

## **LAW ENFORCEMENT OF TERRORISM CRIMES ASSOCIATED WITH FOREIGN TERRORIST FIGHTER ISIS CASES**

**Qurrata A'yun**

Faculty of Law University Padjadjaran  
Banda Street Number 42 Bandung, Jawa Barat 40115  
E-mail: [qurrata19001@mail.unpad.ac.id](mailto:qurrata19001@mail.unpad.ac.id); Phone Number: (022) 4220696

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### **ABSTRACT**

This study aims to discuss the position of terrorism in international criminal law and law enforcement against terrorism crimes committed by the Islamic State of Iraq and Syiriah (ISIS) Foreign Terrorist Fighter (FTF). The research method used in this research study is a normative juridical legal research method. In some literature, crimes of terrorism in international criminal law are categorized as extraordinary crimes because of their systematic, organized and widespread nature. Law enforcement against the FTF ISIS for crimes of terrorism can basically be carried out by means of preventive measures as preventive and repressive measures as penal measures which in this case can be prosecuted based on the legal rules of the perpetrator's country of origin and allowed to make arrests, prosecutions and punishments or attempts. Extradition if necessary. In addition, law enforcement based on international criminal law can also be pursued if the crimes of terrorism committed by the perpetrators cause things that have an impact on the international community and qualify as stipulated in the Rome Statute.

Key Words: terrorism; foreign terrorist fighter (ftf); isis; law enforcement.

### **INTRODUCTION**

Global terrorism has existed before the 20th century. It is believed to be motivated by the dissatisfaction of individuals group to the political conditions and ideology of a country (Ali, 2009). This individuals group claims to be marginalized because of the imbalance of political and ideological conditions which then forms a separate movement to produce new ideas that give them a sense of justice. The idea was formed to change the ideology, structure and policies that have been there by using the radical action and violent. The ideas that they wanted to achieve were obtained by means of radicalism, extremism and indoctrination which eventually merged into one act, namely terrorism.

Terrorist groups since the 20th century have continued to intensify their actions radically and brutally until they have killed many civilians as victims, but they believe that no one can punish them because their actions are an effort to fight for their rights (Hendropriyono, 2009). The cruelty of terrorism began to increase and disturb the world community since the end of the 20th century. History records that acts of terrorism globally have occurred in Japan, Europe, Latin America and even the United States. Several acts of terrorism have occurred, such as the kidnapping of Israel athletes who participated in the Munich Olympics on September 6 1972, and the bombing of Pan Am aircraft No.103 that killed more than 250 passengers on December 21 1988, and the bombing in a row The Casablanca that killed 41 people on Mei 16 2003 (Ikrami, 2008).

Terrorism can be categorized as international crimes dimensions because the network has exceeded the limit of state. Any action carried out by them can become a victim, including civilians, children and women. Acts of terrorism are extremely gripped the world occurred in September 2001 to twin tower World Trade Center (WTC) in New York. The terror acts committed by al-Qaeda with the aim of attacking the United States and its allies for defying their existence. Al-Qaeda itself is formed by using religious doctrine as a tool to legalize any act of brutal and extreme that is based on hatred against the United States (Zahid & Naufel, 2018). From this action, the existence of terrorists is getting more and more attention. This is one of the goals desired by terrorists, namely to bring attention to the world which will affect their political advantage. The more threatened world peace, the higher the bargaining value for terrorists to stop their movement with various rewards that lead to their vision and mission. Because of these terror, Osama bin Laden became a world target and in May 2011 he was killed by members of the US special forces in Abbottabad, Pakistan (Sari, 2012).

Along with the death of Osama bin Laden, the existence of Al-Qaeda as a terrorist group was getting weaker and then another terrorist group, namely ISIS, emerged. This organization was

formed in early 2000 spearheaded by Abu Musab Al-Zarqawi with the initial aim of overthrowing the Jordanian government. After the killing of Osama bin Laden, Abu Musab was asked by high-ranking al-Qaeda officials to facilitate the militants to Iraq with the aim of fighting against the US in Iraq. In 2013 ISIS announced its expansion into Syria and declared itself a caliphate with its leader, Abu Bakar al-Baghdadi (Mulyana, Akim & Deasy, 2016). ISIS in the world view is a terrorist organization that is brutal and has no direction in carrying out its actions so that the world community is increasingly agitated due to its existence. Convention for the Prevention and Punishment of Terrorism in 1937 and several international conventions stated that the crimes of terrorism committed ISIS is one form of international crime and required strict enforcement to combat terrorism crimes that get to the root.

