

**LEGAL PROTECTION FOR CHILDREN AS PERPETRATORS OF
TERRORISM CRIMINAL ACTS**

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ABSTRACT

Legal protection for children who are exploited by adults involved in acts of terrorism is subject to the provisions of Law Number 11 of 2012 concerning the Juvenile Justice System which regulates that children as perpetrators of criminal acts can be subject to diversion as an effort of restorative justice. In the provisions of Article 6 of Law Number 11 of 2012, it states that diversion aims to achieve peace between victims and children as a manifestation of efforts to resolve children's cases outside the judicial process. The purpose of the diversion mechanism is to prevent children from deprivation of liberty and encourage the community to participate and instill a sense of responsibility in children and as a form of protection for the future of children who are exploited by adults to commit acts of terrorism in particular. As regulated in Article 7 of Law Number 11 of 2012 which states that cases of children who commit criminal acts that can be diverted are criminal acts with a prison sentence of less than 7 years and not a repetition of the crime. Article 9 of Law Number 11 of 2012 emphasizes that the lower the criminal threat, the higher the priority for diversion. Children who are perpetrators of terrorism crimes are victims of crimes and not perpetrators of crimes because they are victims who are exploited by adults who should receive protection, so children who are involved in terrorism crimes should receive rehabilitation.

Keywords: Protection; Law; Children; Victims; Terrorism.

A. Introduction

Children are subjects that cannot be separated from the components that determine the survival of humans, nations and countries. As this important role makes children's rights emphasized in the constitution Article 28 B of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) which end_page is the spirit of the Indonesian nation, namely the state guarantees that every child gets his right to survival, growth and development and has the right to protection from violence and discrimination. Philosophically, children are none other than part of the younger generation who will later become the successors and struggles of the nation in the future.¹

Likewise, children are expected to obtain welfare, namely the guarantee of good growth and development of children spiritually, physically and socially in the order of life and livelihood in the midst of society. Basically, children cannot protect themselves from various actions that can cause physical and psychological harm. No child can be deprived of their right to liberty arbitrarily and/or be subjected to torture or cruel and inhumane or degrading punishment, the death penalty or life imprisonment” this is emphasized in the Convention on the Rights of the Child. Therefore, protection of children must be placed on the priority scale of the state, because children cannot protect themselves and children need protection from misapplication of laws and regulations that can cause physical, psychological and social harm. Therefore, legal protection for children is very necessary so that child welfare is achieved.²

Terrorism is a criminal act or extraordinary crime that is currently a concern of the world, especially in Indonesia. Terrorism that has occurred in Indonesia recently has ideological, political history and also religious links. Terrorist acts in

¹ Kahesti, Y. Z. Pemenuhan Hak Anak di Bidang Pendidikan pada Lembaga Pemasyarakatan Kelas IIA Kota Balikpapan. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 7(3), 343-359, h.344

² usan, P. S. A. (2017). PERLINDUNGAN HUKUM TERHADAP ANAK AKIBAT PERCERAIAN ORANG TUA. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*,6(2), 200-203, h.201

recent times have been more often carried out by means of bomb explosions that have claimed many victims than terrorism through psychological terror, even though both acts of terrorism are acts that cannot be justified and claim victims. Not only in facing the threat of terrorism, the government must increase its vigilance, but also in handling and protecting, especially for victims of terrorism, the government is obliged to provide organized and maximum handling and protection, both welfare, security and legally, because by helping and rehabilitating the victims, it reduces fear in society. Terror is a common enemy for humanity so that it is a common interest and duty to protect the place where it is occupied. An integrated approach between the State and society is needed, because terror will not be resolved through punitive measures alone, such as the punishment of someone who commits a crime of terrorism will be punished. Terror has robbed the human rights of victims and society in general, especially the right to life, the right to feel safe and free from fear. Terror also causes instability in a country, nation and society which is a threat to peace and development. Not just acts of terror, but in reality, criminal acts of terrorism also violate human rights as basic rights that are inherent in humans, namely the right to life and the right to feel safe and comfortable. Sacrificing oneself in war has long been known. The fuqaha have also discussed it briefly.

