

Integration of National Security and Rehabilitation in Sentencing for Perpetrators of Terrorist Crimes

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Abstract

This research analyzes the integration between national security interests and rehabilitation in the penal system for terrorism offenders in Indonesia, focusing on how the legal framework, policies, and law enforcement practices can combine strict monitoring mechanisms in special correctional institutions with deradicalization and social reintegration programs. The research method relies on document studies of Law No. 5 of 2018 on the Prevention of Terrorism Crimes, the national action plan for counter-terrorism, and a comparative analysis of terrorism sentencing models in Malaysia and Singapore based on literature reviews and secondary data. The research results show that Indonesian

regulations have adopted a balanced approach between security and rehabilitation through the establishment of special class correctional institutions and religious-based psychosocial deradicalization programs. However, its implementation is hindered by limitations in human resources, funding allocation, and a lack of post-release monitoring mechanisms. The rate of recidivism remains significant even though there have been success cases of rehabilitation among inmates who received adequate economic and psychosocial support. The research concludes that the effectiveness of terrorism sentencing requires synergy among institutions, a multisectoral approach, and strengthening the rehabilitation infrastructure capacity. Policy recommendations include revising the Terrorism Law to clarify the mandatory rehabilitation clause, enhancing the capacity of law enforcement personnel and prison managers, and developing post-release economic and community-based reintegration programs.

Keywords

Criminalization, Deradicalization, Social Reintegration

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I. Introduction

Terrorism has evolved into a complex transnational security threat with increasingly sophisticated patterns and characteristics in the digital era, threatening not only physical security but also political, economic, and social stability at both national and global

levels.¹ The dynamic growth of crime in modern societies, such as Indonesia, presents a complex challenge for the legal system. It not only undermines social, economic, and political stability but also requires adaptive and innovative handling in line with technological advancements and social changes.² Bonger defines crime as an anti-social act that is responded to by the state through criminal sanctions. However, its eradication requires an integrative policy between penal approaches to punishment and non-penal preventive measures to create a holistic solution.³ Facing the threats of terrorism and complex modern crimes requires adaptive and innovative security and legal approaches to maintain societal stability.

Strengthening the deradicalization program and preparedness through the second phase of the National Action Plan (RAN PE) for the period 2025-2029 aligned with the National Medium-Term Development Plan (RPJMN) 2025-2029, which outlines the president's vision and mission, is planned to play a role in coordinating the synergy of defense and security instruments, particularly in the prevention and mitigation of terrorism.⁴ The Indonesian Anti-Terrorism Law qualifies terrorism based on ideological, political, or security motives. At the same time, other countries do not specify motives, making the legal aspect weak

¹ Josefin Graef, Raquel da Silva, and Nicolas Lemay-Hebert, "Narrative, Political Violence, and Social Change," *Studies in Conflict & Terrorism* 43, no. 6 (June 2, 2020): 431–43, <https://doi.org/10.1080/1057610X.2018.1452701>.

² Muchlas Rastra Samara Muksin, "Tujuan Pemidanaan Dalam Pembaharuan Hukum Pidana Indonesia," *SAPIENTIA ET VIRTUS* 8, no. 1 (July 10, 2023): 225–47, <https://doi.org/10.37477/sev.v8i1.465>.

³ W. A. Bonger, *Pengantar Tentang Kriminologi* (Jakarta: Pembangunan Ghalia Indonesia, 1981).

⁴ Admin, "BNPT Fokus Perkuat Deradikalisasi Dan Kesiapsiagaan Nasional Melalui RAN PE Tahap 2," <https://bnpt.go.id/bnpt-fokus-perkuat-deradikalisasi-dan-kesiapsiagaan-nasional-melalui-ran-pe-tahap-2>, February 26, 2025.

because motives are not a criminal element.⁵ Balancing human rights and national security is a complex, evolving process that has not yet reached an endpoint.⁶ This creates complex challenges for the country in designing effective criminal policies that adhere to the law and justice.

The rise of terrorism is fueled by factors such as jihad motivation, weak economy, low education, radical groups in places of worship, and the failure of the police's preemptive preventive functions, which tend to be reactive, like firefighters responding after a fire, in detecting and minimizing terrorist threats early.⁷ Of the 1,036 former terrorism convicts, 116 of them have become recidivists, with 19 still in prison, and 8%, based on BNPT data, still adhere to radical ideology and have not shown loyalty to the Republic of Indonesia.⁸ The effectiveness of the law in achieving long-term protection for the community and national security is still hindered by challenges and inconsistencies in the sentencing of terrorism cases in Indonesia, as well as the lack of rehabilitation in correctional facilities specifically handling terrorism convicts.

⁵ Ahmad Bardi, "Pengaturan Kualifikasi Terorisme Dalam Undang-Undang Pemberantasan Tindak Pidana Terorisme Dan Perbandingannya Dengan Negara Lain," *JATISWARA* 38, no. 1 (March 31, 2023), <https://doi.org/10.29303/jtsw.v38i1.484>.

⁶ Abdul Razak Ahmad, "Must The Prevention Of Terrorism Entail The Violation Of Human Rights? The Case Of Malaysia's Prevention Of Terrorism Act," *UUM Journal of Legal Studies* 13 (2022), <https://doi.org/10.32890/uumjls2022.13.2.10>.

⁷ Rezeki Revi Respati; A. Wahyurudhanto; Surya Dharma, "Strategi Pemolisian Pencegahan Kejahatan Terorisme," *Jurnal Ilmu Kepolisian* 14, no. 3 (January 8, 2021): 21, <https://doi.org/10.35879/jik.v14i3.279>.

⁸ Rakean R Natawigena, "BNPT Sebut 116 Mantan Napi Terorisme Kembali Jadi Residivis," <https://www.cnnindonesia.com/nasional/20230213143939-12-912414/bnpt-sebut-116-mantan-napi-terorisme-kembali-jadi-residivis>, February 13, 2023.

Previous research has focused more on the effectiveness of the BNPT deradicalization program on terrorist inmates,⁹ This research discusses integrating national security and rehabilitation in the sentencing of terrorist offenders to create a more holistic and sustainable approach. Meanwhile, other studies focus on techniques,¹⁰ The BNPT deradicalization program uses a soft approach based on RASCLS and MICE techniques without any coercion, aimed at fostering and empowering former terrorists and ex-terrorists through emotional and humanitarian approaches.

