

## TERROR ACTORS AND PUNISHMENT IN INDONESIA

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**Abstract:** In counter-terrorism policy making, government or the authority should not only based on assumption that to reduced acts of terror can threat by severe punishment or use military force. It is, in some cases, punishment actually strengthens the belief of terrorism. Death penalty gained pro and contra reaction, by giving severe punishment for the terrorist can't stop the terror happen in Indonesia. The verdict of death penalty who giving to the terrorist still remain a controversial, today, retribution by "giving" death to the person is not able to give a sense of safe to avoid citizens from terror threat. More over, even if harsh punishment applied by kill the terrorist, it doesn't work to make the terror threat less.

### INTRODUCTION

Since more than a decade ago, the world's attention increasingly intense leads to an action known as terrorism. The world was shocked by the events of collapse of the World Trade Center on 11 September 2001 (then known as 9/11), killed about three thousand people. One word that later became the main ingredient of talk and news in the media that the mastermind of the tragedy is terrorism, and began a war campaign against terrorism led by the United States and its allies. Through the medium of television and the Internet, we seemed to get a picture of terrorist acts in time together from all over the world. Acts of terrorism not only occur in areas of conflict such as the Middle East or the Baltic area, but also in countries that are relatively safe, such as Indonesia. News on the mass media that make terrorist activities not only give us an overview of the potential targets of the action terrorists, but also an overview of social reaction to the terrorist acts, including perception, feeling, justification, and social choices for him.

Said word "terror" began widely known in the era of the French Revolution (1793-1794). Starting from the establishment of institutions Terror of the Committee of Public Safety (which, Robespierre was a member), which is in charge of tackling the dissidents against the monarchy. This institution next lot in the murder of supporters of the republic (republican) and punished without trial. Corporate power is very great, they caught no less than 300,000 people, punish and execute more than 17,000 people. After Robespierre to power, he did not stop the action, even more terrible. Therefore, people at the time later dubbed as "terrorism", as well as officers or agents who support the action of Robespierre was later dubbed as "terrorists", the term is then spread to Europe until around the world (Thackrah, 2004). The debate about defining terrorists which can be seen from the writings

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Shughart II or Thackrah. Shughart II, for example, criticize the characteristics of “unlawful use of force” (illegal or unlawful) as a criterion for determining a person as a terrorist. Thackrah action exemplifies the American liberation fighters were labeled as terrorists as against the constitutional law of King George III (when America was still in the British colonies, and enacted laws made in England). One party regards them as terrorists, but on the other hand regards as freedom fighters or patriots (Thackrah, 2004).

In general, terrorists have criteria: use of illegal violence (against the law); planned, measurable; against civilians (non-combatant); carried out by the group, professionals as part of the state, or individuals; their publications to their action; in order to achieve objectives (change) political, ideological or religious; intimidate an individual, group or nation; cause a feeling of fear or insecurity; (Whittaker, 2002; Tunell, 1993; Al-Makasari, 2003; laquer, 1999); a planned action, calculating and systematic; not adhering to the law or the norms of war (Hoffman Shughart II, 2006; Lutz and Lutz, 2004); planned to cause fear (psychological shocks) for the victims or targets (Hoffman Shughart II, 2006); generally arise because of the force is not balanced and the use of political means unusual (Tilly, 2004). In simple terms, the terror can be seen as a military strategy that was used in warfare (especially with the strength that is not balanced), as well as a crime. As a sociological study of criminology, terrorists in this context we view as a crime more than a military strategy in a war. Still, terrorists in contrast to other types of crimes, especially in terms of the implementation of the systematic and the impact that terrorist acts are grouped as common crime (*extra or dinary crime*), even included in crimes against humanity (*crime against humanity*).

However, there is a difference between terrorists as a military strategy, with terrorist crime. Terrorism as a crime did not follow the law or norms of war, the use of force without the “indiscriminate”, which became the difference between a terrorist act with the freedom fighters, revolutionaries, members of the democratic opposition, or the liberation army nationalist (Lutz and Lutz, 2004). From of crime, in view of the terrorist act, the state has two obligations, namely the creation of retributive justice (*retributiv ejustice*), and security from crime or which we know as the fulfillment of feeling secure. (Crenshaw, 2000) suggests that in preparation of policies, *counter-terrorism* the government or the authorities should not only based on the assumption that giving the threat of severe punishment or with the use of military force would be able to suppress acts of terror. Because according to him, in some cases, punitive or deterrent effect strengthened the belief of terrorism (Crenshaw, 2000). Since 2003 until 2012 as a form of *counter terrorism*, the Indonesian government has given the death sentence for 11 convicted terrorists. In 2005, there were three people sentenced to death. In the period of 2006, there were three others were sentenced to death. While in the period of 2012 there were two people sentenced to death.

