

# Legal Aspect Setting The Definition Of Terrorism In Law No. 5 Of 2018 Concerning Amendments To Law No. 15 Of 2003 Concerning Eradication Of Criminal Acts Of Terrorism

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## **Abstract.**

*Terrorism is a very worrying crime because its development in Indonesia and in other countries is increasing, both in quality and quantity, so that terrorism is not only an Indonesian problem but an international problem. One of the results of changes in the law on combating terrorism in Indonesia is the addition of Article 1 by including restrictions on the qualification of terrorism that were not previously regulated in the law on combating terrorism. This raises its own problems, namely there is no synchronization between the qualification of terrorism and the crime of terrorism, the problem to be examined and analyzed in this study is how the urgency of setting the definition of terrorism in Law No. 5 of 2018 and its comparison with other countries and how the juridical consequences of the inclusion of motives in the definition of terrorism?. The research method used to analyze the problem is to use the normative legal research method with the approach of legislation, concepts and methods of comparison. The results showed that the qualification of terrorism in Law No. 5 of 2018 that terrorism is a crime that depends on a motive, namely ideological, political or security interference motives. It is quite different from the qualification of terrorism in some countries, that other countries that have laws combating the criminal act of terrorism do not regulate the qualification of terrorism and the motives of terrorism, but only regulate the offenses of terrorism and its elements. The regulation of terrorism motives in Law No. 5 of 2018 is ineffective because it is not included as elements of terrorism crimes and even causes multi-interpretations because there is no further explanation of the limits of ideological, political and security interference motives.*

**Keywords :** *Terrorism, Law No. 5 of 2018 and Crime.*

## **I. INTRODUCTION**

One of the national goals of the Unitary State of the Republic of Indonesia is to protect the entire nation and all of Indonesia's bloodshed from all crimes originating from within and from abroad that are continuously developing, including terrorism. Terrorism is one of crimes that really disturb the life of the nation and state and even internationally. According to David C. Rappoport terrorism developed in several stages, namely in the 1880-1920s terrorism aimed at winning civil political reform from the oppression of authoritarian governments, in the 1920s-1960s terrorism aimed at fighting for national sovereignty, in the 1970s terrorism at this stage the perpetrator considered himself as a defender the interests of third world countries against the power of global capitalism, terrorism at this stage is driven by revolutionary ideology and religious encouragement as practiced by the al-Qaeda group.

[1] Terrorism is a crime that is very worrying and becomes an international problem so that the United Nations in its congress in Vienna, Austria in 2000 raised the theme The Prevention of Crime and The Treatment of Offenders, among other things, mentioning terrorism as a development of acts of violence that need attention. [2] ] Terrorism is an act that creates the greatest danger to human rights concerning the right to life and the right to be free from fear [3]. According to Muladi, terrorism is an extraordinary crime that requires extraordinary measures for various reasons:

1. Terrorism is an act that creates the greatest danger to human rights. In this case the human right to life (the right to life) and the human right to be free from fear.
2. The target of terrorism is random or indiscriminate which tends to victimize innocent people.
3. The possibility of using weapons of mass destruction by utilizing modern technology.
4. There is a tendency for negative synergies between national terrorist organizations and international organizations.

5. The possibility of cooperation between terrorist organizations and organized crime both nationally and internationally.
6. May endanger international peace and security. [4]

