

Changes in the Regulation of Terrorism Financing in Law Number 1 of 2023 Concerning the Criminal Code

Bintang Wicaksono Ajie

Faculty of Law, University of Indonesia, Indonesia

Corresponding author: bintang.wicaksono.ajie@gmail.com

Keywords:

Crime, Criminal Code,
Terrorism, Terrorism
Financing

Abstract

Criminal Acts of Terrorism (CAT) are a global threat that threatens national security as well as regional and global peace and stability, including Indonesia. Terrorism financing is one of the key factors that enable terrorist groups to carry out acts of terrorism in Indonesia. Therefore, efforts to prevent and eradicate the Criminal Act of Terrorism Financing (CATF) are very important to stop the CAT. In its development, CATF can be seen as a criminal act that stands alone and is different from its parent crime, terrorism. This is because terrorism financing has peculiarities as well as different modus operandi. Therefore, the international community includes it in the anti-money laundering and terrorism financing regime. In response to this, Indonesia has separated CATF from CAT through Law Number 9 of 2013 concerning the Prevention and Eradication of CATF. Over time, the Government of Indonesia has ratified and enacted the Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code (CC), which also regulates CATF. This research uses normative legal research methods through document review. This study analyzes the different arrangements of the CATF after enacting the new Criminal Code Law. Differences in the regulation of the CATF after the enactment of the new Criminal Code include the CATF being part of the terrorism criminal act regime and removing the phrase "intentionally" in CATF-related offenses, a decrease in the threat of criminal fines for CATF.

Submitted: 30 April 2023

Accepted: 31 May 2024

Published: 1 June 2024

Copyright (c) Author



To cite this article: Ajie, B. W. 2024. *Changes In the Regulation of Terrorism Financing in Law Number 1 of 2023 Concerning the Criminal Code*. *AML/CFT Journal: The Journal of Anti Money Laundering and Countering the Financing of Terrorism* 2(2):100-110, <https://doi.org/10.59593/amlcft.2024.v2i2.69>

Introduction

Criminal Acts of Terrorism (CAT) are a global threat that threatens national security and regional and global peace and stability. In Indonesia itself, terrorism has inflicted huge losses in terms of security and economy. In 2002, a series of bomb attacks in Bali killed 202 people and injured more than 200 others. The attacks also caused huge economic losses, especially in the tourism sector. Since then, Indonesia has been the target of several terrorist attacks, including bomb attacks in Jakarta in 2009 and 2016.

Indonesia has criminalized criminal acts of terrorism through Law Number 15 of 2003 concerning the Government Regulations in Lieu of Law instead of Law Number 1 of 2002

concerning the Eradication of Criminal Acts of Terrorism. Law Number 1 of 2000 has been amended through Law Number 5 of 2018. The financing of terrorism is one of the key factors that enable terrorist groups to carry out their actions.¹ Countermeasures to finance terrorism are very important to be able to combat criminal acts of terrorism. The eradication of acts of terrorism and the financing of terrorism must be carried out simultaneously and continuously. This is important to ensure terrorist cells can be completely shut down.

The Indonesian government has previously regulated terrorism financing as a preparatory act in the Terrorism Law (before the enactment of Law Number 9 of 2013 concerning the Prevention and Eradication of Terrorism Financing Crimes). Bank Indonesia has also issued regulations requiring financial institutions to monitor suspicious transactions and report them to the authorities. Similarly, relevant institutions have also supported efforts to eradicate criminal acts of terrorism financing. Indonesia also cooperates with other countries and international organizations in countermeasures to counter-terrorism financing. Indonesia will become a full member of the Financial Action Task Force (FATF) in 2023 and has implemented international standards to prevent and tackle terrorism financing.

This criminal act of terrorism financing can be seen as a criminal act that stands alone and is different from the parent crime, namely the criminal act of terrorism because terrorism financing has different peculiarities and modus operandi.² Terrorism financing is all actions in the context of providing, collecting, giving, or lending funds, either directly or indirectly, intending to be used and/or used to carry out terrorist activities, terrorist organizations, or terrorists.³ The international community has included it in a regime that is anti-money laundering and terrorism financing. The Government of Indonesia has separated the criminal act of terrorism financing from the criminal act of terrorism through Law Number 9 of 2013 concerning the Prevention and Eradication of Criminal Acts of Terrorism Financing. Through Law Number 9, which has been promulgated since March 13, 2013, it is explained that criminal acts of terrorism always require support in various forms, such as firearms, sharp weapons, explosives, vehicles, residences, and other facilities needed to facilitate acts of terrorism. All forms of support can be interpreted as funding according to the definition of funds in Law Number 9 of 2013.

