as the main target and first in various acts of terrorism brutality. The cases of terrorism a few years ago put women no longer as auxiliary players, not just objects and victims in the terrorism movement, but have experienced
extraordinary transformation into subjects and executors and war troops. Some women are even the main actors of terrorism.

This study aims to examine and find out 1) what are the reasons for women as terrorism offenders. 2) forms of sanctions given to women as perpetrators of criminal acts of terrorism.

II. Method

The type of legal research used in this study is normative legal research, or commonly called normative juridical. Normative legal research is doctrinal law research or library research or document studies. This research is called doctrinal research because it is carried out or aimed at written regulations and other legal materials. The author in this case tries to review various laws and regulations as well as other legal materials related to the problem under study, so that it can help the writer to explain how women as perpetrators of criminal acts of terrorism.

In this study the authors use secondary legal data on primary legal materials, secondary legal materials, tertiary legal materials. Primary legal material is legal material that has the authority and consists of legislation, official records, and judges’ decisions. The statutory regulations used in this study are Law Number 15 of 2003 concerning the Establishment of Government Regulations instead of Law Number 1 of 2002 concerning Eradication of Terrorism Crimes, Law Number 39 of 1999 Concerning Human Rights.

The secondary legal material is used to explain the primary legal material and is all publications about the law but not official documents. Usually the secondary legal material in the form of legal opinions or doctrines or theories obtained from legal literature, research results, scientific articles, and websites related to research. Besides interviews with informants can be done and used as one of the secondary data including secondary legal material. Whereas tertiary legal material consists of legal material that provides meaningful guidance or explanation of primary legal material and secondary legal material, such as legal dictionaries, encyclopedias.

The method of collecting data that I use is a literature study or document study. Study documents for legal research include legal materials consisting of primary legal materials,
secondary legal materials, and tertiary legal materials. While the library data used is sourced from laws and regulations, books, official documents, publications, and research results. Next is the method of data analysis, data analysis is the process of organizing and sorting data in patterns, categories, and basic descriptions so that answers can be found to the problems studied. This research uses a descriptive-analytical research method, the analysis used is a qualitative approach to primary data and secondary data.

III. Main Heading of the Analysis or Results

A. The reasons for women as perpetrators of terrorism

The involvement of women in acts of terrorism is now not only a passive supporter but has advanced to the forefront. Whereas previously terrorist acts had a masculine face and used a patriarchal approach, in recent years terrorist acts have used women as perpetrators and with a feminine approach. Lately terrorists are not dominated by men alone, some have been entered by women who are seen from a gender perspective, usually acting as supporting players. Currently, not a few women play themselves as executors, even in developing a level of radicalism far more militant than their men or husbands.

Someone who is involved in a terrorist group even if only a supporter has a high loyalty to the group. This happens because there is an awareness of the similarity of identity and value of the system adopted. If women are involved in terrorist groups, their identities will change to group identities that enable them to act based on group goals and interests. The motivation of women in taking a risky action is inseparable from their personalities and their environment. Various reasons for a woman to become a terrorist are:

1. Environmental factors
2. Economic conditions
3. Feelings of being abandoned
4. Psychological factors

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5. Factors exposed to social media

6. Gender equality / equality

7. There is a misunderstanding of an ideology

Other factors also mentioned because women were less suspected by security officers. Typically, women undergo the examination process no more stringently than men when dealing with security officers. They are often seen as not dangerous so that security guards are complacent and incidents of bombings by women are inevitable.

From the decision Number: 393 / PID.SUS / 2017 / PN.JKT.TIM on behalf of the defendant DIAN YULIA NOVI and also the decision number: 1235 / Pid.Sus / 2018 / PN.Jkt.Utr on behalf of the defendant SISKA NUR AZIZAH above then the writer argues that the perpetrators in carrying out acts of terrorism have the motivation or objectives of each. The motivation of Dian Yulia Novi, in this case, is wanting to do Istisyhadyah (shaheed) ie committing suicide bombings because when she became a migrant worker in Taiwan she was active in social media and opened sites about jihad so that she was indoctrinated and joined a group that had the same understanding. According to the author, the reason Dian Yulia Novi took the action was influenced by factors exposed to social media because it was easy to access sites that embraced the radical ideology. Because it is easy to access these sites and immediately accepted and examined without thinking in a logical sense it is very easy to be provoked. While Siska Nur Azizah’s motivation, in this case, is to decide to wage jihad in their own country in the context of upholding Islamic Sharia in Indonesia by combating killing and attacking infidels such as “thogut”. According to the author, Siska Nur Azizah’s reason for doing this was because it was influenced by a misunderstanding of an ideology. Because of joining and having an understanding of the Khilafah Islamiyah, namely Sheikh Abu Bakar Al Baghdadi, it caused an ideological misunderstanding embraced with the ideology of the Indonesian state.