International terrorism data shows that in 1968-2001 the number of terrorism cases was 14,415 cases,[5] The terrorism that caused the most victims was the attack on the World Trade Center in New York, United States on September 11, 2001 with a total of 2,977 victims committed by the al-Qaeda group led by Osama Bin Laden [6]. Meanwhile, the development of terrorism in Indonesia from the Old Order to the present also continues to increase, namely in 1945-1967 there were 1 case, 1967-1998, 4 cases, 1998-1999, 2 cases, 1999-2001, 15 cases, 2001- In 2004, there were 18 cases, in 2004-2014, there were 36 cases and in 2014-2019, 341 cases [7]. Terrorist groups also continue to grow, initially on an international scale, radical terrorist groups known is al-Qaida, after al-Qaida was weakened then a far more extreme terrorism group emerged, namely ISIS. On a national scale, especially in Indonesia, the initial terrorist group was the Islamic State of Indonesia (NII) which emerged in 1949. Based on the 1945 Constitution, Indonesia is a legal state, namely in running the government it is carried out based on statutory regulations and not based on power. This means the recognition of the principles of separation and limitation of powers according to the constitutional system stipulated in the 1945 Constitution, the existence of the principle of an independent and impartial judiciary which guarantees justice for everyone, including against abuse of power by those in power. According to Soetandyo Wignjosoebroto, a legal state in a series of words, namely "a state based on law" This term as a phrase is the result of a translation of the legal term in Dutch, namely *rechtsstaat*. [8] According to Philipus M. Hadjon, *rechtsstaat* was born from the struggle against absolutism so that its development was revolutionary and based on a continental legal system called civil law. [9] The characteristics of the rule of law at that time were like a night guard state, the government's duties were limited to maintaining public order and security.

The characteristics of *rechtsstaat* are: [10] The existence of a Constitution or constitution which contains written provisions regarding the relationship between the ruler and the people, the distribution of state power, the recognition and protection of the people's freedom rights. The eradication of terrorism in Indonesia is carried out based on Law No. 5 of 2018 concerning Amendments to Law No. 15 of 2003 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2002 concerning Eradication of Criminal Acts of Terrorism to become Law. One of the new articles after the amendment to the Law on the Eradication of Criminal Acts of Terrorism is the regulation of the definition of terrorism as contained in Article 1 (2) of Law No. 5 of 2018 namely "Terrorism is an act that uses violence or threats of violence that creates an atmosphere of terror or widespread fear, which can cause mass casualties, and/or cause damage or destruction to strategic vital objects, the environment, public facilities, or international facilities with ideological, political or security disturbance motives." Regulating the definition of terrorism as regulated in Article 1 (2) of Law No. 5 of 2018, there is an affirmation that terrorism is an act carried out with ideological, political or security disturbance motives. When compared with the laws of other countries that regulate the eradication of criminal acts of terrorism, none of them include motives for committing terrorism. From the description of the background above, two problems can be raised, namely: What are the legal aspects of regulating the definition of terrorism in Law No. 5 of 2018 and the comparison with other countries and what are the juridical consequences of including motives in the definition of terrorism?

## II. METHODS

There are two known legal research methods, namely normative legal research and empirical legal research. In this study, researchers used normative legal research with statutory approaches, conceptual approaches and comparative approaches. The types and sources of legal materials used are primary legal materials, secondary legal materials and tertiary legal materials. The primary legal materials used in this study are Law No. 5 of 2018 concerning Amendments to Law No. 15 of 2003 concerning Stipulation of Government Regulation in lieu of Law No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism to become Law. Secondary legal materials are legal materials that provide explanations of primary legal materials such as the opinions of legal experts, articles, scientific works of law, newspapers, legal

science journals, and other related legal materials. Tertiary legal materials are legal materials that support primary legal materials and secondary legal materials by providing understanding and understanding of other legal materials such as the Big Indonesian Dictionary and the Legal Dictionary. After all the legal materials have been collected, then a critical analysis is carried out and a conclusion is drawn and a recommendation is made for the regulation of the Anti-Terrorism Law in the future.

### III. RESULTS AND DISCUSSION

A. Analysis of Setting the Definition of Terrorism in Law No. 5 of 2018 Concerning Amendments to Law No. 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law No. 1 of 2002 concerning Eradication of Criminal Acts of Terrorism to become Laws.