Money or funds in criminal acts of terrorism are used to carry out actions, not as goals or objectives to be achieved.⁴ Perpetrators of terrorism crimes will resort to various means to obtain funds, both legally and through criminal activities.⁵ The funds collected are then used to acquire weapons, build networks or recruit members, buy explosives, train members, or mobilize members to a place to carry out acts of terror.⁶ Based on data obtained from the Indonesian Financial Transaction Reports and Analysis Center (INTRAC), mitigations that have been carried out by the Supervisory and Regulatory Agency (SRA) and Law Enforcement

¹ Martin Rudner, "Using Financial Intelligence Against the Funding of Terrorism," *International Journal of Intelligence and CounterIntelligence* 19, no. 1 (2006): 32–58.

² M. Arief Amrullah, "Criminal Law Policies in an Effort to Tackle Criminal Acts of Terrorism Financing," *Jurnal Cakrawala Hukum* 14, no. 1 (2023): 86–95.

³ Pasal 1 Angka 1 Undang-Undang Nomor 9 Tahun 2013 tentang Pencegahan dan Pemberantasan Tindak Pidana Pendanaan Terorisme. [Article 1 number 1 of Law Number 9 of 2013 concerning the Prevention and Eradication of Terrorism Financing Crimes].

⁴ Arie Afriansyah, Ahmad Khozi, and M Akila Wargadalem, "Indonesia's Laws and Policies in Combatting Terrorism Financing: An Update Analysis," *AML/CFT Journal The Journal of Anti Money Laundering and Countering the Financing of Terrorism* 2, no. 1 (2023): 1–18.

⁵ Tom Keatinge and Kerstin Danner, "Assessing Innovation in Terrorist Financing," *Studies in Conflict & Terrorism* 44, no. 6 (J2021): 455–472.

⁶ Sri Yunanto et al., "Misuse of Islamic Charity for Terrorism in Indonesia: Modus, Countermeasures, and Challenges," *Studies in Social Science Research* 4, no. 3 (2023): p1.

Agencies (LEA) related to Terrorism Financing and Financing the Proliferation of Weapons of Mass Destruction in the period 2019 to mid-2021 can be seen in Table 1.⁷

Table 1. Mitigation that has been Carried out by SRA and LEA for Criminal Acts of Terrorism and Financing of Proliferation of Weapons of Mass Destruction

Institution	Type
Indonesian National Police (Indonesian: <i>Kepolisian Republik Indonesia</i> , or POLRI)	<p>Special Detachment 88/Anti-Terror (Densus 88/AT)</p> <ol style="list-style-type: none"> 1. Agree on a joint agreement with 13 relevant Ministries/Institutions (Ministry of Political, Legal, and Security Affairs, Ministry of Home Affairs, Ministry of Law and Human Rights, Ministry of Justice, the Prosecutor Law, National Counter-Terrorism Agency (BNPT), Indonesia State Intelligence Agency (BIN), The Financial Services Authority (OJK), Bank Indonesia (BI), and the Indonesian Financial Transaction Reports and Analysis Center (INTRAC) on the prevention of Criminal Acts of Terrorism Financing through Non-Profit Organizations (NPOs). 2. Publish the latest List of Suspected Terrorists and Terrorist Organizations (DTTOT) 2019 and 2020 3. Carry out law enforcement against administrators of NPOs who are proven to have committed Terrorism Financing Crimes. 4. Included several NPOs and their administrators in the DTTOT list in 2020. <p>Intelligence and Security Agency</p> <ol style="list-style-type: none"> 1. Conduct investigations of persons and corporations allegedly associated with individuals and parties on the sanctions list. 2. Conduct investigations into funding sources of Terror / Radical groups.
Prosecutors	<p>The Directorate of Terrorism and Transnational Crimes has successfully handled terrorism financing crimes, namely 3 (three) cases in 2018, 4 (four) cases in 2019, 7 (seven) cases in 2020, and 7 (seven) cases in 2021 (until April 2021).</p>
Courts	<ol style="list-style-type: none"> 1. In the district court, hearings on cases of terrorism and terrorism financing are carried out cumulatively and alternatively. 2. Examine and prosecute 18 cases of Terrorism Financing Crimes.
Funding for the Proliferation of Weapons of Mass Destruction (WMD) of a general nature	<ol style="list-style-type: none"> 1. A Joint Regulation has been issued between the Minister of Foreign Affairs, the Chief of National Police, the Head of INTRAC, and the Head of the Nuclear Energy Regulatory Agency concerning the Inclusion of the Identity of Persons or Corporations in the List of Funding for the Proliferation of Weapons of Mass Destruction (WMD), and the Immediate Blocking of Funds Owned by Persons and Corporations Listed in the Funding for the Proliferation of WMD List. 2. Indonesia has joined as a member state in the "Treaty on the Non-Proliferation of Nuclear Weapons" (NPT), "The Convention on the Physical Protection of Nuclear Material (CPPNM), and its Amendment," "Convention on Nuclear Safety, Comprehensive Nuclear Test Ban Treaty" (CTBT), "International Convention for the Suppression of Acts of Nuclear Terrorism", and "IAEA Additional Protocol."

