

EXAMINING THE SPARK OF REPREHENSIBLE FACTORS IN THE CONCEPTION OF THE UNITARY STATE

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Abstract: This article seeks to examine how the regulation of terrorism as a reprehensible act within the scope of special criminal acts in the National Criminal Code and its potential danger to Indonesia's existence as a unitary state. This research is normative juridical research, which uses conceptual and statute approaches based on primary and secondary legal materials obtained through library research. Then, the results are discussed using qualitative prescriptive analysis. The results obtained turned out to show that the regulation of terrorism as a despicable act within the scope of special crimes in the National Criminal Code intended to reinforce counterterrorism and radicalism efforts by including it as one of the special crimes by considering special characteristics. In addition, criminal acts of terrorism also have the potential to endanger the existence and sustainability of the Indonesian state as a welfare state; for that, there is a need for synergy in the role of the government and the people in the state.

Keyphrases: Terrorism; *Misdemeanor*; Unitary State.

I. INTRODUCTION

Radical events are sometimes the result of very violent political thoughts and actions that demand fundamental changes in legislation and government (Paikah, 2019), so the moment of the Youth Pledge movement in October, the proclamation of Indonesian Independence in August and the battle in Surabaya which is commemorated as Heroes' Day in November to liberate the archipelago from Dutch colonialism, change the colonized country to replace it with an independent state is radical movement.

However, along with the changing times and the order of the nation – state, among others, through legislation (Al-Fatih et al., 2023), the phrase radical has undergone a shift in meaning towards the understanding of reprehensible acts within the scope of criminal acts of terrorism according to Law Number 1 of 2023 concerning the Criminal Code (Prastini, 2018). Misdemeanor regulation is a legislative policy that aims to affirm that Indonesia adheres to constitutionalism. Constitutionally Article 1 paragraph 1 of the Constitution of the Republic of Indonesia in 1945 (UUD NRI 1945) that: "The State of Indonesia is a Unitary State, which is in the form of a Republic" and the occurrence of various historical events from the beginning of State Independence until now Indonesia has strengthened the order of the unitary state of the Republic of Indonesia (NKRI).

Basically, all acts of lawlessness that damage the order of existence of the Republic of Indonesia as a unitary state can be categorized as reprehensible. To reform the law carried out in the Reformation Era, the Explanation to Law Number 1 of 2023 concerning the Criminal Code (national KUHP) includes reprehensible acts in the group of Special Crimes whose placement is separately based on special characteristics, the types of despicable acts include terrorism crimes.

This research focuses on the context of despicable acts in the form of criminal acts of terrorism in the Criminal Code (Butt, 2023). Reprehensible acts are understood as acts that degrade the dignity (of human beings/state officials). Criminal acts are actions that have been regulated and threatened with criminal sanctions or other actions by laws and regulations (Baranenko et al., 2023). While terrorism is the use of violence to cause fear in an effort to achieve goals. Radicalism is the embryo of terrorism. Radicalism is an understanding or flow that wants social and political change or renewal by violent or drastic means.

Flashbacks of legal events, despicable acts in the form of radicalism and terrorism have been reported by the mass media, including the National Counterterrorism Agency (BNPT) has signaled that there are 7 higher education campuses exposed to radicalism, the rise of various content on social media that contains indications of radicalism/cyber terrorism (Ward, 2009), and various counterterrorism activities (Madjid, 2022).

So that the Indonesian government feels the need to create a deradicalization program as an effort to counteract radicalism and terrorism (Arifinsyah et al., 2020), which are considered to threaten the nation's resilience, potentially disrupting efforts to realize the Republic of Indonesia as a welfare state (MD, 2003). The incessant formulation of the deradicalism program as an effort to counteract radicalism and terrorism because it is considered a despicable act that endangers the unity and unity of the country, is an impetus to further examine what. Actually, what is meant by "despicable deeds". Based on the above, it is necessary to study how the regulation of terrorism as a reprehensible act within the scope of special criminal acts in the National Criminal Code and its potential danger to Indonesia's existence as a unitary state.

II. RESEARCH METHOD

This research is a normative juridical research (Negara, 2023), which uses conceptual and statute approaches (Al-Fatih, 2023). Concept, which use in this paper, related to the term of terrorism, radicalism, deradicalization, and unitary state. While statute approach, take a serious concern on the Constitution and Criminal Code. Based on primary and secondary legal materials, obtained through library research, then the results are discussed using qualitative prescriptive analysis (Djafar et al., 2021).

III. RESULTS AND DISCUSSION

1. Listening to the Footing of Unity and Unity of the Republic of Indonesia

The study of the unitary form of the Indonesian state, shows that the Indonesian state is knitted with the spirit of "Youth Oath" and packaged with the state motto, namely "Bhineka Tunggal Ika" which means "Unity in Diversity, although different, but still one", with the aim of uniting various tribes, nations, cultures, religions, languages and various backgrounds. This is

reinforced by the ideology of the Indonesian state in the form of "Pancasila", which in the 3rd Precept of Pancasila reads "Indonesian Unity", and reaffirmed by the provisions of Article 1 paragraph (1) of the Constitution of the Republic of Indonesia in 1945 (UUD NRI 1945) that: "The State of Indonesia is a Unitary State, which is in the form of a Republic". So that the State of Indonesia is known as the Unitary State of the Republic of Indonesia (NKRI).

The constitutional history of Indonesia has recorded the existence of countries that once existed in the archipelago which is now called Indonesia. Since the time of the Kingdoms, ranging from the kingdoms of Kutai, Tarumanegara, ancient Mataram, Srivijaya, medang, Kahuripan, Jenggala, Panjalu, Singhasari, to Majapahit. And during the sultanate period, for example in the easternmost Bacan Sultanate to the Samudra Pasai Sultanate at the westernmost, at the northernmost Sulu Sultanate to the Bima Sultanate at the southernmost. All of these kingdoms had collapsed and were replaced by the birth of various sultanates, but the sultanates were then defeated and controlled by the VOC / Dutch kingdom, so that before the independence of the Republic of Indonesia only Islamic mataram remained (even then divided into four sultanates and kingdoms).