Restrictions on terms used in a law need to be restricted so that they have normative limitations to avoid multiple interpretations from law enforcement officials which in the end creates legal uncertainty because each law enforcer has different views and tends to be subjective. One of the important points in the law on eradicating criminal acts of terrorism is the term "terrorism". Historically, the notion of terrorism in the Law on the Eradication of Criminal Acts of Terrorism, namely Law No. 15 of 2003, has no normative limitations or authentic interpretations. Authentic interpretation of the term terrorism is then regulated in Law No. 5 of 2018 concerning Amendments to Law No. 15 of 2003. An authentic interpretation of the term terrorism in Law No. 5 of 2018 is that "Terrorism is an act that uses violence or threats of violence that creates an atmosphere of terror or widespread fear, which can cause mass casualties, and/or cause damage or destruction against strategic vital objects, the environment, public facilities, or international facilities with ideological, political, or security disturbance motives. An important point in the definition of terrorism in Law No. 5 of 2018 is regarding the motives of terrorism. Motive is the thing that encourages someone to do something or the reason for someone to do something.

Motive in relation to crime means the urge contained in the inner attitude of the perpetrator to commit a crime. Motive is closely related to crime, because there is no crime without a motive, meaning that motive is actually a field of study in criminology, not criminal law. In the field of criminology, there are known various motives for crime, there are even criminologists who classify crimes based on the motives of the perpetrators, as Bongger stated that crimes consist of four groups, namely: Economic crimes such as theft, robbery, fraud and others, sexual crimes such as rape, sexual deviance and so on, violent crimes such as persecution, murder, and political crimes such as plots to overthrow the government or rebellion. According to AS Alam, the classification of crimes committed by Bongger is based on the perpetrator's motives. If we talk about motives from a criminological point of view, the perpetrators of crimes in carrying out their evil deeds are always accompanied by motives. There is always a reason why the perpetrator commits a crime. According to Emperoruddin Kamaruddin, citing the views of Andi Zainal Abidin's book, 2010: 286, that in doctrine (criminal law science), there are known patterns or gradations of intentionality, namely: Deliberately as intention, deliberately conscious or aware of necessity or awareness of certainty, deliberately aware of the possibility of Deliberately with a different "motive". Deliberately as that purpose requires a "motive". The authentic interpretation of terrorism as stipulated in Article 1 of Law No. 5 of 2018 is an agreement between the government of the Republic of Indonesia and the DPR, so that Indonesia has one interpretation of terrorism contained in the law which serves as a guideline for law enforcement officials in eradicating terrorism.

However, for the sake of changing the law on eradicating criminal acts of terrorism in the future, an authentic interpretation of the term terrorism needs to be studied more deeply and more broadly in terms of various angles and comparisons with other countries because terrorism is not only a problem Indonesian nation, but has become an international problem. To understand the essence of terrorism, it is necessary to review the history of the birth of terrorism. Since the emergence of the term terrorism during the French revolution, the motive for terror has been political motives carried out by the state (state terrorism) and groups that are against the government (organized crime). Veigh, terror carried out with bombs for 15 years and was caught in 1996,[12] then Timothy Mc. Veigh carried out a bomb terror by destroying the 18th floor building in Oklohama City, United States of America in 1995, according to the United States press as "the

worst domestic terrorism in America history".[13] so that Walter Laqueur (terrorist expert) stated "today society faces not one terrorism but many terrorism (currently society is not only facing one terrorism but many terrorisms).

[14] Theodore John Kacynski terrorized using bombs for 15 years and was caught in 1996,[15] Timothy Mc. Veigh carried out a bomb terror by destroying the 18th floor building in Oklahoma City, United States of America in 1995 and was recorded by the United States press as "the worst domestic terrorism in American history".[16] Meanwhile, state terrorism, as happened during the French revolution, in modern times the state is not directly involved in acts of terrorism, but rather sponsors or supports certain organizations as perpetrators of terror, for example America's attitude towards Israel's actions. The Israeli attack on Palestine on March 12, 2002 launched an invasion of the Gaza Strip and the West Bank which left 24 Palestinians dead and 2,500 taken prisoner (Kompas, March 13, 2002).The variety of perpetrators has given rise to various motives for terrorism, including political, economic, rescue, revenge, and madness motives. Political Motives, according to Laqueur terrorism contains political motives: "Terrorism has been defined as the sub-state application of violence or threatened violence intended to show panic in society, to weaken or ever overthrow the incumbents, and to bring about political change. It shades on occasion into guerrilla warfare (although unlike guerrillas, terrorists are unable or unwilling to take or hold territory) and even a substitute for war between states.."[17] This means that terrorism has been defined as the sub-state application of violence or threats of violence that intended to show panic in society, to weaken or always overthrow rulers, and to bring about political change