The punishment of terrorism perpetrators requires a balance of the principles of retributive justice for proportionate punishment, community protection through crime prevention, national security with deterrent effects, and rehabilitation for social reintegration to ensure accountability of public security perpetrators and behavioral transformation. The philosophy of retributive justice emphasizes proportional retribution and accountability for terrorism perpetrators, which justifies harsh penalties due to its destructive impacts, but is criticized for overlooking the complexities of radicalization and the need for rehabilitation as a long-term solution. The terrorist sentencing system in Indonesia faces challenges in balancing national security and rehabilitation to reduce recidivism and enhance social reintegration.

II. Method

⁹ Jerry Indrawan and M. Prakoso Aji, "Efektivitas Program Deradikalisasi Badan Nasional Penanggulangan Terorisme Terhadap Narapidana Terorisme Di Indonesia," *Jurnal Pertahanan & Bela Negara* 9, no. 2 (August 19, 2019): 1, <https://doi.org/10.33172/jpbh.v9i2.561>.

¹⁰ Ahmad Pradipta Budhihatma Adikara, Muhammad Luthfi Zuhdi, and Wawan Hari Purwanto, "Analisis Metode Penggalangan Intelijen Dalam Penerapan Program Deradikalisasi Oleh BNPT," *SOCIA: Jurnal Ilmu-Ilmu Sosial* 18, no. 1 (June 30, 2021): 61–71, <https://doi.org/10.21831/socia.v18i1.41913>.

This research methodology is descriptive qualitative, with two main approaches: doctrinal legal research and comparative study. In the literature research, normative exploration is conducted on Law No. 5/2018 concerning Terrorism, implementing regulations, the National Action Plan for Counter-Terrorism documents, court decisions, as well as secondary literature such as journals, books, and BNPT reports to map the regulatory framework and penal mechanisms that integrate security and rehabilitation aspects. Next, a comparative study compares the terrorism sentencing model in Indonesia with the Security Offences (Special Measures) Act 2012 in Malaysia and the Internal Security Act in Singapore to assess the strengths, weaknesses, and implementation of security policies and deradicalization programs in each country. All data is analyzed thematically to illustrate how the synergy between security-based approaches and rehabilitation programs is implemented in sentencing terrorism offenders.

III. Results & Discussion

A. The Criminalization of Terrorism: Between Security and Rehabilitation

1. Legal Basis and Policies of Terrorism Sentencing

Law Number 5 of 2018 is the primary legal basis for combating terrorism in Indonesia. Article 6 of this law defines terrorism as acts of violence or threats carried out systematically. Terrorism offenders can be sentenced to prison from 5 years up to life imprisonment or even the death penalty. Articles 7 and 15 also regulate penalties of 5 to 20 years in prison for those involved in organizing or conspiring in terrorism. Recruitment and military training for terrorism are governed by Article 8 with a maximum

penalty of 12 years in prison or a fine of Rp1 billion. The use of explosive materials for terrorism, based on Article 10A, can be punished with 3 to 12 years in prison, along with the revocation of passports. Financing terrorism through funds or facilities faces a principal penalty plus one-third of the maximum sentence of 15 years, according to Article 11. Meanwhile, the dissemination of radical propaganda through any media is threatened with a sentence of 7 years in prison or a fine of Rp750 million according to Article 12.

The government also strengthens prevention strategies through Presidential Regulation Number 7 of 2021, establishing a national action plan for combating extremism. This program focuses on non-violent approaches such as deradicalization and inter-agency coordination under the coordination of BNPT.¹¹ Presidential Regulation No. 46 of 2021 gives a special mandate to the BNPT to design and evaluate the rehabilitation program for terrorists. Law Number 15 of 2003, resulting from the ratification of Government Regulation instead of Law Number 1 of 2002, classifies acts of terrorism into two groups: direct acts of terrorism in Chapter III, Articles 6-19, and terrorism-related crimes in Chapter IV, Articles 20 to 24.¹²

Retributivism emphasizes punishment as a response to wrongdoing without rehabilitation or social welfare.¹³ Reflected in Article 6 Paragraph (1) Letter a which imposes a severe penalty of 5

¹¹ Cahya Agung Nugraha and Anwar Kurniadi, "National Agency For Counter-Terrorism Strategy In Preventing The Threat Of Violent Extremism To Support The National's Defense," *Edukasi IPS* 6, no. 1 (March 16, 2022): 15–25, <https://doi.org/10.21009/EIPS.006.01.03>.

¹² Maria Ulfah, "Pidana Kerja Sosial, Tokyo Rules, Serta Tantangannya Di Masa Mendatang," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 3 (September 30, 2021): 517, <https://doi.org/10.24843/JMHU.2021.v10.i03.p07>.

¹³ Muladi and Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana* (Bandung: Alumni, 2010).

to 20 years, life imprisonment, or death for perpetrators of terrorism as a form of just retribution for their wrongdoing.¹⁴ The utilitarian theory aims to prevent crime in the future,¹⁵ It is evident from the 7-year prison sentence threat for the spread of radical propaganda in Article 12, which aims to prevent crime through deterrence, as well as the special procedural provisions that extend the detention period to neutralize threats through incapacitation.¹⁶ Indonesian criminal law combines retribution, prevention, rehabilitation, and protection for a balance of justice.¹⁷ As stated in Article 15 which imposes a sentence of 5 to 20 years for conspiracy to commit terrorism while also requiring a deradicalization program in prisons as a form of community protection and safeguarding.

Rehabilitation reduces recidivism through training, counseling, and social support for positive integration,¹⁸ realized through Articles 43C and 43D, which require the national counter-terrorism agency (BNPT) to conduct systematic deradicalization, including ideological rehabilitation, psychosocial rehabilitation, and social reintegration.¹⁹ Mandatory rehabilitation in correctional

¹⁴ Andi Hamzah, *Sistem Pidana Dan Pemidanaan Indonesia* (Jakarta: Pradnya Paramita, 1993).