The weakness and end of the state in the form of kingdoms and sultanates that once existed in the archipelago, inevitably due to the struggle for influence and wars between each other, which was basically due to the absence of unity among the population and the fragmentation of the archipelago territory, so it was very easy to be destroyed and controlled by rival countries. Even the most painful in the colonial period, the archipelago was controlled by the VOC which was then replaced by the Dutch kingdom for hundreds of years (since 1880) and which during World War II was conquered by the Empire of Japan (1942-1945).

The destruction of various countries in the past and colonialism experienced by the Indonesian state, carved painful historical wounds that can only be overcome solely because of God's help, by eliminating the various causes of destruction and division with earnest struggle based on the spirit of unity, and the desire to choose the form of a unitary state. So the unity and unity of the country in Indonesia is as if 2 sides of the coin, only valuable if both sides exist. On the one hand, the unity of Indonesia (the Third Precept of Pancasila) has encouraged the birth of people's awareness that various differences in background should not cause division, but instead should give birth to national unity because unity in differences is a necessity. Because with that unity every human being instinctively and very humanly will always try to do the best for fellow humans and humanity (humanism).

The unity of Indonesia contains the meaning of nationalism that is so laden, including the understanding:

- a. Proclamation of independence of the Indonesian state;
- b. the sovereignty of the Indonesian state in and out;
- c. Symbol of unity of Bhineka Tunggal Ika;
- d. the language of unity is Indonesian;
- e. the concept of the nation state, namely the Indonesian nation;
- f. the concept of archipelago insight;
- g. populist concept;
- h. The concept of the welfare state as the goal of the state (Kaelan, 2009).

This spirit of unity then inspired the struggle of the people of the archipelago not to atone for the destruction of all countries and by fighting against the invaders, to rise up to fight to establish the country and maintain the independence of the country. This historical fact that cannot

be denied, the fact that after all the defeat and destruction, God with his mercy has bestowed unity and unity in this country, so as to be able to proclaim the independence of the Unitary State of the Republic of Indonesia NKRI.

On the other hand, related to the form of the unitary state of Indonesia, The founding fathers of the Indonesian state, who came from various kinds of social status, education, religion, regions, professions, tribes, languages and ethnicities, had chosen the form of a unitary state for the Indonesian state, a state that would stand in the former territory of the Dutch East Indies. Do not choose to make it a union state, a religious state, a royal state or separate national states. But chose to form the Unitary State of the Republic of Indonesia. The choice of the form of this unitary state was not born grusa-grusu / perfunctory, but a choice that emerged from the results of radical thinking, the result of deep reflection on the constitutional history that once existed in the archipelago. This choice gave birth to a strategic, visionary and revolutionary agreement. The choices to be realized have been, are and will require great sacrifice and a long struggle. So the concept of a "unitary" state does not depart from the same background, but departs from a different background.

However, these various backgrounds found common ground and were attached by the Grace of God, so that the same spirit of forming the country, the feeling of common destiny and the spirit of fighting as a noble desire (the philosophy of "*holopis kunthul baris*" and "*tongkat sapu*") ended the cruelty of the Dutch and Japanese colonial eras. The realization of the unitary state of Indonesia seems to trace the spirit of the Palapa Oath from Maha Patih Gajahmada. The spirit of forming a unitary state in a complete struggle through a united and sovereign state, can be interpreted as a sovereign state fully and centrally, to guarantee a country whose territory consists of 16,056 islands (Delegasi Indonesia, n.d.), and so many and plural people (predicted 267 million in 2019). So that the Republic of Indonesia tries to affirm it in the 4th paragraph of the Preamble of the 1945 NRI Constitution concerning the objectives of the Republic of Indonesia which include:

- 1) protect the entire Indonesian nation and all Indonesian bloodshed;
- 2) to promote the general welfare;
- 3) educating the life of the nation;
- 4) participate in implementing a world order based on freedom, lasting peace and social justice.

The concept of the Republic of Indonesia as a unitary state is intact and sovereign as understood from the doctrine of a unitary state, which is put forward by experts. For example, the opinion expressed by C.F. Strong about *the unitary state*, which can be interpreted that *the unitary state* / unitary state is a state that has an undivided state sovereignty, or in other phrases the power of the central government is not limited. In a unitary state the central government can cede part of its powers to the regions on the basis of autonomous rights), but at the last stage the highest power remains in the hands of the Central Government. So there is only one legislative institution, namely in the center (Strong, 1966).

Similarly, the opinion once expressed by Miriam Budiardjo about the unitary State, from her opinion it can be understood that in the State state power is in the hands of the central government not in the hands of the regional government, but the State through the central government is authorized to distribute part of its power to local governments based on (principles) of autonomy, although the central government retains the highest power in the country (Miriam Budiardjo,

2008). Referring to the line of opinion of C.F Strong and Miriam Budiardjo, the unitary state contains the meaning that between the people and the government, between the region and its inhabitants, between the policies of the central government and with the local government is like a unity that supports and strengthens each other.

In line with the notion of a unitary state in the concept of a unitary state with different colors, according to Mohammad Yamin during the BPUPKI session, the unitary state in the integralistic theory of the state does not guarantee the interests of individuals or group interests, but the state includes the interests of all components. And the state is defined as an integral structure of society in which each existing group has close ties and is related to each other and the society is an organic structure (Indriyany, 2019). This is in line with the existence of sovereignty and policies in the state according to the concept of the unitary state of Indonesia, which is formulated in the 1945 NRI Constitution that the state through the central government must guarantee the protection of the people and territory of the State (based on the principles of local government), the achievement of general welfare and by ensuring order, through independence, peace and justice, in order to prevent various possibilities of disintegration of the nation, in accordance with the purpose of the country. Therefore, local government policies must be aligned and cyclonic with central government policies (Miriam Budiardjo, 2008).