In the context of Indonesia, the provision of the death penalty also raises a good reaction pros and cons. The debate reinforcing especially the moments before the execution of Imam Samudra and Amrozi named members of the group, Ali Gufron, and Mukhlas. In addition, the maximum punishment against perpetrators of terror are not necessarily stop the terror events in Indonesia. It is evident from the acts of terror which did not stop only on events of the first Bali bombing, but there are events such as the bombing of the Australian Embassy (2004), Bali II (2005) where Imam Samudra planned from inside the prison Grobogan Bali, and Bombing Hotel Marriot and Hotel Ritz Carlton (2009), mosques Cirebon Police, and so forth, which have involved people other than members of Jemaah Islamiah, and the new people who previously were not followers of the Salafi Jihadi (Solahudin, 2011).

In the period from 2000 until 2010 just, the police recorded as many as 298 people were killed in a terrorist attack, 838 people were injured, not including 19 policemen were killed and 29 people were injured (“298 people killed terrorist attacks”, antaranews.com), in addition to causing casualties soul, terrorist attacks also cause loss of material, economic and social (especially on the relationship between religious communities). In the table 1 shows that the convicted terrorism did not stop their activities despite being in a correctional institution:

**TABLE 1: RECORD OF ACTIVITY OF TERROR IN INDONESIA**

<i>Name of</i>	<i>Previous</i>	<i>Cases</i>	<i>Source</i>
Abu Tholut	Undergo 8.5 years in prison, blasting Atrium Plaza 2001	Plan a Robbery ( <i>fa'i</i> ) CIMB Medan and military training in Aceh	www.nasional.vivanews.com/news/read/193071-gembong-teroris-abu-tholut-ditangkap-di-kudus
Indra Warman alias Toni Togar	robbery( <i>fa'i</i> )Bank Lippo Terrain (2003)	Planner robbery( <i>fa'i</i> )CIMB Medan August 18, 2010	www.hariansumutpos.com/arsip/?p=64511
Fadli Sadama	robbery( <i>fa'i</i> )Lippo Bank Medan (2003)	Actor Robbery( <i>fa'i</i> )CIMB Medan August 18, 2010	http://nasional.vivanews.com/news/read/192192-fadli-rancang-teror-mirip-di-mumbai-india
Ustadz Oman Abdurahman	7 years imprisonment for train bomb	Previous members of Jamaat Tawhid Wal Jihad, joined JI in prisons Sukamiskin-Bandung	ICG 2007
Gema Beginning of Ramadan and eight students IPDN more	persecution students IPDN	join the JI in prisons Sukamiskin-Bandung	ICG 2007

<i>Name of</i>	<i>Previous</i>	<i>Cases</i>	<i>Source</i>
Imam Samudra	involved Bali bombing I	Planning Bali II of prisons Grobogan	ICG report 2007
Beni Irawan	Warden Prison Krobokan-Bali, converts	Helps to enter the laptop to Imam Samudra in prison cells	ICG report 2007

*Source:* Modifications Author of various source

### **PUNISHMENT AND THE DEATH PENALTY**

Main issue punishment is the administration of justice moral, because in the judgment implied coercion, reduction of pleasure, even-harm as a result of violations of the norms that have been done. And the punishment is expected to reestablish social justice be damaged as a result of violations of the norms that society holds. Bagaric (2001) quotes the definition of Herbert Morris, that punishment is defined as the placement of a person who is believed to have violated faiths commonly added to deprivation or expropriation freedom, where deprivation of liberty as a result of the incorrect behavior of the person. According Moris, then clarified by von Hirsch (Bagaric, 2001):

“Punishing someone consists of visiting a deprivation (*hard treatment*) on him, Because he has committed a wrong, in a manner that expresses disapprobation on the person for his conduct (*emphasis added*), or’ punishing someone consists of doing something painful or unpleasant to him, Because he has purportedly committed a wrong, under circumstances and in a manner that conveys disapprobation of the Offender for his wrong (Bageric, 2001). According (Mustafa, 2005), in general, the purpose of punishment in the end is that people do not commit crimes, which are then termed as deterrence special, and deterrence general or *deterrence*. Where, special deterrence and general deterrence contains two meanings, namely: fear of punishment, or better known by the *general deterrence* (deterrence), and fear of being punished for ever convicted, known as *specific deterrence* (deterrent)”. From that sense envisaged that the punishment given to those believed to have committed a violation of the norm (whether written or unwritten), in the form of giving something unpleasant, where giving something unpleasant because the person has committed an act that is considered reprehensible, wrong or insulted by the public. The expression also implies that punishment only to a particular act, and one can not be punished for acts he did not commit. For that there must be a strong belief that a person has committed a violation of the norms embraced by the people.