**Economic Motives**, namely seeking as much material profit as possible is usually done by crime organizations such as the Mafia, Yakuza, drug cartels. Salvation motive, this motive is closely related to the teachings of sects or beliefs, for example the terrorism carried out by the Aum Shinrikyo sect in Japan led by Shoko Asahara in March 1995 who carried out terror using sarin gas at the Tokyo subway station which killed 10 people and injured 5000 people. The perpetrators did not consider their actions as terror, in their belief, humans live always in a state of imprisonment and misery; therefore there is a need for a quick death for salvation. The implementation of terror aims to save other people's lives as a noble act; far from the intention to frighten, let alone spread terror.

**Revenge Motive**, usually carried out by individual actors, or small groups such as those carried out by Theodore John Kacynski and Timothy Mc. Veigh. The motive for madness of perpetrators of terrorism is rooted in psychological deviations such as the terrorist from Spain, Carlos, who was rampant in the 1970s. In addition to these motives there are also ideological motives. Term Ideology was born at the end of the 18th century or in 1796 put forward by Destutt de Tracy, ideology is the science of ideas, ideals or a combination of both, namely the ideals of the future. This ideology is not just an idea, but an idea that is followed and adhered to by a large group of people or a nation, so that ideology moves people to realize these ideas. Even though someone's idea, no matter how scientific, rational or noble, cannot be called an ideology, if it has not been embraced by many people and fought for and realized, with continuous actions.[18] *Attack New York's World Trade Center* This was done for four reasons, namely: because the United States supported Israel to control Palestine, Saudi Arabia and Israel's funding in the Persian Gulf War, the al-Qaeda region in the Middle East, because the United States always intervened in countries in the Middle East with the presence of its military forces, because al-Qaida hopes that by attacking an important symbol in America, they can spread fear around the world. Until finally, this can strengthen their political and religious goals in the Middle East and the Islamic world, the last reason, for ideological reasons, namely the belief in jihad so that martyrs can die.[19] Based on these four reasons, it shows that the motive of the terrorists carried out the attack on *New York's World Trade Center* is the motive of revenge. After the attack on the World Trade Center in New York, America and Britain then carried out attacks on Afghanistan to avenge al-Qaeda for the attack on the World Trade Center building in New York, United States on September 11, 2001.

The tragedy of the New York World Trade Center by al-Qaeda and the United States attack on Afghanistan had an impact on Indonesia, which was the background for the first Bali bombing, namely to avenge the actions of the United States against Afghanistan which sacrificed many Muslims. The

perpetrators of the Bali I bombing were members of the Jemaah Islamiah terrorist group, the perpetrators previously carried out church bombings simultaneously throughout Indonesia at the end of December 2000, the motive for the church bombing also had the same motive as the attack *World Trade Center (WTC) New York* and the Bali bombing was a motive for revenge. The church bombings in 2000 were carried out against the background of the conflicts that occurred in Ambon and Poso which caused a lot of harm to the Islamic side. These events are indirectly related to religion. According to David C. Rapoport religion is the driving force of violence which is categorized as terrorism. Religious enthusiasm and militancy is able to maintain a terrorist movement for a long time even though it has to face challenges and obstacles that are not small. For example, the Tugs (a sect within Hinduism) survived from the 7th to the 13th centuries, the Assassins, an Isma'ili Shi'ite sect from 1090-1275, and the Zealots-Sicaari (Jews) for 27 years from AD 66-73. The three groups are the early history of contemporary religious violence and terrorism, and are often described as a model for religious terrorism in modern times.[20] David C. The setting of motives in Article 1 of Law No. 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism raises juridical problems because there are three motives for terrorism, namely ideological, political or security disturbance motives. This creates uncertainty because there is no authentic interpretation of the boundaries of ideological, political or security disturbance motives. With no clear boundaries regarding the motives of terrorism, it will lead to subjective interpretations from law enforcement officials.