⁷ Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK) [Indonesia Financial Transaction and Analysis Center], *Penilaian Risiko Indonesia Terhadap Tindak Pidana Pendanaan Terorisme dan Pendanaan Proliferasi Senjata Pemusnah Massal Tahun* [Indonesia's Risk Assessment of Terrorism Financing and Financing of Weapons of Mass Destruction Proliferation in 2019] (2021): 33-34.

INTRAC data for 2022 (until December 2022), the number of analysis results (AR) related to suspected acts of terrorism and/or terrorism financing is 9% (94 AR), consisting of 59 Proactive AR and 35 AR Inquiries. From January 2003 to December 2022, the number of ARs for investigators involved in suspected terrorist acts and/or terrorist financing is 452, consisting of 298 Proactive AR and 154 AR Inquiry (including Inquiries from January 2007 to December 2008 that were not registered as AR during the period).⁸ Data from Bank Indonesia contains 5 (five) rulings that are cases of Terrorism Financing based on data copies of court decisions for 2015-2020. Some of the information obtained from the ruling is as follows:⁹

- a. *There are perpetrators whose job profile is self-employed. In addition, some perpetrators are not working, and their job profiles cannot be known.*
- b. *The profile of the business entity involved could not be identified.*
- c. *Most cases are in DKI Jakarta, which is as many as 3 (three) cases. However, there are also cases where the region cannot be known.*
- d. *Products and services predominantly used in Non-Bank Foreign Exchange Business Activities (KUPVA) are USD Foreign Banknotes (UKA) products. In addition, the mechanism of buying and selling UKA cannot be identified. However, in Fund Transfer Providers other than banks, the dominant products and services used are Cash to Account (Outgoing), followed by Account to Account (Outgoing).*
- e. *The most frequently used delivery channel is the Non-Bank PTD Office, which has as many as 4 (four) cases. Other delivery channels used are the Non-Bank KUPVA Office.*¹⁰

Data from a survey conducted by Bank Indonesia found that:¹¹

- a. *There are 3 (three) typologies of Terrorism Financing Crimes that have the highest risk in Non-Bank KUPVA, namely Use of Funds: Domestic Terrorism Operations - Purchase of Weapons and Explosives, Use of Funds: Domestic Terrorism Operations - False Identity Documents, Use of Funds: Domestic Terrorism Operations - Travel to and from the location of terrorist acts.*
- b. *There are 3 (three) typologies of Terrorism Financing Crimes that have the highest risk in PTD Other than Banks, namely Collection of Funds - Illegal: Proceeds of Other Criminal Crimes, Use of Funds: Domestic Terrorism Operations - False Identity Documents, Use of Funds: Domestic Terrorism Operations - Travel to and from the location of the act of terrorism.*
- c. *There are 3 (three) typologies of Criminal Acts of Terrorism Financing that have the highest risk to EU and ED operators other than banks, namely Collection of Funds - Illegal: Kidnapping for Ransom, Collection of Funds - Illegal: Proceeds of Other Criminal Crimes, and Use of Funds: Domestic Terrorism Operations - Travel to and from the location of acts of terrorism.*
- d. *There are 3 (three) typologies of Terrorism Financing Crimes that have the highest risk to APMK organizers other than banks, namely Fund Collection - Legal: Private Sponsorship (Terrorist Financier / Fundraiser), Fund Collection - Legal: Irregularities in Collecting Donations Through CSOs, Fundraising - Legal: Crowdfunding.*¹²

These data show that the development of the typology and modus operandi of terrorism financing crimes that occur in Indonesia is increasingly troubling because it continues to

⁸ Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK) [Indonesia Financial Transaction and Analysis Center], *Buletin Statistik APUPPT Vol 154 - Edisi Desember*, 2022.