As for the sentencing is expected to impact a wide audience to refrain from any act or violation of these norms, and to those who have been awarded a penalty not repeat again wrongdoing or violate the norms of existing society. Although

punishing the form of something unpleasant, but still consider the balance between the blame for the deeds that have been done, with the possibility of improved behavior in the future. According to Bagaric, for punishment or sanctions as a result of the actions of someone who has violated the norms and moral No, for them to be given a sense of shame, guilt, and sanctioning is done by the party who has the authority, and the administration are legally permitted to give these sanctions (Bagaric, 2001). Bagaric explained shows that sanctions only done by a certain authority which by law has the authority to do so. Thus, the punishment can not be done by hand carelessly, but should only be done by certain parties who have a legitimate legal basis. In the explanation also reflected the orderly administration in terms of sanctions. It aims to minimize arbitrariness in terms of giving judgment.

Similarly Bagaric, Scott mentioned the five elements in the judgment, namely: (1) gives the suffering, (2) is given as a result of a criminal act or a mistake has been made, (3) is only granted to the perpetrators who commits an offense, (4) is given intentionally by another person (the institution) as a reaction to the breach, and (5) carried out by the appropriate authority to represent the embodiment of the rules or laws of the community where the offender committed the offense (Scott, 2008). So, punishment can be understood as a form of criticism or public censure against an act of deviation, which then becomes a form of social control. In practice, the condemnation or punishment may only be made by the law enforcement authorities. According to Scott, the punishment must be carried out by the competent authority in order to avoid retaliation or “vigilante”. According to Scott, there are at least five forms of punishment, namely rehabilitation, *deterrence*, incapacitation, retribution, and restorative justice (Scott, 2008).

In Indonesia, the death penalty is actually legitimate or justified legally because they are recognized in the Book of the Law Legal criminal, even though there are several ways of her to avoid the death penalty, such as by accepting the petition for clemency, forgiveness, or remission, so it is quite be imprisoned for a long time (lifetime) (Shoham, Beck, and Kett 2008).

Under the Code of penal (penal Code), Article 10 of the penal Code which are stelsel criminal differentiate into two groups:

1. Criminal Principal, comprising
  - (a) Capital punishment;
  - (b) Imprisonment;
  - (c) Criminal cover; (added by Act No. 20 of 1946)
  - (d) Imprisonment; and
  - (e) Criminal fines.

2. Additional criminal, consisting of:
  - (a) Criminal revocation of certain rights;
  - (b) Criminal deprivation of certain goods;
  - (c) Criminal announcement of the verdict.

In penology, awarding death penalty is often mentioned as a form of revenge (retribution). Levies are often associated with justice (*Retribution of justice*). The principle of this concept is: if we hurt someone, then we deserve to be hurt. This is the concept of punishment on those who committed the error, then punished the same as what he has done. The term is well known in this concept is the “eye for an eye”, or “life-paid lives.”

This approach assumes that all perpetrators of crimes to be guilty and accountable (penalized) for his mistakes. And sanctions should be worth as judged by the public will mistake. So, if the public considers such actions as a cruel, the offender shall also be given sanctions were cruel. Adherents Mashab punishment justice retributive (*retributive justice*) believes that the main function of the state is to provide security for every citizen to deal with every renum- possible criminals do. Thereby granting the appropriate punishment is a form of attention rather than as a form of responsiveness. Therefore, the demands of law-giving deserving of this can be explained using the theories of constitutional and social theories (Tadros, 2007).

Thinkers groups constitutional theory considers it important publishing penalty in law (constitution) to provide constitutional protection to the court and be a light to the government in response to security threats, relation to crime in general and terrorism in particular. While social theories as a guide to explore and unravel the differences are politically relevant differences of opinion about security, and the development of security engineering, in particular surveillance and risk management. Although according to Scott, the concept of punishment is becoming obsolete, especially in modern states, as assessed by many has drawbacks, such as lack of awareness that there are different social strata in society, and generally violent crimes committed by the lower middle class. But according to proponents of justice levy still rilefan applied, because this is a form of responsibility of the modern state to control or regulate the lives of its citizens.

