

## Legal Protection for Children Perpetrating Crimes of Terrorism Based on Law Number 5 of 2018 in Indonesia



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**ABSTRACT:** This article aims to determine the form of legal protection for children who are perpetrators of criminal acts of terrorism in Indonesia as regulated in Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism. This is based on the phenomenon of children's involvement in acts of terrorism in Indonesia in recent years. The author uses a juridical-normative approach to analyze the problem of forms of legal protection for children who commit terrorism. The research results show that Law No. 5 of 2018 does not specifically regulate children who are perpetrators of terrorism and Indonesia uses the Child Protection Law and the Juvenile Justice System Law as instruments for handling children who are perpetrators of terrorism.

**KEYWORDS:** legal protection, criminal acts of terrorism, Children of Terrorists

### INTRODUCTION

Legal protection against terrorism is an important aspect of modern law in various countries. Legal protection efforts aim to protect society from the threat of terrorism while ensuring that human rights and the principles of justice are respected. The approach to legal protection against terrorism can vary from one country to another, depending on the legal system and values espoused by each country.

The crime of terrorism itself in Indonesia is classified as an extraordinary crime the reason is, this crime has its own characteristics that are not the same as other ordinary crimes. Therefore, the international community agrees that the crime of terrorism is one of the crimes that harms human values. In this sense, criminal acts of terrorism have become a threat to world security and peace.

In Indonesia, the criminalization of terrorism crimes is specifically regulated through Law Number 5 of 2018 concerning the Eradication of Terrorism Crimes. This law is the latest amendment to the previous law regarding criminal acts of terrorism in Indonesia. Previously, legislation on criminal acts of terrorism in Indonesia was regulated through Government Regulation in Lieu of Law (PERPU) Number 1 of 2002 concerning the eradication of criminal acts of terrorism. PERPU Number 1 of 2002 was ratified as Law Number 15 of 2003. During its development, the Terrorism Law was revised again in 2018, which was then stipulated as Law Number 5 of 2018. This change was made in line with the dynamics of the development of terrorism, thereby encouraging government to revise and add several existing articles to make them more effective in ensnaring terrorist networks and perpetrators.

Therefore, the terrorism law in Indonesia has undergone several changes. These changes aim to overcome the increasingly complex and diverse threat of terrorism. One of the complexities of the problem of the threat of terrorism in Indonesia is the involvement of women and children in terrorist networks. Since the emergence of ISIS, women and children have begun to be actively involved in acts of terrorism. The series of Surabaya bombings in 2018 was the first terror attack in the world involving a family consisting of a father, mother and child. The 2018 Surabaya Bombing is proof that in Indonesia women and children are starting to participate in acts and perpetrators of terrorism (Tabrani,2023:33).

The ratification of Law Number 5 of 2018 cannot be separated from the 2018 Surabaya Bombing incident. This act of terrorism has encouraged the government to accelerate the revision and addition of articles in the terrorism law. The reason is, no one ever suspected and no one ever thought that a family would sacrifice their children to take part in suicide which was claimed to be jihad.

The perpetrators of the Surabaya Bombing series were those who actively joined a terrorist organization called Jamaah Ansharut Daulah (JAD) under the influence of Aman Abdurrahman (Tabrani&Ashghor,2023). JAD itself in 2015 declared an oath of allegiance to ISIS. The Surabaya bombings in 2018 were a series of bomb explosions in various places in Surabaya and Sidoarjo, East Java, on 13-14 May 2018. All the perpetrators of the series of bomb attacks in Surabaya were carried out by one nuclear family consisting of from fathers, mothers, and minor children

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In the context of children being "perpetrators" of criminal acts of terrorism, the Terrorism Law Number 5 of 2018 regulates new provisions regarding the involvement of children in terrorism as regulated in Article 16A. This article is an additional new article inserted between Article 16 and Article 17. The article reads, 'Every person who commits a criminal act of terrorism involving a child, the penalty is increased by 1/3 (one third). The inclusion of new provisions regarding children in the terrorism law is a form of anticipation and the government's responsibility to prevent radicalism and terrorism from targeting the children's age group. The involvement of children as perpetrators of terrorism is a real case that has recently occurred in several countries in the world. Starting from the above, the problem of children involved in acts of terrorism as perpetrators must be viewed and addressed with the configuration of thinking that children are victims. Thus, it is necessary to obtain legal protection. This is in line with the elaboration of legal protection for children who commit criminal acts, both in national legal instruments and international legal instruments. Therefore, the author refers more to two main issues, namely (1) investigation into the handling of cases of children involved in criminal acts of terrorism using the principles of legal protection for children; and (2) investigation into the child terrorism criminalization system with the principles of criminalization of children in the juvenile criminal justice system.

Based on the explanation above that the author outlined in the background, there are research objectives including: to find out the form of legal protection for child perpetrators in terrorist crimes, to find out the implementation of the rights of children of perpetrators in criminal acts of terrorism in Indonesia, as for the formulation of the problem in the research namely: what is the form of legal protection for child perpetrators in criminal acts of terrorism based on Law Number 5 of 2018? Has the State fulfilled its obligation to implement the rights of children who have committed acts of terrorism?