**B.** Comparison of Law No. 5 of 2018 concerning Amendments to Law No. 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism with the Law on the Eradication of Criminal Acts of Terrorism in Other Countries Related to Terrorism Qualification Regulations

Judging from the importance of the limitation regarding the qualifications of terrorism in Indonesian law, it is actually not an urgent matter, because if it is connected with the elements of a criminal act of terrorism regulated in Chapter III of Law No. 5 of 2018, there is no ideological, political motive. or disturbance of security as one of the elements of criminal acts of terrorism. There are no qualifications for terrorism in several countries and international institutions that contain the following motives:

1. According to Malaysia's national security law. Article 2 of the National Security Act (Internal Security Act) Number 82 of 1960:

*"Terrorist" means any person who: by the use of any firearm, explosive or ammunition acts in a prejudicial manner to the public safety or to the maintenance of public order or incites to violence or counsels disobedience to the law or to any lawful order*"(through the use of weapons, explosives or ammunition acting in a manner that poses a danger to public safety or public order or seeks violence or encourages non-compliance with the law or any valid regulations), "carries or has in his possession or under his control any firearm, ammunition or explosive without lawful authority therefor; or demands, collects or receives any supplies for the use of any person who intends or is about to act, or has recently acted, in a prejudicial manner to public safety or the maintenance of public order[22]. (carrying or possessing or possessing weapons, ammunition or explosives without obtaining official permission; or c. demand, collect or receive any supplies to use any person who intends or will act,

2. According to the United States Anti-Terrorism Act (*Federal Criminal Code*). *Federal Criminal Code (Chapter 113B of Part I of Title 18 of The United States Code*, on terrorism and a list of criminal acts related to terrorism). In Section 2331 of Chapter 113b, terrorism is defined as:

*"activities that involve violent ... or life-threatening acts ... that are a violation of the criminal laws of the United States or of any State and ... appear to be intended (i) to intimidate or coerce a civilian population ; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the[24].* It means : (frightens or coerces civilians; (ii) influences government policy by intimidation or coercion, or (iii) impacts a government's actions by means of mass destruction, murder or kidnapping; and occurs initially within United States territorial jurisdiction or occurs in originally outside the territorial jurisdiction of the United States [25]

3. According to the UK's Anti-Terrorism Act. In the Terrorism Act 2000, as the use of threats that:

*“ the use of threat is designed to influence the government or to intimidate the public or a section of the public ... and the use of threat is made for the purpose of advancing a political, religious or ideological cause ... it involves serious violence against a person, involves serious damage to property, endangers a person's life, other than that of the person committing the action ... creates a serious risk to the health or safety of the public or a section of the public or is seriously designed to interfere with or seriously to disrupt an electronic system.[26]*Meaning: (the use of threats is designed to influence the government or frighten the general public or community groups and the use of threats is carried out in the interest of developing an interest of a political, religious or ideological nature which involves real (serious) violence against humans, involves acts that are real destructive property, endangers human life other than himself ... creates a real (serious) effect on the health or safety of the general public or community groups or is designed to actually (seriously) interfere real (serious) so as to damage an electronic system).

4. According to European Union countries stated in Art. 1 of the Framework Decision on Combating Terrorism (2002):

*Certain criminal offenses set out in a list made up of large portions of serious offenses against persons and property which given their nature or context, may seriously damage a country or an international organization where committed with the aim of seriously intimidating a population; or unduly compelling a government or international organization to perform or abstain from performing any act; or seriously destabilizing or destroying the fundamental political constitutional, economic or social structures of a country or an international organization.[27]*(certain criminal acts as contained in a list which contains most of the crimes against humans and property that give a condition or atmosphere of real (serious) damage to a country or an international organization to achieve real (serious) fear among the population; or to forcibly attract the attention of a government or international organization to take a step or not to take any step; or cause real (serious) destabilization or undermine the basis of the political, constitutional, economic or social structures of a country or an international organization.

