

# ICLU

Issue No.3/2018

Indonesia  
Criminal Law  
Update

## INDONESIA'S LEGAL FRAMEWORK ON TERRORISM



INSTITUTE FOR  
CRIMINAL JUSTICE  
REFORM

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# Indonesia Criminal Law Update

## Introduction

The war on terrorism has made the government of Indonesia to renew the policy on terrorism. Although critics received from human rights activists, the revision process of Law on Terrorism continued and was finally agreed upon by the government and the House of Representatives which later on becomes the Law No. 5 of 2018.

ICJR has been involved in the advocacy process of the Law on Terrorism. Hand in hand with Indonesia Peace Alliance (Aliansi Indonesia Damai/AIDA), ICJR provided inputs for the revision process to also provide attention on efforts to manage the victim of terrorism. In the Draft Law on the Amendment to Terrorism Law, the management of victim of terrorism did not get a portion from the government. Inputs from ICJR and AIDA were finally accepted by the House of Representatives and became the initiatives of the House of Representatives in the discussion of Draft Law on the Amendment to Terrorism Law which finally has been approved by the government and the House of Representatives.

In this ICLU, we describe what are introduced by the Law No. 5 of 2018 so that the public can find out Indonesia efforts in combating terrorism



**Syahrial M. Wiryawan**  
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# Indonesia's Legal Framework on Terrorism

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## About ICJR

Since its establishment in 2007, the Institute for Criminal Justice Reform (ICJR) commits to take the initiatives in supporting overall criminal justice reform. ICJR is formed with a mission to support collective actions in honoring the Rule of Law and realizing criminal justice system with strong human rights protection.

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*Terrorism is defined as “an act which uses violence or threat of violence which causes a wide spread atmosphere of terror or fear, which can cause mass victims, and/or creates damages or destructions to strategic vital object, environment, public facility, or international facility with a motif of ideology, politic, security disturbance.”*

## **1. Overview**

On 21 June 2018, Law No. 5 of 2018 on Amendment to Law No. 15 of 2003 on Stipulation of Government Regulation in Lieu of Law No. 1 of 2002 on Eradication of Criminal Acts of Terrorism to become a Law (Amendment to Terrorism Law) was formalized by President Joko Widodo. The long discussion on the Amendment to Terrorism Law has finally ended. Several stipulations in this Amendment to Terrorism Law has caused controversy, due to seen not in favor of human rights especially the right to access a fair and balance trial, because for example the long period of arrest and detention which are very risky to be misappropriated by the law enforcer officers. However, several stipulations especially related with victim protection in the Amendment to Terrorism Law should be appreciated for providing a clearer and more structured protection mechanism. In addition, the Amendment to Terrorism Law is finally for the first time defines the phrase of “*terrorism*” after gone through a long debate regarding elements that must be considered in an act of terrorism.

## 2. Definition of Terrorism

Definition of terrorism is a new stipulation which occur in the Amendment to Terrorism Law. Previously, in the Law on Terrorism, the definition of terrorism was not mentioned. Terrorism is defined as "an act which uses violence or threat of violence which causes a wide spread atmosphere of terror or fear, which can cause mass victims, and/or creates damages or destructions to strategic vital object, environment, public facility, or international facility with a motif of ideology, politic, security disturbance."<sup>1</sup> Based on this definition, there are few main elements in the definition of terrorism.

First, an act which uses violence or threat of violence. The said violence in the definition is every act of abuse of physical power with or without the use of a tool unlawfully and causes danger to a person's body, life, and freedom, including making a person unconscious or unable. While the said threat of violence is every unlawful act in a form of spoken, written, drawing, symbol, or gesture, both with or without the use of a tool in a form of electronic or non-electronic which can cause fear to a person or people at large or restrain the basic freedom of a person or society. Second, this act creates a wide spread atmosphere of terror or fear, which can cause mass victims and/or cause damages or destructions to strategic vital object, environment, public facility, or international facility. Third, the motif of the act is ideology, politic, or security disturbance.