ISIS claims to fight for the caliphate and is based on Islamic ideology. It invites a lot of foreigners in large numbers with a variety of motivations for joining ISIS, conduct terrorist training, or just settle in a country that applying Islamic law. The various actions carried out by ISIS that seem to apply Islamic ideology and promote jihad to achieve the interests of forming an Islamic State have made ISIS succeed in attracting sympathizers from various countries. These sympathizers are known as the ISIS Foreign Terrorist Fighter (FTF). FTF is a citizen who travels or tries to travel to a country with the aim of doing, planning, preparing, participating or training in acts of terrorism (Muttaqin, 2020). ISIS FTF is a foreigners who traveled to Iraq and Syria to join ISIS. Based on 2015 data from the United States National Intelligence, ISIS has more than 50,000 members and 28,000 members are FTF (Mulyana, Akim & Deasy, 2016). Some of the area that became the region's largest contributor to the FTF ISIS according to data compiled by The Soufan Center shows Russians and the states former Soviet Union as many as 8717 people, the Middle East 7,054 people, Western Europe 5,778 people, and Maghrib Arap Region 5,356 people (HCRT, 2019). 2017 is considered the year of defeat for ISIS due to the success of the Syrian Democratic Forces (SDF) forces reclaiming 90% of the Raqqa area which is the center of ISIS jihadist power in

Syria. The defeat experienced by ISIS is also considered as the end of the threat to world peace. But in reality all kinds of ISIS propaganda that has inspired terrorist groups around the world will pose new threats and give birth to new jihadists in their respective territories. The ideology instilled by ISIS has motivated the FTF to continue the ISIS struggle and be ready to carry out attacks around the world. Based on data from CNN, New York Times, and Esri, round 2014 - 2017, ISIS claimed to have committed acts of terror as much as 182 attacks also inspired 46 acts of terrorism in 33 countries outside of Iraq and Syria (Zahid & Naufel, 2018).

Various terror cases in the world involving the FTF ISIS require strict handling and regulation, especially related to law enforcement. This is interesting to analyze because the FTF itself is a foreign citizen who participates in terror. Apart from participating, FTF who have received training as members or sympathizers in their home country are feared to cause widespread terror so it is necessary to know how law enforcement against terrorism crimes committed by the FTF ISIS and who is authorized to prosecute them.

Articles related to law enforcement on terrorism crimes as international crimes can be found in the articles of Aulia Rosa Nasution (Nasution, 2015) and Mamay Komariah (Komariah, 2017). In contrast to this article, this article specifically covers the scope of terrorism crimes committed by the FTF ISIS and related to the position of terrorism crimes in international criminal law.

## **RESEARCH METHODS**

This research uses juridical normatif methods (Soekanto, 2015). Research in the context of legal science is carried out to find out about legal processes, legal events and provisions of legal regulations and to know legal procedures that can be applied (Utsman, 2014; Sulaiman, 2018). The data collection method used in this research is library research in order to obtain secondary data in the field of law. This data is then analyzed in relation to the problems.

## DISCUSSIONS AND ANALYSIS OF RESULTS

### 1) The position of Crime Terrorism in the International Criminal Law

Etymologically, terrorism means to frighten (*toterrify*) which comes from the Latin *terrere*, which causes feelings of anxiety (Juergensmeyer, 2003). The word terror in the Black Law Dictionary means "... fright; dread; the state of mind induced by the apprehension of hurt from some hostile or threatening event or manifestation; fear the caused by the appearance of Dange " terror is defined as a condition that causes fear and potentially threatening (Black, 1968). According to Brian McNair, terror is a political communication that deviates from the constitutional corridor to a radicalism approach that attracts public attention, undermines enemy morale, demonstrates strength, spreads fear and creates tempers (McNair, 1999). In addition, terrorism is an international crime that leads to acts of violence that prioritize terror against the government, society and the country itself to achieve their mission (Simbolon, 2013). Brian Jenkins argues terrorism as "a strategy of violence designed to promote desired outcomes by instilling fear in the public at large ", namely a violent strategy designed to increase desired results by generating fear and anxiety in the wider community (Hendropriyono, 2009).