⁹ Bank Indonesia, *Kajian Tipologi Tindak Pidana Pencucian Uang, Tindak Pidana Pendanaan Terorisme, dan Pendanaan Proliferasi Senjata Pemusnah Massal [A Study of the Typology of Money Laundering, Terrorism Financing, and Financing the Proliferation of Weapons of Mass Destruction]*, 2021.

¹⁰ *Ibid*

¹¹ *Ibid*

¹² *Ibid*

develop and needs to be further anticipated by stakeholders, especially law enforcement. Currently, there is a new criminal law regulation that has been passed and promulgated by the Government of Indonesia through Law of the Republic of Indonesia Number 1 of 2023 concerning the New Criminal Code (New CC) on January 2, 2023, after previously being approved at the Plenary Meeting of the House of Representatives of the Republic of Indonesia on December 6, 2022. The regulation in the New Criminal Code also regulates the criminal act of terrorism financing. This study aims to examine more deeply the differences in regulations regarding countering terrorism financing crimes after the promulgation of the New Criminal Code in Indonesia. This research adopts normative legal research methods through the Document Review approach. According to Soerjono Soekanto, one type of legal research is normative legal research, which examines law as a norm. The purpose of normative legal research is to produce legal arguments, theories, or concepts to guide solving problems faced and discussed,¹³ especially in the context of criminal acts of terrorism financing. Peter Mahmud Marzuki argues that legal research should only refer to legal research without distinguishing between normative, empirical, or sociological research. According to him, legal research, or *rechtsonderzoek* in Dutch, strictly refers to normative research.¹⁴

This research uses two approaches, namely the legislative and conceptual approaches. This approach will be applied by in-depth analysis of evolving laws and doctrines related to terrorism financing. This is regulated in Law Number 9 of 2013 concerning the Prevention and Eradication of Criminal Acts of Terrorism Financing and Law Number 1 of 2023 concerning the New CC.

The Criminal Act of Terrorism Financing is part of the Terrorism Criminal Regime in the New Criminal Code

Article 602 of the New Penal Code states that:

*"Any person who provides, collects, gives, or lends funds, either directly or indirectly, to be used in whole or in part to commit a Criminal Act of terrorism, terrorist organization, or terrorist, shall be convicted of the Criminal Act of financing terrorism with a maximum imprisonment of 15 (fifteen) years and a maximum fine of category V."*¹⁵

Based on Article 622 paragraph (1) letter bb of the New Criminal Code, it is stated that:

*"Article 4 of Law Number 9 of 2013 concerning the Prevention and Eradication of Criminal Acts of Terrorism Financing is revoked and declared invalid."*¹⁶

Furthermore, based on Article 622 paragraph (20) of the New Criminal Code, it is stated that:

*"In the event that the provisions of the Article on the Criminal Act of Financing Terrorism as referred to in paragraph (1) point bb refer to Article 4 of the relevant Law, the reference is replaced by Article 602 in this Law"*¹⁷

This means that the provisions of Article 602 of the New Criminal Code have completely replaced the provisions of Article 4 of Law Number 9 of 2013 concerning the Prevention and Eradication of Terrorism Financing, which essentially regulates the punishment for people who

¹³ Soerjono Soekanto, Sri Mamudji, *Metode Penelitian Normatif [Normative Research Methods]*, Jakarta: Rajawali Pers, 2. 1995.

¹⁴ Peter Mahmud Marzuki, *Penelitian Hukum [Legal Research]*, Jakarta: Kencana Prenada Media Grup, 55. 2011.

¹⁵ Pasal 602 Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana [Article 602 of Law Number 1 of 2023 concerning the Criminal Code].