### METODOLOGY

This research is Normative Juridical research with legal material sources, namely Primary, Secondary and Tertiary, which include laws, journals and research results.

### FINDINGS AND DISCUSSIONS

#### Form of Legal Protection

Children who commit criminal acts of terrorism are basically victims of inappropriate treatment, upbringing and social environments. Due to the manipulation of others and the inability to resist invitations to join terrorist groups, which usually arise in the family environment, children as victims can be understood as their involvement is not voluntary. There is a connection with legal protection for children, justice functions in society. Therefore, legal protection must exist in every aspect of people's lives (Sitohang,2023:39)

Legal protection against criminal acts of terrorism must develop along with the growth of terrorism. In fact, terrorism has evolved over time, from attempts to attract new members to groups to involving women, youth and children. The fact that children are involved in criminal acts of terrorism is not something new. This is caused by the condition of the children themselves. Children are basically victims of crime, terrorist networks, doctrines, and exploitation of the ideas and propaganda of their parents and adults.

According to Article 15 of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law 23 of 2002 concerning Child Protection, children have the right to receive protection from their involvement in events containing elements of violence and from being included in war. This protection ensures that the child has a special position that requires protection. This relates to children, who will be the next generation who will represent the nation and become its leaders in the future. Therefore, to create and realize this, children must be protected so that they get enormous opportunities. The basis for violence contained in this article is related to terrorism, where every act of terrorism always involves violence and threats of violence and gives rise to widespread anxiety or fear in society.

Article 69 B of Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection provides special protection to children who are victims of terrorist networks, as stated below:

1. Counseling on the dangers of terrorism provides an understanding of the dangers posed by terrorism
2. Social Rehabilitation is the development and refunctionalization of children so that they can return to society and live their lives in a normal way.
3. Social assistance, accompanying children to provide the necessary social and legal support.

According to Article 16 A of the Law of the Republic of Indonesia Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism Becoming a Law containing conditions regarding the involvement of children in criminal acts of terrorism it will add 1/3 (one third) of the main crime charged.() Therefore, the weight in this terrorist crime is the involvement of children in terrorism. Primarily, additional penalties are imposed on perpetrators who involve children being directly involved. But it can be concluded as protection for children because of the special attention given to children. This can support the existence of preventive protection for children, therefore parties who do not have the responsibility to persuade children or involve children in acts terrorism crime for not involving children in the action.

## **Legal Protection for Children Perpetrating Crimes of Terrorism Based on Law Number 5 of 2018 in Indonesia**

In Indonesian criminal law, legal protection is not only given to crime victims but also to perpetrators. Legal subjects are given protection in accordance with applicable regulations. Therefore, their relationship with children as perpetrators of criminal acts of terrorism must also receive the same protection. Children in the context of "perpetrators" in criminal acts of terrorism are actually victims of doctrine because they are easy to direct. However, if a child is involved in an action, that child is a perpetrator because he or she has caused violence or threatened violence that disrupts the stability of life in society.

Handling children involved in criminal acts of terrorism uses a child approach and legal intervention, and the concept of restorative justice is used in the juvenile justice process. Restorative Justice is an approach to resolving criminal acts with the aim of reconciling the perpetrator with the victim to achieve peace. This explains the changes in punishment or criminal imposition to existing concepts. So that children who are involved or in conflict with the law do not have a societal stigma attached to the child, and the child is able and able to socialize in society. This is related to the aim of criminalizing children not only to impose sanctions but to take into account the condition of the child himself.

### **The Rights of Children Who Perpetrate Terrorism**

#### **1. Accompanying Rights**

Accompaniment is an effort or process carried out to accompany children in the legal process from investigation to court examination as well as assistance in the rehabilitation process. Legal assistance must be provided in the form of reinforcement before the trial takes place, ensuring that the perpetrator's child is ready to meet the perpetrator, if the perpetrator's child is not yet willing, it must be immediately conveyed to the judge and prosecutor during the trial, ensuring that the perpetrator's child is ready to give information, and giving consideration if requested. judge during the trial.

The assistance provided does not only stop until the trial, but also after the child has completed his sentence. Law Number 11 of 2012 Article 7 Paragraph (2) states that children who can seek diversion are children who are sentenced to a criminal sentence under seven years of age only. However, this actually creates problems for the child perpetrators who are only sentenced to prison. In fact, criminal acts of terrorism really require special handling after the sentence ends, considering that correctional institutions can be a means of developing radicalism.

#### **2. Rehabilitation Rights**

Rehabilitation is regulated in the 2012 juvenile criminal justice system in Article 10 paragraph (2) and the explanation of article 9 relating to perpetrators of serious crimes, one of which is the crime of terrorism. According to this article, perpetrators of criminal acts of terrorism cannot be diverted, but in the Minister of Social Affairs Regulation Number 9 of 2015 concerning guidelines for the social rehabilitation of children who are in conflict with the law by social welfare institutions, article 4, children who are less than 12 years old and who have received a legal decision can participate in a rehabilitation program. Therefore, even though they cannot be subject to diversion, children who commit terrorism must still receive social rehabilitation after receiving a decision from the court.