The crime of terrorism is a form of international crime as stated in the Convention for The Prevention and Punishment of Terrorism 1937 Article 1 paragraph (2) that terrorism means "criminal acts directed againts a State and intended or calculated to create a state of terror in the minds of particular person or a group of person or the general public". The regulation explains that terrorism has long been a concern of the international community because of its actions that create terror against all elements of society, including innocent civilians.

In general, acts of terrorism are trained, controlled and financed by foreign agents so that they are linked to other state terrorist networks. Based on the characteristics of having an organization, recruitment, funding and international relations, it explains that terrorism apart from being organized is also very systematic, so it can be said that it is not just an ordinary crime. Terrorist

crimes are categorized as well as an extraordinary crime because the crime of which include cross-border state and specifications are very complex started from the background, objectives, actions and their impact, and can threaten peace and national and international (Wahid, 2004).

Since 1963 several international conventions which are universal legal instruments regulating terrorism related crimes include (Fitriliani, 2013): (a) Convention on Offences and Certain Others Acts Committed On Board Aircraft 1963; (b) Convention for the Suppression of Unlaw Seizure of Aircraft; (c) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1971; (d) Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons 1973; (e) International Convention Against the Taking of Hostages 1979; (f) Convention on the Physical Protection of Nuclear Material 1980; (g) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation 1988; (h) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988; (i) Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf 1988; (j) International Convention for the Suppression of Terrorist Bombing 1997; (k) International Convention for the Suppression of the Financing of Terrorism 1999; (l) United Nations Security Council Resolution 1368 of 2001 on Combating Terrorism; (m) International Convention for the Suppression on Unlawful Acts of Nuclear Terrorism 2005; (n) Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation 2010.

Various international rules that have been established from 1937 to 2010 show the great attention of the international community to crimes committed by terrorists which are recognized by the world as a threat to world peace and security so that the UN Security Council under Charter VII emphasizes that every country has the obligation to arrest, prosecute and punish or extradite terrorists or Foreign Terrorist Fighter (Atmasasmita, 2002). To know that these crimes constitute international crimes, Bassiouni formulate international criminal elements, namely: (1) international

element which emphasizes the threat directly or indirectly to peace and security in the world and the actions that shake the feeling of humanity; (2) international element that form of action that has the effect or involving nationals of more than one country and taking action that goes beyond the territorial boundaries of a country (Atmasasmita, 2000).

Goals, targets, actions, actors and methods that terrorism do is growing supported by technological advances so that it becomes wider and more varied so that more bright and clear as well that terrorism is not a common crime, but more complex in the eyes of the world that threaten the peace and security of the human being (crime against peace and security of mankind) (Kusumah, 2002). The number of attacks that have been carried out by terrorist groups explains that in carrying out their actions, anyone can become a victim and these acts of terrorism do not care about the victim, gender, nationality, social status, and age as long their goal is achieved (Cassese, 2003). Acts of terrorism carried out in a heinous manner are certainly crimes that cannot be tolerated by anyone. In general, in every action terrorism has different and varied motivations and goals, both general or specific according to the circumstances (Nasution, 2015).

According to Hoffman, terrorists have a broad motivations and goals and all forms of their actions are based on ideologies and doctrines that seem as if the current state government contradicts the true ideology and they want to reshape the ideology that has been lame. A.C. Manullang said that just some terrorist motive sourced from nationalism and religious extremism that leads to separatism and particular interests which then lead to chaos (Manullang, 2006). When terrorism is always related with religious ideology, actually this is a mistake because in essence, any religion in the world has nothing to legalize division and violence. In fact, terrorism only uses religious ideology as an excuse to vent the disappointment that has grown with the unfair treatment that has long been hidden.

Muladi described the forms of terrorism based on The Report of the Task Force of the on Disorders and Terrorism 1996 according to the National Crime Commission, namely: (a) political

terrorism, which is an act of violence or radicalism that is grown to frighten the public for political interests; (b) non-political terrorism, acts of creating fear and anxiety by means of brutal violence due to personal interests in a systematic and organized manner; (c) quasi terrorism, actions that do not have an ideological motive but have a material purpose such as taking hostages for a ransom; (d) political terrorism limited is a terrorist group that has a motive ideology and politics, but more likely to control the state like violence for revenge; (e) a terrorist state or government, an act of repression by the state or government to control subjects (dictator) as Hitler did in Germany and Joseph Stalin in the State of the Soviet Union who detain, torture and execute against their people brutally and blindly without sense of humanity (Armawi & Anggoro, 2010) .