¹⁶ Pasal 622 Ayat (1) Huruf Bb Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana [Article 622 paragraph (1) letter bb of Law Number 1 of 2023 concerning the Criminal Code]

¹⁷ Pasal 622 Ayat (20) Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana [Article 622 paragraph (20) of Law Number 1 of 2023 concerning the Criminal Code].

deliberately assist in financing terrorism crimes, namely imprisonment for a maximum of 15 years, a fine of IDR 1,000,000,000.00.¹⁸

"Any person who knowingly provides, collects, gives, or lends Funds, either directly or indirectly, intending to be used in whole or in part to commit a Criminal Act of Terrorism, the terrorist organization, or terrorist shall be convicted of committing a criminal act of terrorism financing with a maximum imprisonment of 15 (fifteen) years and a maximum fine of IDR 1,000,000,000.00."

Other provisions in Law Number 9 of 2013 concerning the Prevention and Eradication of Criminal Acts of Terrorism Financing other than those stipulated in Article 4 of the Law remain in force, and there are no changes in the New Criminal Code. However, if these other provisions refer to Article 4 of Law Number 9 of 2013 concerning the Prevention and Eradication of Criminal Acts of Terrorism Financing, in the future, it will be replaced, referring to Article 602 of the New Criminal Code (Law Number 1 of 2023). What is interesting about the provisions in the New Criminal Code is the laying down of the regulation of the Criminal Act of Terrorism Financing in Chapter XXXV of the Special Crime of the Second Part of the Criminal Act of Terrorism. The Criminal Act of Terrorism Financing is part of the Criminal Act of Terrorism Regime. Therefore, this arrangement is like going backward as before the regime of Law Number 9 of 2013. The regulation of Law Number 9 of 2013, which separates Criminal Acts of Terrorism from Criminal Acts of Terrorism Financing, is in line with the provisions of the international legal regime that includes Criminal Acts of Terrorism Financing in the Anti-Money Laundering and Financing of Terrorism Regime (AML-CFT).

Removal of the Phrase "*intentionally*" in Offenses Related to Terrorism Financing Crimes

The New Criminal Code has removed the phrase "*intentionally*" in the offense related to the criminal act of financing terrorism. Meanwhile, in Article 4 of Law Number 9 of 2013 concerning the Prevention and Eradication of Terrorism Financing Crimes, there is a phrase "*intentionally*" to be able to ensnare perpetrators of terrorism financing crimes. However, if we look further, the absence of the phrase "*intentionally*" stipulated in Article 602 of the Criminal Code does not eliminate the element of intentionality in the offense. This is a significant and fundamental change in the New Criminal Code because the aspect of intentionality is part of criminal liability regulated in Article 36 of the New Criminal Code, namely:

Article 36

*"(1) Everyone can only be held accountable for a Criminal Offence committed intentionally or through negligence. (2) Acts that can be punished are Criminal Acts committed intentionally, while Criminal Acts committed due to negligence can be punished if expressly stipulated in laws and regulations."*¹⁹

The explanation of Article 36 of the New Criminal Code, namely:

Explanation of Article 36

"Paragraph (1) of this provision confirms the principle of no crime without fault. Doctrinally, the form of error can be both intentional and negligence."

"Paragraph (2) of the provisions in this paragraph is intended to state that every criminal act in the laws and regulations must always be considered to have been

¹⁸ Pasal 4 Undang-Undang Nomor 9 Tahun 2013 Tentang Pencegahan Dan Pemberantasan Tindak Pidana Pendanaan Terorisme [Article 4 of Law Number 9 of 2013 concerning the Prevention and Eradication of Terrorism Financing Crimes].

¹⁹ Pasal 602 Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana [Article 602 of Law Number 1 of 2023 concerning the Criminal Code].

*committed intentionally, and this element of intentionality must be proven at every stage of the case examination. Other forms of willfulness are usually formulated in laws and regulations using the terms 'with intent,' 'knowing,' 'knowing it,' 'when it is known,' or 'while it is known.'"*²⁰

The regulation in the New Criminal Code can be concluded that all criminal acts regulated in laws and regulations must always be considered to have an element of intentionality, and this element must always be proven in the examination stage of the case even though in the future the framer of the law will no longer need to write or regulate the phrase "*intentionally*" in the Article or Criminal Delicts because the element of intentionality as part of this criminal responsibility will later refer to the provisions in Article 36 of the New Criminal Code.