Refunctionalization and development of social rehabilitation processes enable child perpetrators, child victims and witnesses to criminal acts of radicalism and terrorism to carry out their social functions properly in society. Social rehabilitation is carried out through the following steps:

- a. Initial approach
- b. Communication and problem understanding or evaluation
- c. Develop strategies to solve problems
- d. Problem solving or intervention
- e. Socialize again
- f. Conclusion
- g. Further guidance

Social rehabilitation is carried out persuasively, motivationally, coercively, both in the family, community and social institutions. Apart from social rehabilitation, in this case children of terrorists need psychosocial rehabilitation. What is meant by psychosocial rehabilitation is all types of social and psychological services and assistance which aim to alleviate, protect and restore the physical, psychological, social and spiritual condition of victims so that they can return to carrying out their social functions well. Medical rehabilitation is also very much needed in criminal acts of terrorism. What is meant by Medical Rehabilitation is integrated treatment to restore the physical condition of Child Victims, Children of Perpetrators, and Children of Witnesses to Radicalism and Criminal Acts of Terrorism.

#### **3. Right to Social Reintegration**

Social Reintegration is the process of preparing Children of Perpetrators, Children of Victims, and Children of Witnesses to Radicalism and Criminal Acts of Terrorism to be able to return to their family/substitute family environment and society. The Juvenile Criminal Justice System Law states the role of the community in the social reintegration of children in article 93, which states, "The community can participate in the protection of children from prevention to social reintegration of children by:

- a. Submit proposals regarding the formulation and policies relating to children

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- b. Participate in resolving children's cases through diversion and a restorative justice approach
- c. Contribute to the rehabilitation and social reintegration of children, child victims and/or child witnesses through community organizations

Reintegration starts from the rehabilitation or correctional center until the child is returned to the intended home with regular monitoring over a certain period of time. Child reintegration programs appear to be still widespread, or widespread, and have not been designed comprehensively and specifically to support the process of returning children to society. Social reintegration usually aims to improve economic, social and psychological life skills and abilities. This effort is very important because they take longer to be accepted in society. Apart from that, one of the achievements in social reintegration efforts is openness and easy access, as well as opportunities for children to obtain higher education.

### CONCLUSION

From all the descriptions explained above, the author concludes that Law Number 5 of 2018 concerning the eradication of criminal acts of terrorism in Indonesia does not specifically regulate legal protection or handling of children affiliated with violent terrorism and extremism groups. Handling of children involved in criminal acts of terrorism refers to Law Number 35 of 2014 concerning child protection and Law Number 11 of 2012 concerning the juvenile criminal justice system. Law on the juvenile criminal justice system Number 11 of 2012 in Indonesia does not specifically discuss cases of children involved in criminal acts of terrorism. However, the Juvenile Criminal Justice System Law provides a legal basis for dealing with children involved in criminal acts, with the principle of involving the interests of the child. In this case, the rights of children who have committed criminal acts of terrorism are regulated by law juvenile criminal justice system and ministerial regulation for women's empowerment and child protection number 7 of 2019 concerning guidelines for protecting children from radicalism and criminal acts of terrorism.

### REFERENCES

- 1) Dedy tabrani, Terorisme Keluarga, Jakarta: PT Kompas Media Nusantara, 2021.
- 2) Dedy Tabrani & Aly Ashghor, Jamaah Ansharut Daulah, (Jakarta: Penerbit Buku Kompas, 2023)
- 3) Hermanto Pandapotan Sitohang, Perlindungan Hukum Terhadap Anak Yang Dilibatkan Dalam Tindak Pidana Terorisme Dalam Perpektif Perundang-Undangan, Skripsi Universitas Jambi, 2023.
- 4) Pemerintah republik Indonesia, Peraturan Pemerintah Pengganti Undang-Undang Republik Indonesia Nomor 1 tahun 2002.
- 5) Presiden Republik Indonesia, Undang-Undang Republik Indonesia Nomor 15 Tahun 2003 Tentang penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2002 Tentang Pembrantasan Tindak Pidana Terosime Menjadi Undang-Undang.
- 6) Undang-Undang Nomor 35 Tahun 2014 Tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 Tentang perlindungan anak.
- 7) Undang-Undang Nomor 5 Tahun 2018 Tentang Perubahan Atas Undang-Undang Nomor 15 Tahun 2003 Tentang Penetapan Peraturan Pemerintah Pengannti Undang-Undang Nomor 1 Tahun 2002 Tentang Pembrantasan Tindak Pidana Terorisme.
- 8) Peraturan Menteri Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia Nomor 7 Tahun 2019 Tentang Pedoman Perlindungan Anak Dari Radikalisme dan Tindak Pidana Terorisme
- 9) Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pindana Anak



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