The authority of the International Criminal Court (hereinafter referred to as ICC) through the provisions of the 1998 Rome Statute basically does not explicitly include provisions for crimes of terrorism as part of the provisions regulated therein. The ICC has limited jurisdiction on the most serious crimes involving the international community as a whole as described in Article 5 of the Rome Statute, namely: genocide or the crime of genocide; crime against humanity; war crime; and aggression. However, if the crime of terrorism as referred to has an impact that fulfills the elements of crimes under the ICC's jurisdiction in the 1998 Rome Statute, then the ICC has the same authority over the perpetrators of the crimes referred to. In practice, law enforcement against terrorist crimes ever attempted in some of the following courts, including the Special Tribunal for Lebanon under Security Council resolution 1757 Chapter VII of 2007, which was formed to investigate and prosecute terrorist incident largely jurisdiction is determined by the criminal law of Lebanon, the Statute of the International Criminal Tribunal for Rwanda, the Statute of the Special Court for Sierra Leone and the Extraordinary Chamber of the Courts of Cambodia (UNODC, 2018).

The elements of terrorism as extraordinary crimes, the form of a series of crimes committed in terrorism crimes and the impacts that occur as a result of the crimes as referred to can fulfill the elements of crimes against humanity as regulated in Article 7 of the 1998 Rome Statute which

basically includes prohibited acts including brutal violence committed against the entire community including innocent civilians in a comprehensive and widespread systematic aggression such as murder, expulsion, rape, sexual slavery, enforced disappearance and the crime of apartheid (Koalisi Masyarakat Sipil Untuk Mahkamah Pidana Internasional, 2009). The broad and systematic or organized meaning is a fundamental requirement or the most basic requirement to distinguish crimes against humanity from other international crimes. Based on the Blaskic case in the International Criminal Tribunal for the former Yugoslavia (ICTY), it can be concluded that the widespread attack can be seen from the number of victims and the scale of the massive attack so that it has a very serious impact as well as a systematic element reflected in a certain pattern or method that is organized in a systematic manner. thoroughly using the same or fixed pattern (Mumtazinur, 2018).

## **2) Law Enforcement Against Terrorism Crimes, FTF ISIS**

The terror crimes committed by ISIS to form an Islamic State or Khilafah Islamiyah have been criticized by the entire international community because of the radicalism. In addition, terrorism as an international crime is carried out beyond national borders so that it threatens world peace and peace and has received sharp attention from the international community because it has far-reaching consequences for the world (Parthiana, 2003). However, many are also inspired by the propaganda that ISIS calls for through its ideology because it is considered firmly by the FTF. FTF is an individual who travels to another country with the aim of participating in acts of terror related to armed conflict which are exploited by terrorist networks in expanding their networks in FTF's home country, transit country and destination country. The existence of FTF in fact can increase the intensity, duration and continuity of conflicts and can pose a big threat to countries of origin, countries of transit and destination countries of the FTF. FTF is also believed to be able to promote the terrorism movement widely. The majority of the ISIS FTFs who are foreigners involved in

terrorism actions, plans and training are motivated by ideology. FTFs who have joined ISIS certainly have high military capabilities and are trained so they have the potential to pose a great threat because the more FTFs, the more threatening peace around the world.

Law enforcement against crimes of terrorism is a must and is a form of protection of the human rights of every individual who is a victim. According to Romli Atmasasmita, law enforcement and the eradication of terrorism must be enforced because philosophically it contains several elements, namely: terrorism is the enemy of mankind, crimes against humanity, crimes of civilization, transnational crimes, protection of society is the main goal and limitation of the human rights of a suspect or defendant is an exception (Nasution, 2015). According to Muladi, handling terrorism as an extraordinary crime requires extraordinary measures because: (a) terrorism is an act that causes the greatest danger (the greatest danger) to human rights, namely the right to get a decent life (the right to life) and the right to be free from fear; (b) undirected targets of terrorism which resulted in innocent people becoming victims; (c) it is possible to use weapons of destruction utilizing modern technology; (d) negative synergy relationships between national and global terrorist organizations that can take root; (e) possible cooperation between national and global terrorist organizations; (f) endangering world security and peace (Komariah, 2017).