The concept of a unitary state for the Indonesian state, according to Notonegoro, contains the following meanings:

- a) Historical unity;
- b) Union of fate;
- c) Cultural union;
- d) Territorial union.
- e) The unity of the foundation of the kerokhaniaan (Kaelan, 2009).

Compare with Soepomo's opinion expressed in the BPUPKI session on May 31, 1945, that integralistic means the existence of the state not to guarantee the interests of each individual. Nor for the interests of a certain group, but to ensure the fulfillment of the interests of the whole community as an integral unit of society, which allows changes in the form of the state in accordance with the development of circumstances (Toip Heriyanto, 2007). So the unitary state based on people's sovereignty (democracy) in the NRI Constitution from the beginning is actually different from the integralistic state based on kinship proposed by Soepomo.

Many differences were found later in Indonesia's post-independence constitutional history, in the form of differences in ethnicity, nation, language, religion, customs, culture, social background. Differences of opinion, differences in attitudes ranging from mild to violent, in formal / non-formal meetings, work programs, concepts, policies, even to the point of leading to various radical attitudes / views, anarchist movements or separatists / rebellions in various regions that have occurred in this country in the past now and that will occur, in all areas of national and state life. All differences that color the unity and unity of the Indonesian state are not only related to radical attitudes / views / radicalism. This actually happened starting from the issue of different views on how to fill independence / how to manage the country.

2. The Basic Conception of Reprehensible Deeds

The regulation of reprehensible acts in the context of the modern state constitution, began to be known contained in the United States Constitution of 1987, in article 2 paragraph (4) which

reads: "*The President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors*" (United States Senate, n.d.). regulates misdemeanor as a clause to impeachment / impeachment proceedings of the President carried out through criminal justice processes beginning with accusations by the legislature, for example President Andrew Johnson in 1868, President Richard Nixon in 1973-1974, and President William Clinton in 1998. *Misdemeanor* is a misdemeanor offense under United States law, as opposed to *felony* which is a gross violation of law.

Historically, in the context of the United States the concept of despicable acts is a minor violation of law, Nasmun in the context of the Indonesian state, the concept of despicable acts metamorphoses into violations of law and special criminal acts. Reprehensible acts began to be recognized in Indonesia since the 3rd amendment to the 1945 NRI Constitution, which reads: "The President and/or Vice President may be removed from office by the People's Consultative Assembly on the proposal of the House of Representatives, either if proven to have committed a violation of the law in the form of treason against the state, corruption, bribery, other serious crimes, or reprehensible acts or if proven no longer qualified as President and/or Vice President".

The clause on "Reprehensible Acts" was then adopted by various laws in Indonesia that regulate state institutions and various matters including elections, the Constitutional Court, the Supreme Court, the General Elections Commission, the Judicial Commission, Judges, the police, the Ombudsman, the Prosecutor's Office, Local Government and so on. Regulation Reprehensible acts as acts that are contrary to Indonesian positive law are adopted by these various regulations with certain understandings, for example:

- a. According to Article 10 paragraph (3) Letter (d) of Law Number 24 of 2003 concerning the Constitutional Court, reprehensible acts are understood as acts that degrade the dignity of the President and Vice President. According to the Explanation to Article 10 paragraph (3) Letter (d) of Law Number 24 of 2003 concerning the Constitutional Court, reprehensible acts are understood as acts that are contrary to religious norms, moral norms, and customary norms.
- b. according to the provisions of article 5 letter (i) of Law 42/2008 PILPRES, despicable acts are understood as contrary to religious norms, moral norms and customary norms such as gambling, drunkenness, drug addicts, and adultery".
- c. According to Article 11A paragraph (1) Letter (b) and its Completion in Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court, a reprehensible act is understood as 'when the chief justice concerned because of his attitude, deeds, and actions both inside and outside the court degrade the dignity of the chief justice'.
- d. According to Article 169 letter (j) and its Explanation in Law Number 7 of 2017 concerning Elections, what is meant by "never commit reprehensible acts" is never to commit acts that are contrary to religious norms, moral norms, and customary norms, such as gambling, drunkenness, drug addicts, and adultery".

Even then despicable acts are regulated in Law Number 1 of 2023 known as the National Criminal Code, not only as a criminal offense but given an additional label as a special crime, as a form of semi-open codification spirit to accommodate various rules related to criminal acts that

were previously located outside the Criminal Code (outside those regulated by Law Number 1 of 1946 jo Law Number 73 of 1958 concerning the Criminal Code).

A criminal act is an act that by laws and regulations is threatened with criminal sanctions and/or other actions, the act must be against the law of law or contrary to the law that lives in society. Such a view of criminal acts means that the perpetrators of the act in question are threatened with criminal sanctions (Marcella Elwina, 2010). That is, there is a law that stipulates that committing certain acts will cause a person to be sentenced by the criminal justice system. It also means that the act is against the law or contrary to the laws that live in society. Criminal acts must violate or contradict the laws in force in society. It includes written laws such as statutes and regulations, as well as norms and values that are widely recognized in society. In other phrases, the act must be considered invalid or unacceptable by applicable legal or moral norms (Aditya & Al-fatih, 2016).