¹⁵ Muladi and Arief, *Teori-Teori Dan Kebijakan Pidana*.

¹⁶ Marcus Priyo Gunarto, "Sikap Memidana Yang Berorientasi Pada Tujuan Pemidanaan," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 21, no. 1 (February 23, 2012): 93, <https://doi.org/10.22146/jmh.16248>.

¹⁷ Misran Misran and Desi Royanti, "Teori Gabungan Hukuman Dalam Hukum Positif Ditinjau Menurut Hukum Pidana Islam," *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 9, no. 2 (January 4, 2021): 237, <https://doi.org/10.22373/legitimasi.v9i2.8514>.

¹⁸ Farradhila Ayu Pramesti et al., "Jaminan Ganti Rugi Serta Rehabilitasi Terhadap Korban Error In Persona," *JURNAL HUKUM, POLITIK DAN ILMU SOSIAL* 3, no. 3 (June 20, 2024): 250–62, <https://doi.org/10.55606/jhps.v3i3.3888>.

¹⁹ Sudarto Sudarto, "Pelaksanaan Deradikalisasi Sistem Pembinaan Narapidana Teroris Di Lembaga Pemasyarakatan Gunung Sindur Berdasarkan Undang-

institutions and social reintegration, either inside or outside prisons, has not been optimal, resulting in high recidivism because terrorist ideology is difficult to eradicate even after undergoing guidance. Therefore, this law balances retributive justice with efforts for prevention and recovery of offenders as a holistic approach to breaking the cycle of terrorism.

The analysis of the terrorism eradication regulations in Indonesia shows that Law No. 5 of 2018 serves as the main legal foundation, defining terrorism and imposing severe penalties ranging from imprisonment to the death penalty, as well as regulating various related aspects such as recruitment, use of explosives, and terrorism financing. The government is also implementing preventive strategies through Presidential Regulation No. 7 and 46 of 2021, which emphasize deradicalization and rehabilitation. Indonesia's criminal law approach combines retributive, utilitarian, and rehabilitative elements, but its effectiveness still needs to be improved, especially regarding deradicalization and social reintegration to reduce recidivism rates. Therefore, there is a need for ongoing evaluation and refinement of deradicalization and social reintegration programs to ensure the effectiveness of comprehensive terrorism eradication.

2. Types of Terrorism Punishment: Special Prisons and Deradicalization

Herbert L. Packer stated that punishment is a necessary tool of social control but is regrettable because it causes suffering with uncertain outcomes, although its necessity is acknowledged.²⁰ The Anti-Terrorism Law regulates the planning of criminal acts through Article 14, while Article 15 includes conspiracy, attempts,

Undang Pemasarakatan,” *Begawan Abioso* 14, no. 2 (July 2, 2024): 117–25, <https://doi.org/10.37893/abioso.v14i2.798>.

²⁰ Herbert Leslie Packer, *The Limits of the Criminal Sanction* (California: Stanford University Press, 1968).

or assistance in other criminal acts. Both articles impose penalties equivalent to the primary sanctions in Articles 6 to 13A. Perpetrators of terrorism in that category face imprisonment for 5 to 20 years based on Article 6, paragraph 1, letter a, in conjunction with Article 15. Punishment that only aims to retaliate or intimidate the perpetrator tends to be ineffective as it risks fostering resentment rather than remorse and contradicts the principle of justice.²¹

The use of violence and threats of violence that governs every individual who deliberately commits violence or threats of violence, thereby creating a terror atmosphere, especially against state officials, strategic vital objects, or public facilities, is threatened with a minimum penalty of 5 years in prison, life imprisonment, or the death penalty as stipulated in Article 6 paragraph (1) letter a. Inmates in this category are required to serve their sentence in a special terrorist block within correctional institutions, with the implementation of a risk assessment-based monitoring system to mitigate potential security disturbances.²² In addition, they are required to participate in an intensive deradicalization intervention program designed to change aggressive mindsets through psychological approaches, ideological counseling, and cognitive behavioral training. This process aims to break the cycle of radicalism and prepare the reintegration of prisoners into society after serving their sentences.²³

²¹ J.E. Sahetapy, *Ancaman Pidana Mati Terhadap Pembunuhan Berencana* (Bandung: Alumni, 1979).

²² Josias Simon Runturambi, "Penanganan Narapidana Teroris Di Lembaga Pemasyarakatan Indonesia," *Jurnal Kajian Strategik Ketahanan Nasional* 1, no. 1 (June 25, 2018), <https://doi.org/10.7454/jkskn.v1i1.10003>.

²³ Erlangga Alif Mufti and Ontran Sumantri Riyanto, "Peran Lembaga Pemasyarakatan Dalam Upaya Rehabilitasi Narapidana Untuk Mengurangi Tingkat Residivis," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (December 22, 2023): 2425–38, <https://doi.org/10.37680/almanhaj.v5i2.4026>.

Articles 8 and 10 of the Terrorism Law regulate the criminalization of recruitment and the prohibition of military or paramilitary training for terrorist purposes, with a punishment of up to 12 years in prison and a maximum fine of IDR 1 billion, followed by strict detention in special correctional institutions and the obligation to participate in deradicalization programs involving religious leaders, security experts, and psychologists to eliminate militant ideology.²⁴ Article 10A on Terrorism regulates the procurement, storage, or use of explosives for terrorist purposes with a prison sentence threat of 3 to 12 years accompanied by the revocation of passport rights as an additional penalty, as well as the obligation to participate in a special rehabilitation program at the Terrorist Correctional Institution, which includes entrepreneurship training and psychological assistance in accordance with BNPT Regulation No. 3 of 2024 on the deradicalization of former terrorism convicts.