The Criminal Act of Terrorism Financing is Only Part or A Series of Efforts to Prepare for Criminal Acts in the New Criminal Code

The criminal act of terrorism financing is ostensibly part or series of efforts to prepare criminal acts as stipulated in Article 15 and Article 612 of the New Criminal Code. Even though we know that the Criminal Act of Financing Terrorism is a criminal act that stands alone and is different from the Criminal Act of Terrorism, this is because the Criminal Act of Financing Terrorism has characteristics and modus operandi different from the Criminal Act of Terrorism itself. Preparation to commit a Criminal Act occurs if the perpetrator seeks to obtain or prepare means in the form of tools, collect information or compile action plans, or perform similar actions intended to create conditions for the commission of an act that is directly intended for the resolution of the Criminal Act and Preparation for committing a criminal act if expressly stipulated in the Law.²¹

Preparation to commit a Criminal Act is not punishable if the perpetrator stops or prevents the possibility of creating conditions for the commission of an act directly intended for the resolution of the Criminal Act.²² The criminal act of terrorism itself, including provisions regarding malicious conspiracy, preparation, experimentation, and assistance regulated in the Law on Serious Crimes against Human Rights, Criminal Acts of Terrorism, Criminal Acts of Corruption, Criminal Acts of Money Laundering, and Criminal Acts of narcotics applies under the provisions in the Law.²³

Decreasing the Threat of Criminal Fines in the New Criminal Code

Regarding sanctions, in the New Criminal Code, the threat of fines has been classified into 8 (eight) classifications of fine categories, namely Category I to Category VIII. Article 79 of the New Criminal Code states that:²⁴

²⁰ Penjelasan Pasal 602 Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana [Explanation of Article 602 of Law Number 1 of 2023 concerning the Criminal Code].

²¹ Pasal 15 Ayat (1) dan (2) Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana [Article 15 Paragraphs (1) and (2) of Law Number 1 of 2023 concerning the Criminal Code].

²² Pasal 16 Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana [Article 16 of Law Number 1 of 2023 concerning the Criminal Code].

²³ Pasal 612 Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana [Article 612 of Law Number 1 of 2023 concerning the Criminal Code].

²⁴ Pasal 79 Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana [Article 79 of Law Number 1 of 2023 concerning the Criminal Code].

Article 79

"(1) The maximum penalty shall be determined based on:

- a. category I, IDR 1,000,000.00 (one million rupiah);*
- b. category II, IDR 10,000,000.00 (ten million rupiah);*
- c. category III, IDR 50,000,000.00 (fifty million rupiah);*
- d. category IV, IDR 200,000,000.00 (two hundred million rupiah);*
- e. category V, IDR 500,000,000.00 (five hundred million rupiah);*
- f. category VI, IDR 2,000,000,000.00 (two billion rupiah);*
- g. category VII, IDR 5,000,000,000.00 (five billion rupiah); and*
- h. category VIII, IDR 50,000,000,000.00 (fifty billion rupiah)*

(2) In the event of a change in the value of money, the provisions for the penalty amount shall be determined by Government Regulation."

Referring to the provisions of the New Criminal Code Article 602 of the New Criminal Code, the criminal threat that can be imposed on perpetrators of the Terrorism Financing Crime is a maximum prison sentence of 15 (fifteen) years and a maximum fine of category V. The threat of imprisonment has not changed, which still stipulates a maximum prison sentence of 15 (fifteen) years. However, there is a change for the threatened fine where the category V fine, according to the New Criminal Code, is a maximum of IDR 500,000,000.00 (five hundred million rupiah). This means that there is a reduction in the threat of fines for perpetrators of terrorism financing crimes, where in Law Number 9 of 2013 concerning the Prevention and Eradication of Terrorism Financing Crimes, fines are threatened with a maximum of IDR 1,000,000,000.00 (one billion rupiah). This is quite unfortunate, considering the spread of terrorism financing actions is currently increasingly worrying and requires more intense efforts from law enforcement and the government to eradicate these criminal acts of terrorism financing.

Terrorism as a Special Crime in the New Criminal Code

The explanation of the New Criminal Code states that Terrorism Crimes are included in a separate grouping along with serious crimes against human rights, corruption crimes, money laundering crimes, narcotics crimes in 1 (one) separate chapter called '*Special Crime Chapter*'.²⁵ The placement in separate chapters is based on specific characteristics, namely:²⁶

- "a. the impact of victimization (of the victim) is large;*
- b. often transnational organized crime;*
- c. the arrangement of the criminal procedure is of a special nature;*
- d. often deviates from the general principles of material criminal law;*
- e. the existence of law enforcement support agencies that are of a special nature and authority (for example, the Corruption Eradication Commission, the National Narcotics Agency, and the National Human Rights Commission);*
- f. supported by various international conventions, both ratified and unratified; and*
- g. is an act considered very evil (super mala per se) and despicable and strongly condemned by society (strong people condemnation)."*²⁷

²⁵ Penjelasan Umum Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana [General Explanation of Law Number 1 of 2023 concerning the Criminal Code].