Specific crimes are "Serious crimes against human rights, terrorism crimes, corruption crimes, money laundering crimes, narcotics crimes grouped in 1 (one) separate chapter named "Special Crime Chapter". Provisions regarding placement in a special chapter that are separate are based on special characteristics, namely:

Table 1. Characteristics of Special Criminal Acts in the National Criminal Code (in Bahasa)

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- a. dampak viktimisasinya (Korbannya) besar;
 - b. sering bersifat transnasional terorganisasi (*Transnational Organized Crime*);
 - c. pengaturan acara pidananya bersifat khusus;
 - d. sering menyimpang dari asas umum hukum pidana materiel;
 - e. adanya lembaga pendukung penegakan hukum yang bersifat dan memiliki kewenangan khusus (misalnya, Komisi Pemberantasan Korupsi, Badan Narkotika Nasional, dan Komisi Nasional Hak Asasi Manusia);
 - f. didukung oleh berbagai konvensi internasional, baik yang sudah diratifikasi maupun yang belum diratifikasi; dan
 - g. merupakan perbuatan yang dianggap sangat jahat (*super mala per se*) dan tercela dan sangat dikutuk oleh masyarakat (*strong people condemnation*).
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Source: *Explanation of Law Number 1 of 2023.*

So, the characteristics of criminal acts so that they are referred to as special crimes in the General Explanation for the Second Book Number (4) Letter (g) of Law Number 1 of 2023 (National Criminal Code) are understood in 3 types of acts, namely:

1. Deeds that are considered very evil;
2. Reprehensible deeds;
3. Deeds are strongly condemned by society.

The logical ratio for declaring a specific crime as *super mala per se*, and highly condemned by society, involves several considerations:

- a. **Broad and Serious Impacts:** Specific criminal acts, such as terrorism, corruption, money laundering, and others, have far-reaching and serious impacts on individuals, communities, and states. They can cause huge financial losses, undermine public trust in key institutions, and threaten social security and stability.
- b. **Violation of Law and Morality:** Specific criminal acts often violate criminal law and fundamental moral values, such as human rights, justice, and integrity. They show intolerance of norms that society considers important in general.
- c. **Shocking and Frightening Motivations:** The motivations behind specific criminal acts often indicate vicious ambition, a desire to dominate or harm others for personal or group gain. This has drawn strong criticism from societies that reject ideologies or goals that lead to acts of violence or abuse of power.
- d. **Threats to National and International Security:** Some specific criminal acts, such as terrorism, have implications that transcend national borders and can threaten global security. This caused a strong reaction from other countries and international institutions in an attempt to eradicate and prevent such actions.
- e. **Emotional and Moral Reactions of Society:** Society in general shows strong emotional reactions to specific criminal acts due to their destructive and cruel impact on individuals and society. The condemnation and rejection of such acts is reflected in the moral and ethical attitude of society which condemns unequivocally such crimes.

Taking these factors into account, the assertion that a particular crime is considered *super mala per se*, and highly condemned by society, reflects a logical ratio based on serious consequences, violations of law and morality, and the emotional and moral responses of society. This research focuses on the context of despicable acts only, more sublime in the scope of despicable acts in the form of criminal acts of terrorism in the National Criminal Code. From the national Criminal Code, it can be seen that the scope of criminal acts that accommodate reprehensible acts, is no longer just referred to as acts / violations of the law / crimes / criminal acts but has been called the appendage "special crimes". So that despicable acts are criminal acts that not only degrade the dignity of state officials and contradict religious norms, moral norms, and customary norms, but are also special criminal acts. One of the specific crimes in the national Criminal Code is terrorism.

3. Examining the content of radicalism and terrorism

Although the definition of radicalism, counter-radicalism and radicalism are not regulated in Indonesian legislation. But it is understandable that what is meant by radicalism, counter-radicalism and radicalism is radical actions, actions and ideas related to terrorism. Thoughts and actions exposed to radicalism and terrorism can damage the order of unity and unity of the country. Previously, terrorism including radicalism as a despicable act had been regulated and prohibited by Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law (PERPU) Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law, and also regulated by Law Number 16 of 2003 concerning the Stipulation of PERPU Number 2 of 2002 concerning the Implementation of PERPU Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism in the

Bombing Event in Bali on October 12, 2002 Became Law, which signals that one of the embryos of terrorism is radicalism.

a. The content of radicalism

The term radical comes from the phrase "*radix*" in Latin which means "root". The phrase "*radix*" was later absorbed into English into the phrase "*radical*" which when referring to *the Encyclopædia Britannica*, the phrase was originally used by Charles James Fox in a political context in 1797 in support of changing the electoral system of the British parliament with the term "radical reform".

In Indonesia the phrase "radical" in the Big Dictionary Indonesian interpreted as follows: "radical/ ra-di-kall a 1. Fundamentally (down to the principle): change that -- 2. Pol was very hard to demand change (laws, government); 3. advance in thinking or acting; Next the phrase "Radicalism" / ra-di-kal-is-me / n 1. radical ideas or currents in politics; 2. Beliefs or sects that desire social and political change or renewal by violent or drastic means; 3. extreme attitudes in political currents".

So the meaning of the phrase "radical" according to the term in the dictionary includes the understanding / school of thought and action in various fields carried out to make fundamental changes regarding principled matters, especially in the socio-political field which was considered advanced according to the size at that time. So the meaning of the phrase "radical" includes the understanding / school of thought and action in various fields that are carried out to make fundamental changes regarding principled matters, especially in the socio-political field which is considered advanced according to the size at that time.

With this understanding, it can be formulated the possibility of thoughts and actions that are forms of radicalism / radicalism in general, including:

- 1) separatism,
- 2) terrorism (violence),
- 3) Extremism
- 4) revolutionary movement,
- 5) anarkisme,
- 6) reform / renewal,
- 7) ideological differences,
- 8) discursive thinking or radical thinking that has never committed violent acts,
- 9) Religious radicalism,
- 10) intolerance to different groups (BNPT, n.d.-a).

There are many more possible forms of radicalism, terrorism is only one form because radicalism is the embryo of terrorism. However, according to BNPT, there are several understandings and attitudes that can be recognized as radical characteristics, including:

- a) intolerant (unwilling to respect the opinions and beliefs of others);
- b) bigotry (always self-righteous; thinking others are wrong)
- c) exclusive (distinguishing oneself from Muslims generally);
- d) revolutionary (tends to use violent means to achieve goals) (BNPT, n.d.-c).