Lately we have seen many similar actions using explosives, grenades, mines and other weapons. In this day and age, a weapon can destroy an entire city and take many lives in an instant without distinguishing between military and civilians. Terrorism has caused fear in society and has had an impact on political, economic, socio-cultural, security and public order, national resilience, and international relations. Terrorism will move more massively if it is not immediately addressed and threatens national peace and security. In eradicating Terrorism, simultaneous, planned and integrated prevention aspects need to be put forward to minimize the occurrence of Terrorism. Terrorism in various forms and not only carried out by adults but also starting to involve children.

The main reason for recruiting children in these acts of terror is the difficulty of attracting new members who are adults. Meanwhile, children are relatively easy to persuade. Regarding crimes committed by minors, the perpetrators must still be processed in accordance with applicable laws, but if we look at the child protection framework, it is certainly unwise to treat minors the same as adults because physically and psychologically, children are still unstable compared to adults. Children who are not yet independent in terms of psychological and physical aspects become targets of the evil influence of terrorism. The nature of children who are still easily influenced has now led many to fall into the world of terrorism, children have now become perpetrators of terrorism.

The emergence of child terrorists is certainly surprising and eye-opening about children as perpetrators of terror crimes. The lack of independence of children is certainly the basis for the imposition of sanctions on child perpetrators of terrorism. In this case, the crime of terrorism committed by children, where the rules regarding the handling of children who commit terrorism have not been specifically regulated in Indonesia, but in Perpu number 1 of 2002 concerning terrorism, article 19 states that the death penalty or life imprisonment does not apply to children under the age of 18. Based on this, the Child Criminal Justice System Law stipulates that children aged 18 years who are threatened with the death penalty or life imprisonment for committing a crime, then the maximum sentence given to the child is 10 years and must prioritize the restorative diversion justice approach first.

B. Research Methods

A research cannot be said to be research if it does not have a research method.³ Research methods are one of the factors of a problem that will be discussed.⁴ The study was carried out using secondary data which was analyzed qualitatively using the Desk Research Method. The literature materials used in writing this research are

³ Ismail Koto, "Perlindungan Hukum Terhadap Korban Tindak Pidana Terorisme", *Proceeding Seminar Nasional Kewirausahaan*, 2.1, (2021): 1052-1059.

⁴ Ida Hanifah, Ismail Koto, "Problema Hukum Seputar Tunjangan Hari Raya Di Masa Pandemi COVID-19", *Jurnal Yuridis* 8.1, (2021): 23-42.

several references originating from the results of research, studies and reviews of several papers which are then summarized into a work of scientific.

C. Analysis And Discussion

1. Factors Causing Criminal Acts of Terrorism Committed by Children

Minors have unstable souls and are always looking for something new as a hold. From their instability, it can lead to actions that disrupt public order in society. Children in doing something are not yet able to think about the negative consequences that will occur, either to themselves or to society, because they do an action that is not yet fully realized. This pattern of children is a process of their path to adulthood. The various deviant acts committed by children are divided into two groups:

- a. Crimes and violations.
- b. Violations of other norms such as religious norms, norms of decency, and moral norms.

Children involved in acts of terrorism are generally done through persuasion, indoctrination, brainwashing by exposing crimes committed by the authorities, arousing their anger and then wrapping it in a religion that invites children to activities that contain radicalism that have an impact on themselves and others. Acts of terrorism can cause children to become victims, children of perpetrators, and children of perpetrators. Children become victims in the form of physical injuries, psychological injuries, trauma, and even death. Children of perpetrators experience suffering in the form of physical, psychological, trauma, and stigma. Children of perpetrators experience suffering in the form of psychological, trauma, and stigma due to their parents who have committed acts of terrorism. The involvement of children in this terrorist network shows that society, especially parents, does not provide guidance and does not care for, maintain, educate, and protect children and does not provide character education and instill good moral values in children, developing attitudes and behaviors to children in a bad way. Children of terrorist perpetrators generally have a very high religious spirit, but do not read and understand religion so that they are unbalanced and have empty thoughts. Children who commit terrorism consider their

actions to be right, therefore they need assistance by taking a psychological approach using their mother tongue, humanistic, family, affectionate and carrying out deradicalization efforts by eliminating, reducing and reversing the radical understanding of terrorism from children and making children smarter so that they realize that their actions endanger themselves and others.