²⁶ *Ibid*

²⁷ *Ibid*

The regulation of the '*Special Crime Chapter*' does not reduce the existing authority of law enforcement agencies and remains authorized to deal with serious crimes against human rights, terrorism crimes, corruption crimes, money laundering crimes, and narcotics crimes.²⁸ Criminal acts of terrorism and terrorism financing (which in the New Criminal Code are included in the regime of criminal acts of terrorism) are considered by lawmakers as special crimes that require extraordinary efforts / extraordinary in handling and countermeasures. Efforts to eradicate special types of crimes, especially terrorism and terrorism financing, need to be strengthened and strengthened to prevent future acts of terror. These efforts can be made by regulating more concrete and firm implementation regulations, developing apparatus human resources through education and training, and strengthening facilities and infrastructure to combat criminal acts of terrorism and terrorism financing.

Conclusion

Based on this study, there are changes in the regulation in the Criminal Act of Terrorism Financing regulated in Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code), namely:

1. The placement of the regulation of the Criminal Act of Terrorism Financing in Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) is in Chapter XXXV of the Special Crime Part of the Second Criminal Act of Terrorism. The provisions of the New Criminal Code for the Financing of Terrorism are part of the Terrorism Criminal Regime. The regulation of Law Number 9 of 2013 separates Terrorism Crime from Terrorism Financing Crime in line with the provisions of the international legal regime that includes Terrorism Financing Crime in the Anti-Money Laundering and Terrorism Financing Regime (AML/CFT).
2. The New Criminal Code has removed the phrase "intentionally" in the offense related to the criminal act of financing terrorism. Meanwhile, in Article 4 of Law Number 9 of 2013 concerning the Prevention and Eradication of Terrorism Financing Crimes, there is a phrase "*intentionally*" to be able to ensnare perpetrators of terrorism financing crimes. If we look further, the absence of the phrase "*intentionally*" stipulated in Article 602 of the Criminal Code does not eliminate the element of intentionality in the offense. This is a significant and fundamental change in the New Criminal Code because the element of intentionality is part of criminal liability regulated in Article 36 of the New Criminal Code. The regulation of the Criminal Act of Terrorism Financing regulated in Law Number 1 of 2023 concerning the New Criminal Code is ostensibly only part or series of efforts to prepare criminal acts as stipulated in Article 15 and Article 612 of the New Criminal Code. Even though we know that the Criminal Act of Financing Terrorism is a criminal act that stands alone and is different from the Criminal Act of Terrorism, this is because the Criminal Act of Financing Terrorism has characteristics and modus operandi different from the Criminal Act of Terrorism itself.
3. Regarding criminal sanctions, there is no change regarding the maximum penalty for imprisonment in Law Number 1 of 2023 concerning the Criminal Code (New CC), which remains a maximum of 15 (fifteen) years imprisonment, the same as the regulation in Law Number 9 of 2013 concerning the Prevention and Eradication of Criminal Acts of Terrorism Financing. However, there is a change in the maximum penalty for fines, where Law Number 1 of 2023 concerning the new Criminal Code regulates a maximum fine of category V or IDR 500,000,000.00 (five hundred million rupiah). This threat is reduced from the criminal threat of fines regulated in Law Number 9 of 2013 concerning the Prevention and Eradication of Terrorism Financing Crimes,

²⁸ *Ibid*

where in Law Number 9 of 2013, the criminal threat of fines that can be imposed is a maximum of IDR 1,000,000,000.00 (one billion rupiah). So that there is a decrease in the threat of criminal fines in the New Criminal Code.

4. In the Explanation of the New Criminal Code, it is stated that Terrorism Crimes are included in a separate grouping along with serious crimes against human rights, corruption crimes, money laundering crimes, and narcotics crimes in one separate chapter named '*Special Crime Chapter.*' With the regulation of the '*Special Crime Chapter,*' the authority that already exists in law enforcement agencies is not reduced and remains authorized to handle serious crimes against human rights, terrorism crimes, corruption crimes, money laundering crimes, and narcotics crimes. Therefore, in the future, efforts to eradicate these types of crimes, especially terrorism and terrorism financing, need to be strengthened and strengthened to prevent terror acts.