B. Form of sanctions given to women as terrorism offenders

Sanctions are central in criminal law because they describe the socio-cultural values of the nation. This means that the criminal contains values in society about good and bad,
what is moral and what is immoral and what is permissible and what is prohibited. Speaking of criminal sanctions, it is inseparable from the problem of criminal liability. To be convicted of someone who has committed the act must be proven that the person is guilty. This means that the person must be held accountable for his actions or if viewed from the action, the act must be held accountable to that person. Thus the criminal liability includes the presence or absence of the ability to be responsible, intentional, or negligence of the maker and the absence of forgiving reasons. So in this case what is included as an element of criminal liability is:

1. The existence of a criminal offense;
2. Performed based on one's own volition;
3. Actors are aware of the actions carried out and the consequences arising from these actions.

On the other hand, there are general principles of responsibility in law which can be distinguished as follows:

A. Principle of Liability Based on the Error Element (fault liability or liability based on fault)
B. The Principles of Presumption for Responsibility (presumption of liability)
C. Principles of Presumption for Not Always Responsible (presumption of non-liability)
D. The Principle of Absolute Responsibility (strict liability)
E. The principle of Liability With Limitation (limitation of liability principle)

The principle of responsibility with restrictions is often used in matters of a civil nature in an agreement made by a business actor. This principle is used as an exoneration clause in the agreement it makes. There are several articles in the Terrorism Law that include the threat of confinement and fines. Criminal confinement is only formulated in one article, namely Article 23 which is threatened by witnesses and other people who mention the name or address of the reporter or other matters that enable the

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identification of the reporter to be known. Whereas criminal fines are only threatened by criminal acts committed by corporations.

In the decision Number: 393 / PID.SUS / 2017 / PN.JKT.TIM on behalf of the defendant Dian Yulia Novi who stated that the defendant had been legally proven and convincingly guilty of committing a terrorism crime using the first indictment of the public prosecutor namely Article 15 Jo Article 7 Law of the Republic of Indonesia Number 15 of 2003 concerning Government Regulations instead of the Law of the Republic of Indonesia Number 1 of 2002 concerning Eradication of the Criminal Acts of Terrorism into Law and sentenced to prison in the form of prison for 7 (seven) years 6 (six) months.

Article 15 of the Law of the Republic of Indonesia Number 15 the Year 2003 states: 'Every person who commits an evil agreement, probation, or assistance to commit a criminal act of terrorism as referred to in Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, and Article 12 is convicted with the same crime as the perpetrators of the crime '.

Article 7 of the Law of the Republic of Indonesia Number 15 the Year 2003 states: 'Every person who intentionally uses violence or threat of violence intends to cause an atmosphere of terror or fear of people in a widespread manner or cause mass victims by depriving independence or loss of life or other people's property, or to cause damage or destruction to vital strategic objects, or the environment, or public facilities, or international facilities, shall be sentenced to a maximum imprisonment of a lifetime '.

The purpose of Article 15 states that 'every person' is a subject, that is, a person or an individual who engages in a conspiracy, trial, or assistance is a perpetrator in a criminal act of terrorism. So in this case the subject of the perpetrators of the decision was the defendant Dian Yulia Novi. Then in the formulation of Article 7 is to create an atmosphere of terror against people is an act of terrorism that is deemed to have completed a crime against state security with a criminal threat that has been formulated in law and in the formulation of the article the actions taken do not need to wait until there is impact.

The principle of accountability used in the decision is the principle of responsibility based on the element of error and the principle of always being responsible. Besides that, the elements of criminal liability have also been fulfilled. Where in this case the defendant Dian Yulia Novi planned to conduct “amaliyah” at the State Palace by using a bomb. The defendant has realized and knows that the intent and purpose of the action
to be taken is to fight against the infidels who are not in line with the understanding of jihad that is believed by the defendant. Besides that, the defendant also knew what was made and brought by Muhammad Nur Solikin was the bomb that was used to carry out acts of terrorism. The defendant also knows the consequences of the actions that will be carried out can cause an atmosphere of fear and unrest for the community. So the defendant was sentenced to prison for 7 (seven) years 6 (six) months.

The principle of accountability used in the decision is the principle of responsibility based on the element of error and the principle of always being responsible. Besides that, the elements of criminal liability have also been fulfilled. Where in this case the defendant Dian Yulia Novi planned to conduct “amaliyah” at the State Palace by using a bomb. Whereas in the decision Number: 1235 / Pid.Sus / 2018 / PN.Jkt.Utr. on behalf of the defendant Siska Nur Azizah stating that the defendant has been legally proven and convincingly guilty of committing a criminal act of terrorism using the first indictment of the public prosecutor namely Article 15 Jo Article 7 of the Republic of Indonesia Law Number 15 of 2003 concerning Government Regulations instead of Republican Laws Indonesia Number 1 of 2002 concerning the Eradication of Terrorism Act became a law and was sentenced to a prison term of 2 (two) years and 8 (eight) months.