Article 11 of the Anti-Terrorism Law criminalizes all forms of terrorism financing including material assistance, funding, or the provision of facilities before or during the commission of the crime with a primary prison penalty increased by one third of the maximum punishment under the Criminal Code, as well as the revocation of passport rights accompanied by the obligation to participate in economic assistance programs such as entrepreneurship training and access to micro-credit in prisons specifically for terrorists in accordance with deradicalization policies to break the dependence on radical networks. Article 12 criminalizes the dissemination of terrorism propaganda through written, audio, or visual means with a maximum prison sentence of 7 years and/or a fine of Rp750 million, and requires offenders to

²⁴ Haykal Hafizul Arifin et al., “Ketika Kekerasan Dianggap Seksi: Persepsi Laki-Laki Bahwa Perempuan Suka Kekerasan Memicu Pola Pikir Ekstremis Militan,” *Jurnal Psikologi Sosial* 22, no. 1 (February 29, 2024): 63–86, <https://doi.org/10.7454/jps.2024.08>.

participate in a workshop-based counter-radicalization program and dialogue with former terrorists in Correctional Institutions to mitigate the effects of ideological incitement, an approach that combines strict supervision and deradicalization for the balance between national security and the reintegration of offenders.

Sanctions against perpetrators of terrorism can be implemented through deradicalization brainwashing programs, separation in penal institutions, and the establishment of a special agency under the Attorney General's Office as the executor of court rulings.²⁵ The deradicalization program in prisons includes religious, national, psychological, and entrepreneurship mentoring through non-violent dialogue that successfully builds the inmates' awareness, in line with the global programs based on nationalism and multiculturalism.²⁶ Terrorism perpetrators are essentially victims of an extremist ideology based on revenge and hostility, who are unconsciously manipulated by terrorist networks to carry out the group's agenda.²⁷

The new Penal Code categorizes specific crimes such as terrorism, serious human rights violations, corruption, money laundering, and narcotics in the chapter on Special Crimes, while still maintaining the full authority of law enforcement agencies to handle them.²⁸ Terrorism is a criminal act through violence or

²⁵ Cipi Perdana, "Rekonstruksi Pemidanaan Pelaku Tindak Pidana Terorisme Di Indonesia," *Jurnal Hukum IUS QUIA IUSTUM* 23, no. 4 (2016): 672–700, <https://doi.org/10.20885/iustum.vol23.iss4.art8>.

²⁶ Ali Muhammad and Eric Hiariej, "Deradicalization Program in Indonesia Radicalizing the Radicals," *Cogent Social Sciences* 7, no. 1 (January 1, 2021), <https://doi.org/10.1080/23311886.2021.1905219>.

²⁷ Zulfi Mubaraq et al., "Return of the Lost Son: Disengagement and Social Reintegration of Former Terrorists in Indonesia," *Cogent Social Sciences* 8, no. 1 (December 31, 2022), <https://doi.org/10.1080/23311886.2022.2135235>.

²⁸ Bintang Wicaksono Ajie, "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*

threats that targets random individuals to create terror and fear in order to compel government compliance with the demands of perpetrators who are generally motivated by ideologies or political views that oppose the state.²⁹

The deradicalization program over the past seven years has faced various obstacles, both from the terrorists themselves and external factors such as the budget for prison facilities and community rejection, while the crucial resocialization and reintegration are often neglected, leading to the program's effectiveness not being optimal in changing the mindset of terrorists and ensuring their successful reintegration into society.³⁰ BNPT implements four deradicalization approaches: rehabilitation focusing on independence and personality development, re-education with correction of violent doctrines, resocialization through community engagement, and reintegration through training/certification to ensure former terrorists adapt and contribute positively to society.

According to the theory of relativity, punishment must be established so that the suffering exceeds the benefits of the crime, to prevent all violations, especially the most severe ones, to suppress crime and minimize losses, and in criminal law, this theory is divided into general and specific prevention.³¹ General prevention aims to prevent the general public from committing crimes by maintaining order through a deterrent effect. In contrast, specific

Terrorism 2, no. 2 (June 1, 2024): 100–110, <https://doi.org/10.59593/amlcft.2024.v2i2.69>.

²⁹ Muhammad Sholahudin Al Ayyubi, “Perlindungan Korban Terorisme Dalam Undang-Undang Nomor 5 Tahun 2018,” *Ma'mal: Jurnal Laboratorium Syariah Dan Hukum* 3, no. 4 (August 8, 2022): 286–312, <https://doi.org/10.15642/mal.v3i4.130>.

³⁰ Indrawan and Aji, “Efektivitas Program Deradikalisasi Badan Nasional Penanggulangan Terorisme Terhadap Narapidana Terorisme Di Indonesia.”

³¹ Muladi and Arief, *Teori-Teori Dan Kebijakan Pidana*.

prevention focuses on rehabilitating offenders so they do not repeat criminal acts and become valuable members of society.

Herbert L. Packer views punishment as a necessary social control that is painful and often ineffective, as seen in the handling of terrorism in Indonesia which combines heavy penalties with deradicalization programs. The Anti-Terrorism Law regulates the entire chain of crime from planning to financing, accompanied by rehabilitation obligations in special prisons. This approach reflects the theory of specific prevention, but its effectiveness is limited by the resistance of the perpetrators and structural obstacles. Efforts by the National Counterterrorism Agency (BNPT) through four stages of deradicalization are crucial to breaking radicalism. Still, they need to be strengthened so that punishment does not merely punish, but also rehabilitates.

3. The Strategic Role of the Courts and Correctional Institutions

A harmonious partnership between local government social organizations, security apparatus, and the community in preventing terrorism through interfaith dialogue, cultural activities such as wayang (puppet shows) and hadrah (musical performance), as well as the campaign of Islam rahmatan lil'alam, has successfully countered radicalism by promoting the values of peace and unity.³² The individualization of punishment in Law No. 1/2023 of the Criminal Code regulates the adjustment of sanctions based on the unique characteristics of the offender as stated in Article 54 Paragraphs 1 to 2, prioritizing substantive justice over legal certainty as stated in Article 53 Paragraph 2. The individualization of sentencing in Law No. 22/2022, Article 36, Paragraph 4 regulates the placement of convicts based on risk assessment and needs and rehabilitation through Social Research.

³² Najahan Musyafak and Lulu Choirun Nisa, "Dakwah Islam Dan Pencegahan Radikalisme Melalui Ketahanan Masyarakat," *Jurnal Ilmu Dakwah* 41, no. 1 (June 30, 2021): 56–72, <https://doi.org/10.21580/jid.v41.1.7869>.