According to the Indonesian government's policy related to terrorism contract policy and deradicalization, radical actions are understood to tend to give birth to terrorism, as BNPT founded, that: "Radicalism is the embryo of the birth of terrorism".

Reflecting on the historical side, if based on the radical meaning in the Indonesian Dictionary, the moment to liberate the Dutch East Indies from Dutch colonialism and change from a colonized country to an independent state, is an event that occurs as a result of very hard political thoughts and actions that demand changes in legislation and government fundamentally (KBBI, n.d.), can be categorized as radical acts that are loaded with radicalism. More clearly, some radical thoughts and actions / events that are in accordance with the terms used in the dictionary that have occurred in the history of Indonesian statehood in the past, which are not included in the definition of radical according to Law 5/2018 Eradication of terrorism, radical thoughts and actions in the history of Indonesian statehood in the past include:

- 1) Youth Pledge of October 1928;
- 2) Proclamation of Indonesian independence in August 1945;
- 3) Indonesian resistance to the actions of Dutch Military Aggression I (1947) and Dutch Military Aggression II in 1948;
- 4) The fighting spirit of the heroes known as Heroes' Day in the battle of Surabaya November 1945;
- 5) Round Table Conference (KMB) in 1949, which changed the Unitary State of the Republic of Indonesia into the United States of Indonesia (RIS);
- 6) Replacement of the 1945 Constitution with the 1949 RIS Constitution;
- 7) Dissolution of RIS into the Republic of Indonesia (RI) in 1950;
- 8) Replacement of the RIS Constitution with the Provisional Constitution (UUDS) of 1950;
- 9) Re-enactment of the 1945 Constitution by presidential decree of July 5, 1959;
- 10) Rebellion by Darul Islam/ Tentara Islam Indonesia (DI/ TII) ;
- 11) Rebellion by the Revolutionary Government of the Republic of Indonesia/ Perjuangan Semesta Alam (PRRI/ Permesta);
- 12) South Moluccan Republic Rebellion (RMS);
- 13) Rebellion and Eradication of G/30/S/PKI rebellion in 1965;
- 14) Changes to the Old Order by the New Order in 1967;
- 15) Malari Movement, Tanjung Priok Tragedy, Haur Koneng, jihad commandos, Petition 50, the rise of KKN, Presidential Decree for life (New Order era);
- 16) The movement demanding the resignation of President Suharto in 1998;
- 17) The Change of the New Order into the Reformation Era;
- 18) Four amendments to the 1945 Constitution from 1999-2002;
- 19) Aceh rebellion and the enactment of the DOM;
- 20) Opinion polls in East Timor and the founding of the state of East Timor;
- 21) Riots between Dayak and Madurese, Ambon riots, Poso riots;
- 22) Various acts of terror before and after the enactment of the Anti-Terrorism Law.

After the enactment of PERPU Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism and PERPU Number 2 of 2002 concerning the Implementation of PERPU Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism in the Bombing Event in Bali on October 12, 2002, an understanding of radical thoughts and actions in accordance with the meaning of the terms used in the dictionary will help

understand the phrase radical, that radicals are ideas or currents that want social and political change or renewal by violent or drastic means.

According to the definition of radicalism, counter-radicalism and deradicalization is not found expressly regulated in Law 15/2003 Anti-Terrorism with all PERPU and its amendment laws until the birth of Law 5/2018 as a regulation regulating the eradication of terrorism in Indonesia, The understanding of the phrases radical, counter-radicalism and deradicalization is only based on the implied intent of the provisions in Article 43D paragraph (1) of Law 5/2018 on Combating Terrorism, namely "Deradicalization carried out to people or groups of people, is a planned, integrated, systematic, and continuous process carried out to eliminate or reduce and reverse the radical understanding of terrorism that has occurred".

Based on what is contained in Law 5/2018 on Combating Terrorism, then implicitly radicalism is a radical understanding of Terrorism. A radical understanding that contains terrorism. Through the definition of radicalism according to the dictionary and Law 5/2018 on Combating Terrorism, radicalism can be implicitly interpreted:

- 1) that there is a link or similarity between radicalism and terrorism. Radicalism can be considered as an initial or early-stage step that allows a person or group to consider or justify acts of terrorism;
- 2) indicates that in this context, "radical" not only means having different or extreme views, but also includes a deep understanding or strong commitment to a particular ideology or belief that drives a person to justify or involve themselves in acts of violence or terror;
- 3) show that radicalism is not only limited to radical views or ideas, but also includes the adoption or understanding that supports acts of terrorism. In other phrases, radicalism is considered as the foundation or justification for acts of terrorism committed by the individual or group concerned.

From the examples of radical thoughts and actions / events above, it is important to note that not all radical people or groups will be involved in acts of terrorism, and not all acts of terrorism originate from radicalism. There are many factors that can influence a person to engage in acts of terrorism, including social, political, economic, and psychological factors.

b. Terrorism Charge

Understanding terrorism, the phrase 'terror' comes from the Latin "terrere" trembling, and from the phrase "deterere" means fear (Carolina, 2019). The Great Dictionary Indonesian states: the phrase "Terror" /te-ror/ /téror/ n means an attempt to create fear, horror, and cruelty by a person or group. Furthermore, the phrase "Terrorism" /te-ror-is-me/ /térorisme/n is the use of violence to cause fear in an attempt to achieve goals (especially political goals); the practice of acts of terror. So terrorism is the use of violence to cause fear in an effort to achieve goals (Al-Fatih & Aditya, 2019).

Law 5/2018 on Combating Terrorism, states that: "terrorism is an act that uses violence or threats of violence that creates an atmosphere of widespread terror or fear, which can cause mass casualties, and/or cause damage or destruction to strategic vital objects, the environment, public facilities, or international facilities with ideological, political, or security disturbance motives".