Law enforcement against terrorism as an international crime has a legal protection through various international conventions as a legal standing for countries in the world to regulate and prosecute the perpetrators of terrorism in their countries. The FTF, which traveled to the central state of the ISIS government, namely Syria to carry out acts of terrorism together with the ISIS terrorist group, also did not escape the threat of punishment in accordance with what had been done. Law enforcement against the ISIS FTF cannot be carried out by the FTF's home country independently but there is integrated cooperation and coordination with other countries considering that the FTF is part of a dangerous terrorist organization.

United Nations through the United Nations Terrorism Prevention Branch recommends steps that can be applied to countries as efforts to combat terrorism in a comprehensive manner through some aspects of the political and governance, economic and social, psychology, communication, education, justice and law, Police and Prison System, Intelligent, military, and immigration (Firmansyah, 2011). Therefore, several concrete efforts that can be made to enforce the law for the ISIS FTF based on the UN recommendations, namely preventive and repressive measures.

Preventif effort towards law enforcement terrorism crimes in this case can be in done in several steps following, namely: (1) conduct international cooperation with the United Nations Global Counter Terrorism Strategy (UNGCTS) is an international organization under the auspices of the United Nations; (2) synergize with PPATK and carry out cooperation and coordination with the Asia Pacific Group on Money Laundering in investigating the flow of funds to break the chain of terrorism financing; (3) taking a soft approach through the National Counterterrorism Agency in the deradicalization and counter-radicalization program including rehabilitation, reintegration and re-education of detained criminals so that the true religious ideology is embedded; (4) taking a hard approach based on Law Number 15 of 2003 concerning Counterterrorism and Law Number 9 of 2013 concerning the Prevention and Eradication of Criminal Acts of Terrorism; (5) strengthening access into and out of the country to detect FTFs; (6) the synergy of the government in supervising FTFs that have returned from other countries so that they can handle them as early as possible; (7) carry out cooperation and coordination with domestic agencies such as the TNI, Polri, Intelligence, Ministry of Communication and Information, Kemenkum HAM, and others; (8) involving Islamic Organizations because terrorism is related to the Islamic religious ideology that is distorted; (9) to disseminate widespread socialization to the community regarding the deviant ideology propagated by outside terrorist groups, that everything is due to mere interests; (10) The state provides a forum for terrorist prisoners and their families, such as providing skills training so that FTFs can return to their community and their positions are not marginalized in society, which are feared to re-generate

radical thoughts. In addition, other efforts that can be carried out are repressive efforts for the ISIS FTF which has carried out acts of terrorism that have threatened and killed many innocent lives. Based on Chapter VII of the UN Charter, there are legal implications for the countries where the FTF originates, that each country is obliged to arrest, prosecute, punish and extradite terrorists who are outside the country, namely the FTF.

In terms of law enforcement terrorism through ICC will depends on the fullfill of jurisdiction elements of the ICC as provided in Article 12, 13 and 14 of the Rome Statute 1998. Due to the structured and widespread impact on the international community on terrorism crimes, such as brutal killings, sexual harassment and others as previously stated, the crimes of terrorism crimes can basically be part of the ICC authorities. In this case, the countries do not ratified of the 1998 Rome Statute can make special agreements with the ICC related to prosecuting the perpetrators of crimes. In addition, UN Security Council resolutions also greatly influence the ICC in exercising its judicial authority. When these two conditions are fulfilled, the Public Prosecutor can apply for the right to conduct an investigation at the pre-trial committee as stipulated in Article 15 of the 1998 Rome Statute. Therefore, in this case FTF ISIS as individuals who commit crimes against humanity as a terrorist member can be tried by the ICC when the requirements are fulfilled.

## **CONCLUSIONS**

The crimes of terrorism in international law categorized as exceptional or extraordinary crime. This crimes has a very complex specifications, starting from the background, objectives, actions and their impact that can threaten peace in national and international. The law enforcement against the ISIS FTF can be carried out by preventive and repressive measures. Preventive steps are based on United Nation recommendations through United Nations Terrorism Prevention Branch, namely through political and governmental, economic and social aspects, psychology, communication, education, law and coordination with domestic agencies such as the judiciary, the Police,

Intelligence, military and immigration. Repressive measures can be tried by the legal rules of the states where the FTF's came from, based on the UN Charter which obliges every country to arrest, prosecute and punish or extradite perpetrators of terrorism.

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