Barda Nawawi Arief stated that the idea of individualizing punishment is a modification of the sentencing decision that has permanent legal force based on the development or self-improvement of the convicted person.³³

Based on Article 5, Paragraph 1 of Law No. 48 of 2009, the judge must explore, follow, and understand the community's legal values and sense of justice with the independence to adjust the facts and the law to achieve justice. The judge has full authority to impose a penalty on the defendant without being bound by the prosecutor's charges and can decide on a heavier or lighter sanction based on the analysis of aggravating or mitigating factors of the defendant's fault.³⁴ The Criminal Code Article 54 regulates the purpose of punishment to prevent crime through law enforcement, as well as rehabilitating prisoners to be beneficial to society while resolving conflicts, restoring social balance, eliminating the convict's guilt, and granting forgiveness with the principle of not diminishing human dignity or causing suffering.

Andi Hamzah formulated the objectives of punishment in the concept of the three R's and one D, namely, Reform to rehabilitate offenders into becoming useful, Restraint to secure society through isolation, Retribution as retribution for crimes, and Deterrence to prevent crimes through a deterrent effect on offenders and society.³⁵ Criminal sentencing integrates legal aspects through legal foundations and at least two valid pieces of evidence, sociological aspects by considering societal reactions, and psychological aspects from the victim's perspective, allowing the judge to assess facts and circumstances comprehensively.

³³ Barda Nawawi Arief, *Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru* (Jakarta: Prenada Media, 2008).

³⁴ M. Sholehuddin, *Sistem Sanksi Dalam Hukum Pidana: Ide Dasar Double Track System Dan Implementasinya* (Jakarta: RajaGrafindo Persada, 2007).

³⁵ Andi Hamzah, *Asas-Asas Hukum Pidana* (Jakarta: Rinneka Cipta, 1994).

The Economic and Social Resolution (Ecosoc) Number 46 of 1984, which was adopted on May 25, 1985, at the 7th UN Congress in Milan, Italy, encourages the use of non-custodial sanctions as an alternative to imprisonment, emphasizing detention as a last resort for minor offenders, while also reducing the negative impacts of prisons and increasing research on non-custodial sanctions. Meanwhile, terrorism is categorized as a serious crime with the potential to cause casualties and public fear, necessitating special handling. It is essential to ensure that non-custodial approaches still consider the level of risk and potential danger of offenders to not compromise public safety to humanize the penal system.

The theory of retribution in criminal law emphasizes proportional punishment for offenders, rooted in retributive justice that upholds the rights of victims, and is applied in Indonesia in severe cases such as corruption and terrorism for strict law enforcement and deterrent effects.³⁶ The theory of rehabilitation in modern criminal law emphasizes the improvement of behavior and the reintegration of offenders into society with a focus on future orientation, according to Sudarto, and is applied in cases of minor crimes or juveniles to trigger awareness and self-improvement.³⁷

Gunung Sindur Prison has not been optimal in its personality change programs and empowerment of terrorism convicts due to an imbalance in the officer-prisoner ratio, a lack of psychological experts, limited funding, and inappropriate programs. The background of the prisoners requires adjustments in ratio,

³⁶ Syaiful Bakhri, "Pengaruh Aliran-Aliran Falsafat Pemidanaan Dalam Pembentukan Hukum Pidana Nasional," *JURNAL HUKUM IUS QUIA IUSTUM* 18, no. 1 (2011): 136–57, <https://doi.org/10.20885/iustum.vol18.iss1.art8>.

³⁷ Lisa Forsberg and Thomas Douglas, "What Is Criminal Rehabilitation?," *Criminal Law and Philosophy* 16, no. 1 (April 3, 2022): 103–26, <https://doi.org/10.1007/s11572-020-09547-4>.

involvement of experts, and interest-based programs to improve rehabilitation success.³⁸

The partnership between local government, law enforcement, social organizations, and the community has successfully prevented radicalism through cultural approaches, interfaith dialogue, and peace campaigns. Sentencing is now directed towards individualization with adjustments to penalties based on the offender's character, risk assessment, and rehabilitation needs. Judges have the discretion to consider juridical, sociological, and psychological factors to render fair and proportional decisions. Sentencing combines the objectives of rehabilitation, security, retribution, and prevention, while non-custodial alternatives are recommended for minor offenses without neglecting the risks in serious cases such as terrorism. The rehabilitation of inmates still faces structural obstacles, so reforms based on potential and needs are required to ensure the success of reintegration.

B. Key Factors in the Criminalization of Terrorism: Between Security and Rehabilitation

1. The Risks of Recidivism and Its Implications for National Security

BNPT data from early 2023 shows that 116 out of 1,036 former terrorism convicts, or 11.2%, have relapsed into terrorist actions, indicating challenges in the effectiveness of the

³⁸ Hamja Hamja, Sulistiani Andan Dewi, and Eri Eka Sukarini, "Efektivitas Pembinaan Mental Dan Deradikalisasi Narapidana Teroris Di Lembaga Pemasyarakatan Kelas III Gunung Sindur Bogor," *Masalah-Masalah Hukum* 50, no. 4 (October 30, 2021): 460–72, <https://doi.org/10.14710/mmh.50.4.2021.460-472>.

deradicalization program.³⁹ The government addresses terrorism through a soft approach deradicalization program by BNPT since 2008, while social media plays a role in increasing intolerance and encouraging the resurgence of extremism.⁴⁰ Deradicalization aims to transform radical beliefs into moderate ones and to separate individuals from radical groups to prevent reattachment, ensuring a sustainable ideological transformation.⁴¹

Malaysia regulates counter-terrorism through the Security Offences Act (SOSMA) 2012, the Prevention of Terrorism Act (POTA) 2015, the Special Measures Against Terrorism in Foreign Countries Act 2015, and the Anti-Money Laundering and Anti-Terrorism Financing Act (AMLA-TFA) 2001, accompanied by a limited rehabilitation program through the Religious Rehabilitation Program (RRP) to correct extremist ideologies and support the families of detainees. However, the deradicalization modules are not standardized, recidivism data is not transparent, and anecdotal reports indicate that former detainees are re-engaging with militant networks. POTA is Malaysia's law enforcement policy for preventing terrorism, established in response to the ISIS threat in Southeast Asia, which includes preventive measures both domestically and abroad.