Terrorism in the modern era, triggered by the September 11, 2001 WTC tower bombing in the United States, was followed by the United Nations passing resolution No. 1368 of 2001 condemning terrorist attacks on the WTC towers, the Pentagon, and Pennsylvania and categorizing it as threatening peace and security. Then the United Nations, with resolution No. 1373 of 2001 affirmed some obligations of states against terrorist activities. While terrorism in Indonesia was triggered by the Bali I bombing on October 12, 2002 which prompted legislation to eradicate terrorism, most recently with Law 5/2018 on Combating Terrorism (Prakasa et al., 2023).

Meanwhile, according to the National Criminal Code, after declaring the provisions of Articles 6 and 7 of Law 15/2003 on Anti-Terrorism and the provisions in Article 4 of Law Number 9 of 2013 concerning the Prevention and Eradication of Criminal Acts of Terrorism Financing declared revoked and declared invalid, then affirmed the regulation in articles 600, 601 and 602 of the National Criminal Code that criminal acts of terrorism are acts and financing activities used to carry out various criminal acts of terrorism, terrorist organizations, or terrorists.

Article 600 of the National Criminal Code:

"Any Person who uses Violence or Threats of Violence that creates an atmosphere of widespread terror or fear of people, causes mass Karban by depriving others of their liberty or loss of life and property, or causes damage or destruction to strategically vital objects, the environment, public facilities, or international facilities, punishable with imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years, life imprisonment, or death penalty".

Article 601 of the National Criminal Code:

"Any Person who uses Violence or the Threat of Violence intends to create an atmosphere of terror or fear against people widely or inflict mass Casualties by depriving others of their liberty or loss of life or property, or to inflict damage or destruction on strategically vital objects, the environment, public facilities, or international facilities, sentenced to imprisonment for a minimum of 3 (three) years and a maximum of 20 (twenty) years or life imprisonment".

Article 602 of the National Criminal Code:

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

From these provisions, it can be seen that the National Criminal Code understands that the criminal act of terrorism is violence or threat of violence that causes and intends to cause an atmosphere of terror or fear of people widely, cause mass casualties by depriving freedom or loss of life and property of others or resulting in damage or destruction to strategically vital objects, environment, public facilities, or international facilities. This includes providing, collecting, giving, or lending funds, either directly or indirectly, with the intention of being used in whole or in part to commit a criminal act of terrorism, terrorist organization, or terrorist.

According to the National Criminal Code, terrorism is grouped into crimes that have special characteristics so that they are categorized as special crimes, these special characteristics are:

- a) The impact of victimization is extraordinary: Criminal acts of terrorism tend to have far-reaching and serious impacts on victims. This can include substantial physical, psychological, and emotional harm to the individuals and communities affected. An example is a terror attack that claimed many lives or caused severe injuries to the victim.
- b) Transnational Organized Crime: Terrorism often involves international networks and organized organizations that carry out criminal activities in more than one country. This makes handling terrorism cases more complex because it involves cooperation between countries in law enforcement.
- c) The criminal procedural law regulations are special: Legal proceedings relating to terrorism cases usually require a more specialized and well-coordinated approach. This includes the arrangement of trial proceedings, the protection of witnesses and judges, and procedures for handling sensitive evidence.
- d) Violating general principles of material criminal law: Acts of terrorism often involve violations of basic principles of criminal law, such as murder, extortion, or destruction of property. This could violate the principles of fairness and proportionality in law.
- e) Specialized law enforcement agencies: Terrorism cases require a special approach to law enforcement. Therefore, it requires special skills, adequate resources, effective coordination, prompt and appropriate handling, which will play an important role in supporting law enforcement efforts against terrorism.
- f) It needs international conventions, both ratified and unratified: Terrorism is often condemned internationally, and efforts to address this problem are supported by numerous international treaties and conventions. It reflects the global commitment to countering the threat of terrorism together.
- g) Considered a very evil, very despicable and highly condemned act by society: acts of terrorism are considered the most serious and despicable crimes by society. This led to a strong and unequivocal reaction from the international community who condemned the act and supported efforts to punish the perpetrators.

In understanding the criminal act of terrorism, it is also important to know the main factors of the criminal act of terrorism, the elements are (Haedar Nashir, n.d.):

- 1) Acts of violence are well-planned, not impulsive or spontaneous.
- 2) The act is political, not criminal like crimes committed by mafia motivated by money.
- 3) Political in the sense that it aims to overturn the existing government system or political system.
- 4) The target of terrorism is always civilians, not military installations or armed forces.
- 5) It was launched by domestic splinter groups who were dissatisfied and angry with the government's policies.

From this typology, it is imagined that the difficulty of disclosing criminal acts of terrorism is more due to the basic and complex objectives desired by the perpetrators, in accordance with the interests behind them, based on the objectives and characteristics of terrorist acts. Often the narrowing of the meaning of radicalism / radicalism, narrowed to

radicalism in the scope of understanding with a religious background, and then more directed to acts of terror by terrorists who factually happen to have a Muslim background. While the status as a terrorist is rarely pinned on followers of religions other than Islam. Although religious fundamentalism is possible in all religions and beliefs. This can be seen from the various events of radical acts in the form of terror that have occurred always then lead to counter-terrorism policies pinned on individuals who are Muslim.

Because it is actually radical thoughts / actions in the form of terrorism, cannot always be associated with followers of certain religions. Because basically radicalism is caused by various backgrounds and factors. Some backgrounds of thoughts/events/actions that are indicated as radicalism, among others:

- a) Dislike/ dissatisfaction,
- b) Revenge.
- c) rejection of differences,
- d) differences in understanding,
- e) differences in purpose,
- f) lack of knowledge,
- g) environmental influences.