5. According to Countries that are members of the Arab League.:

*The Arab Convention for the Suppression of Terrorism, adopted by the Council of Arab Ministers of the Interior and the Council of Arab Ministers of Justice. Which was held in Cairo in April 1998 defines terrorism as follows: "Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupy or seizing them, or seeking to jeopardize a national resource".[28]*Meaning: (Any act or threat of violence, regardless of motive or purpose, that occurs in the advancement of an individual or collective evil agenda and seeks to spread panic among people, causing fear by endangering them or placing their life, liberty or security at risk harm or attempt to cause damage to the environment or to the public or private installations or property or to occupy or seize such installations or property or to attempt to harm national resources).

6. According to the US Central Intelligence Agency (CIA), US Federal Bureau of Investigation (FBI), US Departments of State and Defense, UN Convention of 1937.

1) *US Central Intelligence Agency (CIA)*:International terrorism is terrorism carried out with the support of foreign governments or organizations and or directed against foreign countries, institutions or governments,

2) *US Federal Bureau of Investigation (FBI)*terrorism is the use of unlawful force or violence against a person or property to intimidate a government, the civilian population and its elements to achieve social or political goals,

3) *US Department of State and Defence*. Terrorism is politically motivated violence perpetrated by state agents or subnational groups against non-combatants. International terrorism is terrorism involving citizens or territories of more than one country, and

4) The 1937 UN Convention on terrorism is "acts of terrorism" means criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons, a group of persons or the general public." all forms of crime that are aimed directly at the state with the intention of creating a form of terror against certain people or groups of people or the general public.[29]

Terrorism is a common problem with the international world, so the laws and regulations governing the eradication of criminal acts in Indonesia need to be adjusted to developments in the international world. With regard to the qualifications of terrorism, laws in other countries stipulate that the qualifications of terrorism and criminal acts of terrorism are criminal acts that do not contain a motive, so that the qualifications of terrorism as regulated in Article 1 (2) Law No. 5 of 2018 according to the opinion author, needs to be changed by not including motives in the qualifications of terrorism. Setting the qualifications for terrorism by including elements of motive, has consequences for the crime of terrorism regulated in Chapter III of Law No. 5 of 2018 because it must contain ideological, political or security disturbance motives. According to the author, the word "terrorism" in Article 1 (1) should be interpreted as terrorism as regulated in Article 1 (2). In addition, terrorism is an international problem, so the law on eradicating criminal acts of terrorism in Indonesia needs to be adjusted to developments in other countries, one of which is regarding the limits of terrorism and the motives of terrorism.

#### IV. CONCLUSION AND SUGGESTION

##### Conclusion

Based on the discussion and analysis above, the authors conclude as follows, that authentic regulation of the qualifications of terrorism in Law No. 5 of 2018 concerning amendments to Law No. 15 of 2003 is on the one hand a progress in Indonesia, because previously there was no clarity regarding qualifications of terrorism. On the other hand, regulation of the qualifications of terrorism has created new problems because the qualifications are too broad and contain ideological, political or security disturbance motives. While in the offense articles, there is not a single article that regulates terrorism offenses that contain ideological, political or security disturbance motives. Thus, the regulation of qualifications for terrorism is not urgent and ineffective and even becomes a juridical problem in law enforcement.

##### Suggestion

As a recommendation in eradicating criminal acts of terrorism in the future, the authors provide the following recommendations:

1. The regulation of terrorism qualifications in Law No. 5 of 2018 is not effective, so that in the future the law on eradicating criminal acts of terrorism does not need to provide limitations on the qualifications of terrorism, but it is enough to clarify the elements of the terrorism offense.
2. Whereas the regulation of the qualifications of terrorism in the future in the amendment to Law No. 5 of 2018 the legislators need to adjust the law on eradicating criminal acts of terrorism with laws in other countries related to the qualifications of terrorism and terrorism offenses.

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