Singapore excels in handling terrorism in Southeast Asia through collaboration between the government, society, a strict

³⁹ Natawigena, "BNPT Sebut 116 Mantan Napi Terorisme Kembali Jadi Residivis."

⁴⁰ Agus Subagyo, "The Implementation of the Pentahelix Model for the Terrorism Deradicalization Program in Indonesia," *Cogent Social Sciences* 7, no. 1 (January 1, 2021), <https://doi.org/10.1080/23311886.2021.1964720>.

⁴¹ Tora Bjorgo and Andrew Silke, *Root Causes of Terrorism* (New York: Routledge, 2018).

security system, and regional cooperation, as seen from the continuously increasing GTI.⁴² Singapore implements the Internal Security Act (ISA) for indefinite administrative detention for national security, supported by a deradicalization program by the Religious Rehabilitation Group (RRG) which conducts religious to psychological counseling as well as community aftercare under the strict supervision of the Internal Security Department (ISD) and electronic monitoring post-release, achieving an official claim of zero recidivism for 41 former detainees through a cross-agency coordination approach and individual interventions.

Intelligence as the search for the best solutions plays a crucial role in early detection of threats through covert operations and in-depth analysis to support the effectiveness of deradicalization programs as a soft approach to counterterrorism, with collaboration between agencies such as BNPT, BIN, and Densus 88, as well as synchronization of terrorism data to strengthen national resilience.⁴³ Indonesia has experienced the phenomenon of terrorism since the era of 1948 through a series of rebellions such as the Madiun PKI, DI/TII, and OPM, which were initially handled militarily as a domestic threat. However, post-2000, influenced by international social construction after 9/11, counter-terrorism policies became more repressive with a risk of human rights violations, hence the government needs to accurately interpret

⁴² Tan Evi, "Hukum Terorisme Di Singapura," *Journal of Terrorism Studies* 1, no. 2 (November 20, 2019), <https://doi.org/10.7454/jts.v1i2.1008>.

⁴³ Dian Dwi Irawan, "Peran Intelijen Dalam Assessment Dan Evaluasi Program Deradikalisasi," *Jurnal Ketahanan Nasional* 30, no. 1 (April 23, 2024): 1, <https://doi.org/10.22146/jkn.90354>.

terrorism while upholding the law fairly without discrimination.⁴⁴ Indonesian culture makes it vulnerable to radicalism that undermines Pancasila, weakens the economy, and threatens unity, so strengthening the values of Pancasila is necessary to maintain national stability.⁴⁵

Radicalism in Indonesia is an ideology that advocates for social and political change through violence, as exemplified by groups such as DI, HTI, FPI, JAD, and ISIS, which are characterized by their takfiri beliefs, a desire to establish an Islamic state, and replace the national ideology. Therefore, anti-radicalism education by families, communities, and educational institutions is necessary to break the chain of these ideologies.⁴⁶ Recidivism among former terrorism prisoners is triggered by complex factors such as socio-economic marginalization, radicalization networks, and weaknesses in the rehabilitation system, thus requiring a holistic approach through the integration of legal policies, economic support, education, and community interventions to minimize the risk of reoffending and ensure sustainable reintegration.⁴⁷

⁴⁴ Ardli Johan Kusuma et al., "Indonesia Dan Ancaman Terorisme: Dalam Analisis Dimensi Imaterial," *Sosiohumaniora* 21, no. 3 (November 4, 2019), <https://doi.org/10.24198/sosiohumaniora.v21i3.21142>.

⁴⁵ Sri Dewi Ariyani, "Is Moral Education Effective in Preventing Radicalism and Terrorism?," *Indonesian Journal of Counter Terrorism and National Security* 2, no. 1 (January 31, 2023): 115–46, <https://doi.org/10.15294/ijctns.v2i1.66161>.

⁴⁶ Ilham Kurniawan, "Memaknai Radikalisme Di Indonesia," *TA'LIM: Jurnal Studi Pendidikan Islam* 3, no. 1 (January 13, 2020): 70–82, <https://doi.org/10.52166/talim.v3i1.1848>.

⁴⁷ Ali Masyhar, Ali Murtadho, and Ahmad Zaharuddin Sani Ahmad Sabri, "The Driving Factors for Recidivism of Former Terrorism Convicts in Socio-

The high recidivism of former terrorists shows the weaknesses of the BNPT deradicalization program, which has not effectively severed ideological ties, compounded by the negative influence of social media. Malaysia relies on strict regulations and religion-based rehabilitation programs, although lacking standards and transparency. Singapore excels with an integrated approach, including administrative detention, religious counseling, and strict post-release supervision. In Indonesia, intelligence plays a crucial role in early detection, but the repressive approach post-9/11 is prone to human rights violations. Radicalism that threatens Pancasila and national unity needs to be countered through strengthening national values and anti-radicalism education from an early age. A holistic approach based on law, socioeconomic factors, and community involvement is key to the sustainable reintegration of former militants.

2. The Potential for the Rehabilitation of Terrorism Offenders

Indonesia implements mandatory deradicalization through Law No. 5/2018 BNPT. The deradicalization program for 1,192 former prisoners shows that 116 out of 1,036 who are indicated have returned to being recidivists in terrorism cases.⁴⁸ Malaysia manages modern terrorism through the Prevention of Terrorism Act (POTA), a law aimed at preventing and detaining militant

Legal Perspective,” *Journal of Indonesian Legal Studies* 8, no. 1 (May 31, 2023), <https://doi.org/10.15294/jils.v8i1.69445>.