Here is a summary of some of the reasons why children are involved in terrorism crimes, including:⁵

- a. The child's mental condition is still unstable so that children are more easily indoctrinated with radical things.
- b. The condition of children who are driven by a youthful and enthusiastic soul and then misused by irresponsible people.
- c. The victims of terrorists never thought that children would commit such sadistic and brutal crimes, so they were careless in anticipating.
- d. The instigators of these acts of terror have understood the legal construction of child criminal responsibility both internationally and nationally

Children are involved in terrorism networks due to internal and external factors:⁶

- a. Internal factors include the influence of weaknesses in terms of religion, ignorance of National Insight, gender, age, intelligence, and emotional maturity of the child.
- b. External factors include:
 - 1) Family, namely parents who influence children to be involved in the Terrorism network.
 - 2) Environment, namely friends around them who invite children to be involved in the Terrorism network.

⁵ Lilik Purwastuti, "Perlindungan Hukum Terhadap Anak Dalam Kejahatan Terorisme", Jurnal Ilmu Hukum, Jilid 2, 2011, hlm. 37

⁶ PERMEN Pemberdayaan Perempuan dan Perlindungan Anak (PPPA) tentang Pedoman Perlindungan Anak dari Radikalisme dan Tindak Pidana Terorisme, No. 7 Tahun 2019, hlm. 27

3) Media, especially through the internet, which provides Radicalism sites, how to carry out actions that lead to Terrorism.

4) Poverty, generally terrorists come from poor families, they are promised and given salaries, lifetime guarantees so that they are attracted to being involved in the Terrorism network.

5) Education, generally terrorists have low education or are influenced by their teachers who provide radical understanding, or attend schools that are identified as providing radical understanding that leads to Terrorism

Some of the impacts caused by terrorism can be divided as follows:⁷

- a. Impact on National Defense and Security Attacks originating from armed terrorist actions often target soft targets, greatly endangering the safety of the people in a country. Often attacks are not specifically directed at certain groups. In national life, threats to citizens also mean threats to national security as a whole. Terrorism has clearly become a threat to the safety of Indonesian citizens as a whole
- b. Impact on Ideology The efforts of terrorist groups have threatened the ideology of the Indonesian nation, namely Pancasila and the 1945 Constitution. Furthermore, the negative impact can reduce the sense of nationalism. This is proven by the perpetrators of terrorism who use suicide bombs who are influenced by doctrines that are aimed at destroying the country itself. Other effects that can affect the disruption of public confidence in the sovereignty of the Indonesian nation
- c. Impact on Politics In several incidents, acts of terrorism have also been aimed at important people or institutions that run the government such as the Attorney General's Office, the National Police Headquarters, the MPR/DPR, and others. This can disrupt the government.

⁷ Damayanti dkk, "Perkembangan Terorisme di Indonesia" (Jakarta: BNPT, 2013) hlm. 54-58

- d. **Economic Impact** The most obvious impact is when there was a terrorist attack in Bali. Many tourists canceled their plans to travel to Bali and other tourist attractions because they were afraid of the threat of terrorism.
- e. **Impact on the Social Community** The actions and actions of the terrorists have made the general public afraid and start to be aware of the crime of terrorism. Even fear and psychological trauma are experienced by victims of terrorist actions and actions. The fear of interacting with other groups can also arise because it is based on an attitude of fear and anxiety about the crime of terrorism.
- f. **Impact on the Education Sector** Religious education is a serious concern for parents in sending their children to school or college. Moreover, parents become very worried and limit their children's involvement in religious activities at school, for example Islamic Spirituality (ROHIS). They are afraid that there will be deviant beliefs and change their children's thinking. In some cases, this fact has a negative impact on children because their space for seeking religious knowledge is limited.
- g. **Impact on Interfaith Relations** Terrorist actions also tarnish the image of Islam as a religion of rahmatan lilalamin (blessing for all nature). The slogan that Islam does not teach hatred and hostility falls by itself. The doctrine that Islam is a tolerant religion, full of peace and does not advocate violence, becomes difficult to understand. The image of Islam becomes bad in the eyes of other religious communities. This condition can create antipathy and suspicion towards Islam.