The background of radicalism can be triggered by various causative factors, including ideological, political, economic, social, religious and educational factors, with various developments. While the background of the occurrence of acts of terror / terrorism is among others caused by political discontent, ethnic or religious conflicts, economic inequality, ideology, foreign involvement or security disturbances and the influence of extreme groups. It is important to remember that the background to the occurrence of terrorism can vary greatly depending on the geographical, political, and social context. In addition, each terrorist event usually has its own dynamics and context.

So the thought of thoughts / events / actions that are indicated as radicalism / radicalism and terror / terrorism can be triggered by various factors, not only triggered by religious factors. Other factors are also very possible for that. In fact, the history of post-independence Indonesian statehood that has occurred in this country in the past and present, there are many phenomena that trigger radicalism and terrorism, because of differences in ethnicity, nation, language, religion, customs, culture, social background (SARA issues), because of the emergence of differences of opinion, differences in attitudes ranging from mild to hard, in formal / non-formal meetings, work programs, concepts, policies, even to the point of leading to various radical attitudes / views, anarchist or separatist movements / rebellions, acts of terror in various regions, or movements that want fundamental changes to the regime in power (during the Old Order, New Order and Reformation Era), differences in political choices even to the desire to change the constitutional system in the Constitution.

So the thought of thoughts / events / actions that are indicated as radicalism / radicalism and terror / terrorism can be triggered by various factors, not only triggered by religious factors. Other factors are also very possible for that. Therefore, if there is an impression that radical thoughts and attitudes / radicalism are more dominantly directed at religious radicalism, then there should be a clear religious benchmark as what can be categorized as radicalism / radicalism. In addition, in Indonesia there are at least 6 officially recognized

religions and hundreds of sects of believers (which are followers of traditional beliefs and indigenous religions), should be avoided only directed to one religion.

Although in fact religious radicalism recognizes several levels and forms. According to Fathurrahman (Regional Administrator of Nahdlatul Ulama Special Region of Yogyakarta), the level of religious radicalism consists of (Fathurrahman, n.d.) :

1. radical mind (radical in thought);
2. radical attitude (radical in behavior);
3. Radical in action (radical in action).

Meanwhile, according to the Minister of Coordinating for Political Affairs of the Advanced Indonesia Cabinet, Mahfud MD, the forms of religious radicalism consist of (Mahfud MD, n.d.-a) :

- a. Takfiri (always consider others kafir themselves righteous).
- b. Jihadists (committing acts of violence against others who are different if necessary to kill)
- c. ideological politics (inviting discourse that what exists is wrong with misdirection of thought).

Which of the three can be categorized as dangerous to the unity and unity of the State? So Mahfud MD as the Coordinating Minister for Political, Legal and Security Affairs (Menko Polhukam), initiated the importance of dealing with radicalism, because radicalism is considered dangerous to the nation's resilience (Mahfud.MD, n.d.), potentially damaging the unity and unity of the nation (Mahfud MD, n.d.-b). The idea asserts that radicalism is the embryo of terrorism. BNPT also continues to actively carry out counter-radicalism and terrorism efforts.

4. Radicalism and Terrorism as Reprehensible Acts

The idea for the importance of addressing radicalism and terrorism as despicable acts could be triggered by data submitted by BNPT, which shows that there are 7 higher education campuses exposed to radicalism, namely ITB (Bandung Institute of Technology, UB (Brawijaya University Malang,) IPB (Bogor Agricultural University), UNAIR (Airlangga University Surabaya), UI (University of Indonesia Jakarta), and ITS (Sepuluh Nopember Institute of Technology Surabaya) (Rini, n.d.).

This was then corroborated by Setara Institute with a research entitled "Discourse and Religious Movements Among Students: Mapping the Threat to the State of Pancasila in PTN", that in Indonesia there are 10 state universities that have been exposed to radicalism (Halili, n.d.). In addition, the BNPT report informs that during 2022, there are 475 terrorism prisoners spread across 62 prisons and 1 Class IIB Special Terrorist Prison in Sentul, which have been deradicalized. Meanwhile, outside Lapas, BNPT RI has carried out deradicalization of a total of 1,192 people/groups of people and ex-prisoners (BNPT, n.d.-b).

During the reform era, it is alleged that there have been various radicalism in the form of acts of terror which can be categorized as terrorist criminal acts or the rise of various content on social media that contains radical indications called cyber terrorism (Monica Ayu Danastri, n.d.). As stated by Yonah and Seymour in their book "Terrorism Interdisciplinary Perspectives" which argues that there is a phenomenon "Complex technological society is extremely vulnerable to

unsuspected ruthless attacks of terrorism" (Carolina, 2019), the complexity of the use of technology by society triggers various unexpected terrorist attacks.

BNPT in a press conference broadly stated: "BNPT RI found more than 600 sites/accounts on various social media platforms containing radical elements, spreading more than 900 propaganda content Details of the number of accounts from radically charged social media are Facebook with 167 accounts, WhatsApp 156 contacts or groups, Telegram 119 channels or groups, Twitter 85 accounts or groups, Instagram 50 accounts, Youtube 24 accounts, websites 14 links and others 1 account" (Amar, n.d.).

Data findings from BNPT and Setara Institute on the spread of radicalism indicate a danger to national unity and unity. So that it has encouraged not only the government but also various components of the nation to think about how to strengthen the unity and unity of the country, how to respond to this radicalism in the frame of the Indonesian state which emphasizes the concept of unity and unity of the state. For this reason, it is important to distinguish between terror / terrorism crimes and other crimes, by looking at the characteristics of criminal acts that are different from ordinary crimes, so that radical thoughts / actions are not always categorized as radical terrorism.

In the context of Indonesian law, radicalism and terrorism can be considered reprehensible acts because they involve acts that are contrary to norms that are considered fundamental in society, including religious norms, moral norms, and customary norms. Radicalism and terrorism involve the use of violence or the threat of violence to achieve certain goals, which are contrary to the widely recognized values of society.