References

- Afriansyah, Arie, Ahmad Ghazi, and M Akila Wargadalem. "Indonesia's Laws and Policies in Combatting Terrorism Financing: An Update Analysis." *AML/CFT Journal The Journal of Anti Money Laundering and Countering the Financing of Terrorism* 2, no. 1 (2023): 1–18.
- Amrullah, M. Arief. "Criminal Law Policies in an Effort to Tackle Criminal Acts of Terrorism Financing." *Jurnal Cakrawala Hukum* 14, no. 1 (2023): 86–95.
- Bank Indonesia, *Kajian Tipologi Tindak Pidana Pencucian Uang, Tindak Pidana Pendanaan Terorisme, dan Pendanaan Proliferasi Senjata Pemusnah Massal [A Study of the Typology of Money Laundering, Terrorism Financing, and Financing the Proliferation of Weapons of Mass Destruction]*, 2021.
- Elemanya, A. Vincent. "Terrorism and Global Security: A Study of Islamic State of Iraq and Syria (ISIS)." *Global Journal of Arts, Humanities and Social Sciences* 11, no. 6 (2023): 63–78.
- Indonesian Constitutional Court. Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana [Law Number 1 of 2023 concerning the Criminal Code].
- Indonesian Constitutional Court. Undang-Undang Nomor 9 Tahun 2013 tentang Pencegahan dan Pemberantasan Tindak Pidana Pendanaan Terorisme [Law Number 9 of 2013 concerning the Prevention and Eradication of Terrorism Financing Crimes].
- Indonesian Constitutional Court. Undang-Undang Republik Indonesia Nomor 15 Tahun 2003 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Republik Indonesia Nomor 1 Tahun 2002 tentang Pemberantasan Tindak Pidana Terorisme menjadi Undang-Undang jo. Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2002 tentang Pemberantasan Tindak Pidana Terorisme Sebagaimana telah Diubah terakhir kali dengan Undang-Undang Nomor 5 Tahun 2018. [Law of the Republic of Indonesia Number 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law of the Republic of Indonesia Number 1 of 2002 concerning the Eradication of Terrorism Crimes into Law jo. Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Terrorism Crimes as last amended by Law Number 5 of 2018].
- Keatinge, Tom, and Kerstin Danner. "Assessing Innovation in Terrorist Financing." *Studies in Conflict & Terrorism* 44, no. 6 (2021): 455–472.
- Marzuki, Peter Mahmud, *Penelitian Hukum [Legal Research]*, Jakarta, Kencana Prenada Media Grup, 2011.
- Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), *Penilaian Risiko Indonesia Terhadap Tindak Pidana Pendanaan Terorisme dan Pendanaan Proliferasi Senjata*

- Pemusnah Massal Tahun 2021*, 2021. [Indonesia Financial Transaction Report and Analysis Center (PPATK), Indonesia's Risk Assessment of Terrorism Financing and Financing of the Proliferation of Weapons of Mass Destruction in 2021].
- Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK) [Indonesia Financial Transaction Report and Analysis Center (PPATK)], *Buletin Statistik APUPPT vol 154 - Edisi Desember*, 2022.
- Reinhard Golose, Petrus. "Terrorism as Socio-Economic and Cultural Barriers to Indonesian Firms' Financial Performance." *Journal of Ethnic and Cultural Studies* 10, no. 2 (2023): 22–40.
- Rudner, Martin. "Using Financial Intelligence Against the Funding of Terrorism." *International Journal of Intelligence and CounterIntelligence* 19, no. 1 (2006): 32–58.
- Soekanto, Soerjono, Sri Mamudji, *Metode Penelitian Normatif [Normative Research Methods]*, Jakarta, Rajawali Pers, 1995.
- Yunanto, Sri, Angel Damayanti, Suhail -, Amin Shabana, Asep Setiawan, M. Syauqillah, Usni -, Syaiful Rohman, and Ahsani Maulinardi. "Misuse of Islamic Charity for Terrorism in Indonesia: Modus, Countermeasures, and Challenges." *Studies in Social Science Research* 4, no. 3 (2023): p1.