2. Legal Protection for Children of Terrorist Criminal Acts

Terrorism is an extraordinary crime, considered not yet able to be overcome through existing positive laws, various articles in the Criminal Code, cannot anticipate and take action quickly, precisely and comprehensively against parties involved in acts of terrorism. The pattern of eradicating criminal acts of terrorism in Indonesia, in terms

of legislation or positive laws that are repressive in nature, seems to have no problems. In other words, it has been completed finally, but in a broad sense, starting from population identification, supervision and community participation still need to be improved. The Indonesian government and nation must be able to demonstrate and take proactive, firm and reasonable steps in dealing with terrorist activities, both internationally and nationally. Several problems that need to be considered are how to implement the eradication of terrorism in Indonesia according to applicable positive laws and how to implement human rights protection in eradicating terrorism. The pattern of coordination of government apparatus and community participation in eradicating terrorism also needs to be considered. The commitment of the Indonesian government and people in eradicating terrorism must continue to be built. International cooperation must be carried out consistently.⁸

The lack of agreement on the definition of terrorism does not mean that terrorism is allowed to escape the reach of the law. Efforts to eradicate terrorism have been carried out since the middle of the 20th century. In 1937, the Convention for the Prevention and Suppression of Terrorism was born, where this Convention defines terrorism as Crimes against the State. Through the European Convention on the Suppression of Terrorism (ECST) in 1977 in Europe, the meaning of terrorism experienced a paradigm shift and expansion, namely as an act that was originally categorized as Crimes against the State (including murder and attempted murder of the Head of State or members of his family), to become Crimes against Humanity, where the victims are civilians. Crimes against Humanity are categorized as Gross Violation of Human Rights (Gross Human Rights Violations) which are carried out as part of a widespread/systematic attack which is known to be aimed directly at civilians, more directed at the souls of innocent people (Public by innocent), as happened in Bali. From the various limitations of the definition of terrorism above, it is clear that there is no

⁸ Abdul Gani Abdullah, 2006, Penelitian Hukum tentang Pola Pemberantasan Tindak Pidana terorisme Dalam Hukum Indonesia dalam abstrak, Jakarta.

uniform definition of terrorism. However, terrorism has the following basic characteristics: the use or threat of violence, the element of surprise, carefully and thoroughly planned and prepared, causing widespread fear or causing material or economic destruction, having a political goal that is much broader than the direct target/victim. In the provisions of Article 6 of Law Number 11 of 2012, it states that diversion aims to achieve peace between victims and children as a manifestation of efforts to resolve children's cases outside the judicial process.

The purpose of the diversion mechanism is to prevent children from being deprived of liberty and to encourage society to participate and instill a sense of responsibility in children and as a form of protection for the continuity of the future of children who are used by adults to commit acts of terrorism in particular. As regulated in Article 7 of Law Number 11 of 2012 which states that cases of children committing crimes that can be diverted are crimes with a prison sentence of less than 7 years and not a repetition of the crime. Article 9 of Law Number 11 of 2012 emphasizes that the lower the criminal threat, the higher the priority for diversion. Children who commit crimes are also regulated in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (SMRJJ) or The Beijing Rules (UN General Assembly Resolution 40/33 on November 29, 1985) which emphasizes that diversion contains a statement that children in conflict with the law must be diverted to informal processes, such as returning them to social institutions, both governmental and non-governmental. Various regulations for children who commit acts of terrorism as stated in Law Number 5 of 2018 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism. Diversion in Law Number 11 of 2012 is not intended for children who commit acts of terrorism because the criminal threat is above 7 (seven) years. So there are no regulations that provide protection for children who are used by adults as perpetrators of acts of terrorism.