In the ruling the article imposed by the defendant Siska Nur Azizah with the article imposed by the defendant Dian Yulia Novi namely both Article 15 Jo Article 7 of the Republic of Indonesia Law Number 15 the Year 2003 Concerning Government Regulation instead of the Republic of Indonesia Law Number 1 the Year 2002 Concerning Eradication of Terrorism Act became Law and only different criminal convictions.

On the verdict Number: 1235 / Pid.Sus / 2018 / PN.Jkt.Utr. Article 15 the subject of the perpetrators in the decision was the defendant Siska Nur Azizah. The principle of accountability used in the decision is the principle of responsibility based on the element of error and the principle of always being responsible. Also, the elements of criminal liability have been fulfilled and included in the formulation in Article 7, namely the defendant Siska Nur Azizah has the purpose of coming to the Makam Brimob Kelapa Dua Depok to meet the brothers in detention because they have the same understanding and purpose, namely both want to uphold Islamic Sharia in Indonesia and their arrival
intends to provide food to them to increase their strength in fighting the thought. Besides, the defendant also carried scissors in his backpack with the intention not to attack the police officers but to protect themselves when there were officers who prevented the defendant from coming in to help the brothers in Mako Brimob. Because the riots committed by the napiters in the Mako Detention Center in Kelapa Dua Depok Depok had resulted in 6 (six) police officers having died, they had a psychological impact on the police members while on duty were always on guard, worried and had caused fear and trauma and anxiety especially for Kab. community Depok and the Indonesian people in general.

In this case the form of sanctions given to women as perpetrators of criminal acts of terrorism is the same as male perpetrators in general. The only difference is the role or qualifications taken in carrying out the crime of terrorism. For example, such as deliberately providing assistance and convenience to perpetrators by providing loans of goods and assets, hiding the perpetrators and information about the perpetrators of terrorism. Also there are investments, planning and providing or collecting funds in any way.

C. women’s rights as perpetrators of terrorism

Indonesia recognizes and upholds human rights and basic human freedoms as rights inherently inherent and inseparable from humans that must be protected, respected and upheld for the sake of increasing human dignity, welfare, happiness, and intelligence and justice. Giving appropriate rights to criminal suspects is a protection against human dignity, so that the government’s guarantee of the implementation of the rights of the suspect has entered the territory of human civilization. The Criminal Procedure Code has also placed the suspect as a whole human being, who has dignity and human rights which cannot be deprived of him stated in Article 50-68 of the Criminal Procedure Code. The aim is given and guaranteed rights for the suspect is that there is fair treatment for him. Regarding the rights of women suspects as perpetrators of criminal acts of terrorism is the same as the perpetrators of male criminal acts of terrorism. The use of criminal law in solving terrorism cases has been regulated in the Criminal Procedure Code and Perpu No. 1 of 2002 which was passed into Law No. 15 of 2003 concerning the Eradication of the Criminal Acts of Terrorism. In Article 25 paragraph (2) Perpu No. 1 of 2002 which was passed into Law No. 15 of 2003 concerning Eradication of Terrorism Criminal Acts
of a person suspected of committing terrorism crimes can be arrested only based on intelligence information.

IV. Conclusion

Based on the results of research and discussion described above, the following conclusions can be drawn:

1. Reasons for women as perpetrators of terrorism appear because there are several factors, namely environmental factors, economic conditions, the feeling of being abandoned, psychological factors, factors of social media exposure, gender equality / equality, misunderstanding of an ideology. Another factor that also led to the emergence of women as perpetrators of terrorism is that women are less suspected by security officers so that they are often seen as not endangering security officers. From some of the reasons above, the author can conclude that women in this case are victims. Although the facts in the field point out that women are perpetrators, but still they are victims of ignorance and powerlessness that are used by those who have the goal to carry out these acts of terrorism.

2. Regarding the form of sanctions given to women as perpetrators of criminal acts of terrorism all guided by the Law of the Republic of Indonesia Number 15 of 2003 concerning Government Regulations instead of Law Number 1 of 2002 concerning Eradication of Terrorism Criminal Acts. in this case the form of sanctions given to women as perpetrators of criminal acts of terrorism is the same as sanctions given to male perpetrators. The only difference is the role or classification taken in carrying out these acts of terrorism. Besides, in carrying out or carrying out examinations carried out by law enforcement, the state including the government is obliged to provide appropriate rights to criminal suspects because it is a protection against human dignity. The rights of female suspects as perpetrators of criminal acts of terrorism are also as friendly as those of male criminal acts of terrorism. The use of criminal law in solving terrorism cases has been regulated in the Criminal Procedure Code and Perpu No. 1 of 2002 which has been ratified into the Republic of Indonesia Law No. 15 of 2003 concerning Eradication of Terrorism Criminal Acts.

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