Some aspects that make radicalism and terrorism reprehensible in Indonesia include:

- a. According to Religious Norms: Acts of terrorism and radicalism often contradict religious teachings that emphasize peace, justice, and compassion. The use of violence to achieve certain goals can be considered an abuse of religious teachings.
- b. According to the Norms of Decency: Acts of violence involved in terrorism often contradict norms of decency that teach respect for life, human rights, and moral principles.
- c. According to Customary Norms: In Indonesia, customary norms often reflect the values of togetherness, harmony, and tolerance. Actions that undermine social order and community security can be considered a violation of customary norms.

Indonesian law has taken serious action to counter radicalism and terrorism, such acts are prohibited and can now be punished in accordance with Law 5/2018 on Combating Terrorism and going forward when the National Criminal Code comes into force in January 2024. The establishment of the rule of law and criminal sanctions to punish perpetrators of terrorism and prevent the spread of radical ideologies that are contrary to the values of Indonesian society.

5. Strengthening the unity and unity of the state

The struggle to work hand in hand to uphold the Indonesian state and knit it with the spirit of Bhineka Tunggal Ika, is important to unite various tribes, nations, cultures, religions, languages and various backgrounds, as well as a country that is a forum for struggle and a place to pour creative ideas, feelings and charities into the frame of the State of Indonesia. The State of Indonesia, a country that has the 3rd Precept of Pancasila which reads "Indonesian Unity". The

country in Article 1 of the 1945 NRI Constitution states "The State of Indonesia is a Unitary State, in the form of a Republic". The State of Indonesia, known as the Unitary State of the Republic of Indonesia (NKRI), still needs contributions from all components of the nation in order to achieve the goals of the Unitary State of the Republic of Indonesia. With the hope of leading to a better Indonesia.

Therefore, if we want to maintain the agreement (social contract) to establish this country, because we realize that the independence of the Indonesian state is "thanks to the blessing of Allah the Almighty and motivated by a noble desire for a free national life", then all differences that undermine the state should be returned to the awareness of the choice of the form of state, namely a unitary state based on the precepts of Indonesian Unity (third precept Pancasila).

The choice of a unitary state that was carried out before the Indonesian state became independent and then agreed from the beginning of independence, during the revolutionary war to defend the independence of the Indonesian state, when the Provisional Constitution was enacted in 1950-1959, when the 1945 Constitution was re-enacted, even still agreed upon after the amendment and enactment of the 1945 NRI Constitution from 1999 - 2002 until now. Coloring the unity and unity of the Indonesian state is not only related to radical attitudes / views / radicalism. It is necessary to strengthen the joints of the Republic of Indonesia within the framework of democracy based on Pancasila. Because everything actually happens starting from the issue of different views on how to fill independence/how to manage the country.

One of the ways to fill the independence/way to manage the State to strengthen the unity and unity of the nation while counteracting radicalism/terrorism is the most strategic is through hard work to realize the State of Indonesia as a welfare state. At least there are several things that can be done to address radicalism and terrorism as despicable acts in the context of maintaining Indonesia as a unitary state, namely:

a. Standardization of radicalism / terrorism.

Clear regulatory standards / benchmarks are needed in the form of legislation on what is categorized as thoughts / acts of radicalism / terrorism. Because so far there has been no standard measure of radicalism / terrorism in Indonesia that is well socialized, there are only provisions on counter-terrorism, counter-radicalization and deradicalization which are the tasks of BNPT.

b. Renewal of state policy.

A clear, accountable and transparent state policy related to radicalism / terrorism attitudes is needed in its application. As the purpose of the consideration considering letter C of Law No. 5 of 2018, namely "To ensure protection and legal certainty in the eradication of criminal acts of terrorism, as well as to meet the needs and development of law in society, which has been the basis for the counter-radicalism / terrorism policy.

c. BNPT Supervisory Agency.

An institution is needed that supervises the implementation of BNPT's duties in countering terrorism as a control mechanism. Do not let BNPT commit abuse of power or commit human rights violations. So far, BNPT has the authority to carry out "prevention, protection, deradicalization, enforcement, and preparation of national preparedness" with the support of very large funds (Uchok Sky Khadafi, n.d.).

d. Deradicalization Programs Must Be Right on Target.

So far, BNPT has carried out the Deradicalization program through the stages of identification and assessment, rehabilitation, reeducation and social reintegration of individuals and groups.

e. Strengthening understanding of pancasila values

Through Pancasila education in the face of radicalism, the study and re-understanding of Pancasila and Nationalism in accordance with the times for all human resources in various types of education, so not only preachers, especially those who are Muslim (Fahrul Razi, n.d.).

f. Strengthening the morale of the nation.

By promoting the teaching and implementation of religious values and beliefs in all educational units and in all areas of national life by prioritizing charity, charity, and example.

g. Cultural Reinforcement.

Building a culture of mutual trust, sincerity and competing for goodness in efforts to build society and the country.

h. Equitable development.

Fostering unity and unity through strengthening the joints of state: Development programs, law enforcement, dialogue / communication / counseling, democratization, equitable distribution of equitable development in civilized manners, achievement of state goals.

i. Affirmation of the Welfare Law State

In particular, it is serious to realize the State of Indonesia as a state of law as well as a welfare state with constitutional foundations, humanitarian foundations and religious foundations (Sukmana, 2017).

IV. CONCLUSION

The regulation of terrorism as a reprehensible act within the scope of special crimes in the National Criminal Code, is intended to reinforce counterterrorism and radicalism efforts, by including it as one of the special crimes by considering special characteristics. Criminal acts of terrorism have the potential to endanger the existence and sustainability of the Indonesian state as a welfare state, for that there is a need for synergy on the role of the government and people in the state.

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