Children who commit acts of terrorism should be placed as victims because they are exploited by adults and as a result of deviant culture (deviant culture, can be because of parents or surrounding groups). So there should be regulations for the protection of children who commit acts of terrorism through minimum criminal limits and trial procedures and rights for children as perpetrators of terrorism as well as rehabilitation for the recovery of children who have been exposed to committing acts of terrorism. Children's rights are part of human rights that must be guaranteed, protected and fulfilled by parents, families, communities, states, governments and local governments. Forms of protection and fulfillment of children's rights include; non-discrimination, the best interests of children, the right to life, survival, development and respect for children's opinions. Children as perpetrators of acts of terrorism are victims of crime and not perpetrators of crime because they are victims who are exploited by adults who should receive protection so that children involved in terrorism crimes should receive rehabilitation as stated in Law on Child Protection Number 35 of 2014, especially stated in Article 69B which states, Special Protection for Children Victims of Terrorism through efforts: education, ideology, and nationalism; counseling on the dangers of terrorism; rehabilitation and through the process of social assistance. Children who commit acts of terrorism are manus ministra (tools to commit crimes) through the doctrine of wrong understanding or exploitation of thought, which in fact they do not understand what they are doing. As stated in Article 3 of the SPPA Law which emphasizes the Rights of Children to be treated humanely; separated from adults; Receive legal assistance; Recreation; Not tortured, punished, treated sadistically, inhumanely, which insults their dignity; not sentenced to death or life imprisonment; not ambushed, imprisoned, except for the last resort and the shortest possible time; receive objective, impartial justice, special trials; not have their identity exposed; receive assistance from parents/guardians and trusted people; receive social support; life personality; accessibility for disabled children; receive education; health services; and other rights.

The law stipulates that children who commit terrorism are qualified as victims who must receive special protection. Handling must prioritize a restorative justice approach. Children who are exposed to the teachings of terrorism must receive a special approach. The approach must be a restorative approach, not a punitive approach as for adults who are charged with terrorism. In an effort to build a legal regime for children in conflict with the law, there are 4 (four) foundations of the Commission on the Rights of the Child that are relevant to implementing the practice of child criminal justice, namely:⁹

- a. The best interests of the child, as the primary consideration in all matters affecting the child;
- b. The principle of non-discrimination, regardless of the child's or the child's parents' race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status;
- c. The child's right to survival and development;
- d. The child's right to participate in all decisions affecting the child, in particular the opportunity to be heard in judicial and administrative proceedings affecting the child..

Meanwhile, according to the provisions of Article 1 number 1 of Law No. 11/2012 concerning the juvenile criminal justice system, the juvenile criminal justice system is the entire process of resolving cases of children in conflict with the law, starting from the investigation stage, to the guidance stage after serving a sentence. Meanwhile, according to the Child Rights Monitoring Foundation, there are 3 (three) stages of juvenile justice, namely the first stage, including preventing children from criminal acts. This stage includes the implementation of social policy objectives that allow children to grow in accordance with their best interests. The second stage, marked by children coming into contact with formal procedures of the criminal justice

⁹ Yayasan Pemantau Hak Anak, Anak Yang berhadapan Dengan Hukum Dalam Perpektif Hukum Hak Asasi Manusia Internasional, Artikel, hlm. 3.

system. This stage is a form of child responsibility through the criminal justice process. The third stage, resocialization begins with the isolation process in correctional institutions until the child is released.

C. Conclusion

There are two factors that cause children to commit acts of terrorism, namely internal and external factors. Internal factors include the influence of weaknesses in terms of religion, ignorance of National Insight, age, intelligence, and emotional maturity of children. b. External factors include: 1) Family, namely parents who influence children to be involved in terrorism networks. 2) Environment, namely friends around them who invite children to be involved in terrorism networks. 3) Media, especially through the internet, which provides radicalism sites, how to carry out actions that lead to terrorism. 4) Poverty, generally perpetrators of terrorism from poor families, they are promised and given salaries, lifetime guarantees so that they are attracted to being involved in terrorism networks. 5) Education, generally perpetrators of terrorism have low education or are influenced by their teachers who provide radical understanding, or attend schools that are identified as providing radical understanding that leads to acts of terrorism. Legal protection for children who are exploited by adults involved in acts of terrorism is subject to the provisions of Law Number 11 of 2012 concerning the Juvenile Justice System which regulates that children as perpetrators of criminal acts can be subject to diversion as an effort of restorative justice. In the provisions of Article 6 of Law Number 11 of 2012, it states that diversion aims to achieve peace between victims and children as a manifestation of efforts to resolve children's cases outside the judicial process.

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acts that can be diverted are criminal acts with a prison sentence of less than 7 years and not a repetition of the crime. Article 9 of Law Number 11 of 2012 emphasizes that the lower the criminal threat, the higher the priority for diversion. Children who are perpetrators of terrorism crimes are victims of crimes and not perpetrators of crimes because they are victims who are exploited by adults who should receive protection, so children who are involved in terrorism crimes should receive rehabilitation.

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