⁴⁸ Aryo Putranto Saptohutomo, “116 Eks Napi Terorisme Jadi Residivis, BNPT Akui Deradikalisasi Tak Mudah,” <https://nasional.kompas.com/read/2022/12/29/12160081/116-eks-napi-terorisme-jadi-residivis-bnpt-akui-deradikalisasi-tak-mudah>, December 29, 2022.

terrorists who commit crimes. Meanwhile, Singapore uses the Religious Rehabilitation Group (ISA) and structured aftercare—reporting a 0% recidivism rate from 41 former terrorists, confirming the effectiveness of this integrated model. The strategy of release and social reintegration encourages former terrorists to break free from radicalism through multi-stakeholder or peace circles, BNPT, Densus 88, but some actually return to extremist beliefs post-program.⁴⁹

Malaysia relies on a community-based approach in deradicalization for stability, while Indonesia manages terrorist threats like Jemaah Islamiyah with policies that are sensitive to ethnic and religious issues. Despite the differences in their governance systems, both require inter-agency coordination and global synergy. Malaysia's deradicalization program is based on the concept of Ahli Sunnah Wal Jamaah, aimed at correcting the misguided understanding of jihad among individuals identified as at risk.⁵⁰ Rehabilitation becomes the key to countering radicalism through a religious approach by the Islamic welfare department of Malaysia, correcting misconceptions in Islamic interpretation and replacing Salafi Wahabi ideology with accurate teachings, effectively proven on former terrorists.⁵¹

⁴⁹ Zulfi Mubaraq et al., "Return of the Lost Son: Disengagement and Social Reintegration of Former Terrorists in Indonesia," *Cogent Social Sciences* 8, no. 1 (December 31, 2022), <https://doi.org/10.1080/23311886.2022.2135235>.

⁵⁰ Syahrir Mujib and Mhd Halkis, "Upaya Pemerintah Malaysia Menanggulangi Masalah Terorisme," *Sospol* 8, no. 2 (December 28, 2022): 225–40, <https://doi.org/10.22219/jurnalsospol.v8i2.22549>.

⁵¹ Mohamed Bin Ali, *Coping with the Threat of Jemaah Islamiyah* (Singapore: Taman Bacaan Pemuda Pemudi Melayu Singapore, 2007).

Singapore recorded a 0% recidivism rate from 41 ex-terror convicts through the Religious Rehabilitation Group (RRG) program since 2003, which includes religious and psychological counseling under the ISA followed by integrated aftercare by ISD supported by closed evaluations, inter-agency coordination, and allocation of strategic resources. The Religious Rehabilitation Group (RRG) is a non-governmental initiative supported by Singapore authorities to provide religious counseling to ISA detainees in order to correct deviant Islamic beliefs, along with psychological support, job training, and post-release supervision as efforts to prevent recidivism.

The deradicalization program aims to rehabilitate terrorism convicts through systematic mentoring, but it is hampered by limited socialization, training for officers, and resources, thus requiring the integration of legal frameworks and multisector collaboration for reintegration and preventing terrorism.⁵² Terrorism actors should be seen as victims of radical ideology who need rehabilitation rather than just being punished as criminals.⁵³ The deradicalization program through disengagement transitioning from violent behavior to anti-violence and de-ideologization of acceptance of Pancasila NKRI effectively reduces

⁵² Sudarto, "Pelaksanaan Deradikalisasi Sistem Pembinaan Narapidana Teroris Di Lembaga Pemasyarakatan Gunung Sindur Berdasarkan Undang-Undang Pemasyarakatan."

⁵³ Abdul Jamil Wahab et al., "Deradicalization Programs in Indonesia: Perspectives of Former Terrorist Convicts," *QIJIS (Qudus International Journal of Islamic Studies)* 12, no. 1 (August 28, 2024): 75, <https://doi.org/10.21043/qijis.v12i1.22931>.

violence and transforms the ideology of ex-terrorists into moderates, allowing for social reintegration.⁵⁴

Restorative justice as a form of rehabilitation is developing in Indonesia by focusing on the recovery of victims, offenders, and the affected community from criminal acts, as well as aiming to repair damage and strengthen social relationships among the parties involved.⁵⁵ The implementation of criminal law theory in Indonesia faces complex challenges such as the misalignment of regulations with contemporary societal needs and the demands for regulatory adaptation to dynamic social developments, even though the enactment of the new Penal Code has not stopped substantial debates over these changes.⁵⁶ The challenges of criminal law include the protection of victims' rights and strengthening crime prevention, where the implementation of restorative justice in Indonesia is not yet ideal because the system does not fully meet the needs of victims for a sense of security and post-crime recovery.⁵⁷

Indonesia's deradicalization program through Law No. 5/2018 still faces effectiveness challenges, as evidenced by some former terrorists getting re-involved in terrorism. Malaysia focuses on community-based correction of religious understanding, while

⁵⁴ Mubaraq et al., "Return of the Lost Son: Disengagement and Social Reintegration of Former Terrorists in Indonesia," December 31, 2022.

⁵⁵ Zulita Anatasia, "Diversion Against Crime by Children Confronting the Law to Achieve Restorative Justice," *Pancasila and Law Review* 1, no. 2 (January 5, 2021): 149, <https://doi.org/10.25041/plr.v1i2.2120>.

⁵⁶ Siswantari Pratiwi, "Delik Penyertaan Dalam Kitab Undang-Undang Hukum Pidana (KUHP)," *Binamulia Hukum* 11, no. 1 (March 10, 2023): 69–80, <https://doi.org/10.37893/jbh.v11i1.307>.

⁵⁷ Anatasia, "Diversion Against Crime by Children Confronting the Law to Achieve Restorative Justice."

Singapore has succeeded with an integrated approach through the ISA and RRG without recidivism. Indonesia has not maximized reintegration due to weak coordination, resources, and training. Deradicalization is effective when it combines behavioral change, de-ideologization, and acceptance of Pancasila, accompanied by legal support and institutional synergy. The restorative justice approach is relevant but not yet optimal because the legal system does not fully meet the needs of victim recovery and social stability.

3. Retributive Justice and Community Protection

Retributive emphasizes that punishment is an obligation to uphold absolute justice,⁵⁸ reflected in Article 6 Paragraph 1 of Law No. 5/2018 which imposes sanctions of 5 to 20 years, life imprisonment, or the death penalty as a form of equivalence between the damage caused by the perpetrator and the severity of the sanction. The utilitarian or relative deterrence theory focuses on deterrence and incapacitation through Article 12 of the Terrorism Law which threatens 7 years for propaganda or radical dissemination, as well as the procedures of the Criminal Procedure Code in conjunction with Law No. 5/2018 for long-term detention and priority of investigation to dismantle terrorist networks and protect the community from ongoing threats.