Such statements Foucault quoted Tadros: *Regulatory mechanisms must be established to establish an equilibrium, maintain an average, establish a sort of homeostasis, and compensate for variations within this general population and its aleatory field. In a word, security mechanisms have to be installed around the random element inherent in a population of living beings so as to optimize a state of life* (Tadros, 2007: 662).

According to Tadros, statements Foucault depicts the analysis of Foucault on power relations as depiction of a change in the realm of politics and power. Although

it is in fact difficult to materialize, but when the state has taken responsibility to regulate the lives of its citizens, it should be subject to safeguards normative for the fulfillment of this responsibility, and become a guarantee for citizens.

## DISCUSSION

Giving the death penalty despite the justified legally, but it gives a more complicated problems than merely the execution of death row inmates make. The provision of the death penalty generally take a long time, because it is not infrequently the convict filed an objection or any attempt to cancellation of the decision. For example in the case of death row convicts Amrozi. Amrozi death sentence handed down in 2003, a new execution but held on November 9, 2008. That is, during the anticipation period, his fate uncertain. So it is likely to suffer a double, which not only physically due to being behind bars, but also related to the clarity of his fate. In addition, the waiting period can also be used (the jihadi ideologues) to disseminate the ideology Terrorism is currently developing more to ideology, so it can be transmitted to others without detectable or known to be easy. So the prison became a safe haven for them in carrying out the action, ranging from designing or planning to organize action, disseminate ideology, or recruiting members of the group. The report of the International Crisis Group in 2007 for example, which example involvement warden (clerk Prison Grobogan-Bali) named Beni Irawan who converted to Islam after interacting with Imam Samudra and his friends, then help by entering the laptop to Imam Samudra, which is then used as a tool in designing the attack Bali II. For example, it was agreed that capital punishment for terrorists is a last resort that should be pursued in an effort to minimize understand radical, then the element of immediacy must be considered, so that the possibility of the dissemination of ideology radical can be minimized.

As mentioned above, that the administration of the death penalty is not as simple executions, if the issue only on the premise that the administration of the death penalty in order to give deterrent effect to the audience, and minimize the development of ideology-the ideology of radical, then in fact it can be pursued through the placement of the prisoners in the ward special (sal insulation), which apart from the convict others. At the sociology, criticism of the death penalty for the perpetrators of crimes including terrorists come from the *utilitarian* standpoint, which considers that the granting of the death penalty is ineffective in providing deterrence (both deterrence specifically, and deterrence in general), and people do not benefit from it, at least the problem of terrorism is not necessarily completed by executing the perpetrators. Bagaric explain above, that judgment should be able to give shame to convict, so that the convict observed that his actions are reprehensible in the eyes of society. One thing that is different compared to what a convicted terrorist show, they seemed proud of their status. The provision of appropriate penalties which

often result in a terrorist group gaining the support of the surrounding community so that adds an obstacle for a successful response to such groups. It required patience and perseverance in the defense, intelligence operation to monitor their activities can be done, but not until they first attack. The success of prevention is necessary, but stability should still be maintained.

In addition, the “restraint” is also very important in the fight against terrorism. Efforts premature action could have an impact on the overall counter-terrorism. Therefore, the accuracy of the information is indispensable, including their legal legitimacy, and preparation so as to minimize casualties should not be. For the abolition and human rights advocates, maintain the death penalty is considered contrary to some of the principles and international standards of criminal prosecution. Minimum Standards Rules for the Treatment of Prisoner 1957 and the Covenant on Civil and Political in 1966 states that the purpose of punishment is to rehabilitate offenders. Should the convict be successfully rehabilitated and change its behavior, it does not mean much either to convict or for society, because the convict will be executed. Judging from the above-mentioned human rights instruments, it appears there is still confusion about the provision. On the one hand, human rights considers any act of enforced disappearances lives are in violation of the right to life. But on the other side of the death penalty is still maintained and justified as a means of overcoming some kind of specific criminal acts deemed to threaten the safety of mankind.