Malaysia prioritizes the protection of its citizens from the threat of terrorism while ensuring that countermeasures are in line with constitutional freedoms, democratic principles, and the enforcement of a fair justice system.⁵⁹ Article 8 Number 1 of the Singapore Internal Security Act of 1960 grants the President, upon the recommendation of the Minister of Home Affairs, the authority to conduct preventive detention of individuals deemed to

⁵⁸ Muladi and Arief, *Teori-Teori Dan Kebijakan Pidana*.

⁵⁹ Ahmad, "Must The Prevention Of Terrorism Entail The Violation Of Human Rights? The Case Of Malaysia's Prevention Of Terrorism Act."

threaten national security, including suspected terrorists; although it does not explicitly mention rehabilitation programs, this provision serves as the legal basis for the implementation of rehabilitation during the detention period.

The acts of terrorism in Poso District have caused psychological impacts such as trauma and excessive anxiety, economic impacts like difficulties in meeting family needs due to disrupted daily activities, as well as socio-cultural impacts including reduced interaction and fear of worshiping in public places, thereby undermining the stability of community life.⁶⁰ Indonesia needs to strengthen anti-terrorism policies through collaboration between the government, civil society, and context-based public education while addressing recidivism with a holistic approach from pretrial to reintegration, as well as developing measurable success indicators and further research on social resilience and the threat of lone wolf attacks in order to close gaps in the security system that are not yet optimal.⁶¹ In addition, the death penalty can be applied to perpetrators of crimes that cause significant harm, endanger,

⁶⁰ Tri Novianti and Nove Boy Harapan Lase, "Analisis Yuridis Dampak Kasus Terorisme Terhadap Masyarakat Kabupaten Poso Sulawesi Tengah Serta Upaya Penanggulangannya Menurut Undang-Undang Nomor 15 Tahun 2003 Tentang Pemeberantasan Tindak Pidana Terorisme," *PETITA* 3, no. 1 (July 31, 2021): 1–13, <https://doi.org/10.33373/pta.v3i1.3404>.

⁶¹ Annisa Yudha Apriliyasi and Sapto Priyanto, "Prevention System Towards Terrorist Attacks at Police Headquarters: Astana Anyar Police Station and Indonesian National Police Headquarters Case Studies," *Jurnal Pertahanan: Media Informasi Tentang Kajian Dan Strategi Pertahanan Yang Mengedepankan Identity, Nasionalism Dan Integrity* 10, no. 2 (August 31, 2024): 281–96, <https://doi.org/10.33172/jp.v10i2.19603>.

damage, and threaten many people as well as the economy of the country.⁶²

Terrorists in Indonesia focus on targeting the police due to the weaknesses in the security system and the fulfillment of evil done indicators, so the implementation of situational crime prevention through increasing risks for perpetrators, reducing crime rewards, and eliminating criminal motives becomes a key strategy to divert targets and minimize attack opportunities.⁶³ Indonesian criminal law still adheres to a retributive justice paradigm that positions punishment as the sole solution to achieve justice through a coercive repressive system with the dominance of imprisonment as the most frequently imposed form of punishment by judges.⁶⁴ In addition, the role of the community in countering radicalism requires efforts such as enhancing understanding of the dangers of forming youth movements against radicalism, community awareness campaigns, monitoring potentially radical groups, and reporting indications of radical teachings to the authorities.⁶⁵

⁶² Emi Nugraheni Solihah and Ali Masyhar, "The Implementation of Capital Punishment in Indonesia: The Human Rights Discourse," *Journal of Law and Legal Reform* 2, no. 2 (April 30, 2021): 321–28, <https://doi.org/10.15294/jllr.v2i2.46625>.

⁶³ Nia Lavinia, "Mengurangi Peluang Kejahatan Terorisme Terhadap Kepolisian Dengan Pendekatan Situational Crime Prevention (SCP)," *Jurnal Lemhannas RI* 9, no. 3 (September 30, 2021): 101–14, <https://doi.org/10.55960/jlri.v9i3.408>.

⁶⁴ Brilian Capera, "Keadilan Restoratif Sebagai Paradigma Pemidanaan Di Indonesia," *Jurnal Lex Renaissance* 6, no. 2 (April 1, 2021), <https://doi.org/10.20885/JLR.vol6.iss2.art1>.

⁶⁵ Ali Masyhar et al., "Digital Transformation of Youth Movement for Counter Radicalism," 2022, 030010, <https://doi.org/10.1063/5.0109808>.

The approach to counter-terrorism in Indonesia is still dominated by a retributive paradigm that emphasizes heavy punishments, such as the death penalty or life imprisonment, as stipulated in Law No. 5/2018, but it has not been sufficiently effective in addressing the complexities of modern terrorism. Compared to Malaysia and Singapore, which have begun to implement preventive and rehabilitative approaches based on justice and democracy, Indonesia needs to shift to a more holistic strategy. The impact of terrorism in regions like Poso shows that, in addition to enforcement, social recovery through inter-sector collaboration, locally-based public education, and strengthening situational prevention systems to close security gaps and prevent recidivism is necessary.

IV. Conclusion

The punishment of terrorism in Indonesia combines retributive, preventive, and rehabilitative approaches as regulated in Law No. 5 of 2018, with sanctions ranging from imprisonment to the death penalty. The deradicalization program by BNPT is mandatory for terrorist convicts as part of the recovery strategy, but it still faces obstacles such as ideological resistance, lack of inter-agency coordination, limited resources, and weak post-training support. To break the cycle of extreme violence, a comprehensive evaluation of the program's effectiveness, strengthening of correctional institution capacities, and active community

involvement in the reintegration process are needed. Compared to other countries, Singapore shows higher effectiveness through an integrated deradicalization model and strict supervision that can prevent recidivism. Malaysia adopts a religion-based approach but has not been consistent in transparency and standardizing programs. Indonesia needs to strengthen synergy among institutions, a restorative justice-based approach, and education of national values to comprehensively address radicalism. Moving forward, the balance between national security protection and rehabilitation efforts must be a primary focus in penal policy to fairly and sustainably meet the challenges of terrorism.

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