The provision of the death penalty requires an assurance that appropriate actions for a mistake. It required an appropriate investigative methods in the proof, and can not only be based a subjective sense of the parties in the criminal justice process. Whereas, if the execution has been carried out, then the decision can no longer be withdrawn or canceled. The concept of justice levy generally prefer the public’s view of the level of “cruelty” an offense, so that might cause bias even conflicts of interest in the investigation process. While, in theory, the basic answer from search responsible will be wrong or evil obtained through an objective investigation (Tadros, 2007). According to Tadros, many opinions of observers and experts on criminal law and then have an impact on the implementation of the instruments of investigation and trial. This then raises the question: who exactly is authorized to impose penalties. According to him, the criminal trial should have been based on the theory of criminal investigation. So, the trial should be a process of communication from the parties to find out who is responsible for the occurrence of the crime. This communication process can be interpreted as a more humane approach (*personal approach*), which is within certain limits allows reintegration.

Giving the death penalty is regarded as another form of retaliation was no longer applicable to modern states. Legally, the application of capital punishment to the convicts refer to the Penal Code still refers to the Wetboek van Strafrecht (WvS)



made in the Netherlands. While the Netherlands since 1983 no longer apply the death penalty (except for crimes of war or military law). But it is not followed by Indonesia, which considers the potential for acts that threaten the public interest is more likely to occur in Indonesia compared the Netherlands, as well as a security guard facilities in the Netherlands is more complete than in Indonesia (Chazawi, 2011: 30). It is to be considered the Indonesian government still has the death penalty, even though the country becomes a reference of the law no longer apply.

According to Scott, the levy approach is a relic of past civilization, which is currently just a “dessert” in criminal law country-modern state, though still listed, but is no longer applied. Criticizing the opinions of the levy support thinking which assumes that justice is distributed in the form of punishment. According to Scott, the problems that exist in the statement are thought focused on the seriousness of the crime, but not to the attention of the offender and the consequences of his actions (Scott, 2008). According to Scott mistake on the notion of retribution is that we live in a social environment that is unequal, in which the only effective law enforcement on the perpetrators of the working class (crimes against property). And in fact, most people are currently serving sentences in general are poor people, who committed the crime for survival. Scott cites Braitwaite: how can we punish the perpetrators with a bang when criminals a large class of can not be punished. Scott also believes, no one can guarantee that harsh punishment would be able to make the perpetrators of crimes to be good. And the embodiment of prosperity and security reasons does not necessarily justify inhumane act against perpetrators of crimes. Chimed cruel acts offender with no less cruel action, now, who has lost his humanity (Scott, 2008). There is a double standard that is reflected in the international response to the application of the death penalty in Indonesia. Australia, for example, is strongly opposed to the death penalty for citizens in case of drug abuse (the Bali *Nine* Case), but seemed to be quiet and respectful of the rule of law Indonesia in giving the death penalty to terrorists.

Here we can see the relativity of meaning on the magnitude of the evil that exists. For Australia, due to the impact of drug abuse is not a matter of concern, it is regarded as a terrorist act heinous crimes against humanity. In contrast to Indonesia who consider drug abuse crime and terrorism as a specific crime, which require special handling as well, with different characteristics, but equally far-reaching impact. So for actors peredar drugs can also apply the death penalty .Terrorism as an extraordinary crime, it was likely a part of transnational crime (*transnational crime*), thus allowing attract the attention of not only the public, but also politically, so that the political agenda its own. When this happens, although not included in the political process, but it is very likely to be able to influence the investigation process was very long. Although the level of assumptions, but these concerns may appear in the middle level of confidence in law enforcement in Indonesia, coupled with the impression arises that political dynamics can influence criminal policy.

## CONCLUSION

Provision death penalty for the perpetrators of terrorism still remains a debate, where the levy of “also gave” death to the perpetrator turned out to not be able to give a sense of security to avoid the threat of terror to the citizens until today. Harsh sentencing perpetrators of terror by killing even though it did not necessarily lead to the threat of terror is reduced. The implementation of the death penalty on perpetrators of terrorism need to be re-examined where the policy as they do not give the benefit of their punishment for the offender and the community. Or public stress as a result of a terrorist act is not necessarily lost and relieved by the killing of the perpetrators. Similarly, the actors, who feel there is no point to change thinking and behavior will still remember him executed. Thus, in a period of waiting that prefer not to stop the “struggle”, ranging from planning new attacks, until the expansion network, and recruit new members. Punishment die actually still be “replaced” by giving choices to the actors with the provision he would cooperate tackling acts of terrorism, or at least not repeat and disseminate their radical ideology. So with the punishment does not make us ( public) become inhuman.

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