## 3. New Stipulations in the Amendment to Terrorism Law

### a. New Terms in the Amendment to Terrorism Law

In the Amendment to Terrorism Law, a number of new terms is introduced which will be used a lot in the Amendment to Terrorism Law. In addition to definition of terrorism, which has been elaborated before, other new terms are also defined by the Amendment to Terrorism Law, as follows:

Violence and threat of violence The terms violence and threat of violence in the Amendment to Terrorism Law are introduced as one of elements of terrorism definition. Violence is defined as "every unlawful act of physical abuse of power with or without a tool and create a danger to a person's body, life, and freedom, including making a person unconscious or unable."<sup>2</sup> While threat of violence is defined as every unlawful act in a form of spoken, written, drawing, symbol, or body gesture, both with or without the use of tool in a form of electronic or non-electronic which can creates fear to a person or society at large or restrain the true freedom of a person or

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<sup>1</sup> See Article 1 Point 2 of the Amendment to Terrorism Law

<sup>2</sup> See Article 1 Point 3 of the Amendment to Terrorism Law

society.<sup>3</sup>

- 1) Strategic Vital Object Definition of a strategic vital object is not newly introduced by the Amendment to Terrorism Law, however in the Amendment to Terrorism Law there are changes in regards to the definition of a strategic vital object if compared with the Law on Terrorism. Article 1 Point 10 of the Amendment to Terrorism Law stipulates that a strategic vital object is:

*"A place, location, or building which has a value of economic, political, social, cultural, and security and defense which is very high, including international facilities"*

Meanwhile in the Article 1 Point 7 of the Amendment to Terrorism Law, a strategic vital object is an:

*"Area, place, location, building or installation which: a. related with the life of many people, the nation's honor, and dignity; b. is a source of state revenue that has a value of political, economic, social, and cultural, or c. related with very high defense and security"*

- 2) Every person Definition of every person in the Amendment to Terrorism Law has been changed from previously defined as "individual person, a group of people of private, military, or police which are responsible individually, or corporation" to " individual person or corporation"<sup>4</sup>
- 3) Victim of Criminal Act of Terrorism The term Victim of Criminal Act of Terrorism is newly introduced by the Amendment to Terrorism Law, which is defined as a person who experiences a physical, mental suffering, and/or economic damages which are caused by a criminal act of terrorism<sup>5</sup>

## **b. Criminal Act**

The Amendment to Terrorism Law stipulates that all criminal acts of terrorism which are regulated by laws must be considered not a political criminal act, and can be extradited or requested for a reciprocal support as mentioned by stipulations in the laws and regulations.<sup>6</sup>

Besides that, another revision that is inserted in the Amendment to Terrorism Law related with criminal act of terrorism is the criminal sanction in the Article 6. Article 6 regulates every acts of every person who is intentionally uses violence or threat of violence which creates an atmosphere of terror or fear against a wide spread of people, cause mass victims by taking away other person's freedom or loss of life and possessions, or cause damages or destructions to a strategic vital object, environment or public facility or international facility.

<sup>3</sup> See Article 1 Point 4 of the Amendment to Terrorism Law

<sup>4</sup> See Article 1 Point 9 of the Amendment to Terrorism Law

<sup>5</sup> See Article 1 Point 11 of the Amendment to Terrorism Law

<sup>6</sup> See Article 5 of the Amendment to Terrorism Law

Criminal sanction for this act is increased to imprisonment time of five (5) years at minimum and twenty (20) years at maximum, prison punishment, or capital punishment.

Besides an increase of threshold for the criminal sanction in Article 6, in the Law No. 5 of 2018 there are also few new acts which are categorized as criminal acts of terrorism. First, in Article 10A it is added a stipulation that criminalized an act of **supplying** materials which can be used as an explosive material or weapon of chemical, biological, or radiology, microorganism, nuclear, radioactive, or its components with the intention to conduct a criminal act of terrorism. This article is actually still related with stipulation of Article 10 regarding the use of weapon of chemical, biological, radiology, microorganism, nuclear, radioactive or its components to conduct a criminal act of terrorism. However, Article 10A paragraph (1) categorizes unlawful act of importing to the territory of Indonesia making, receiving, accepting, acquiring, handing over, controlling, bringing, owning supply, or owning in its possession, storing, carrying, hiding, or extracting from the territory of Indonesia those weapons with the intention to conduct a Criminal Act of Terrorism as a criminal act. This article actually has criminal elements that are almost the same with Article 9, however the type of weapons are difference. Not only that, in Article 10A paragraph (2) it is also criminalized an act of person who intentionally trades potential materials as explosive material or trades weapon of chemical, biological, radiology, microorganism, nuclear material, radioactive or its components to conduct a criminal act of terrorism. For someone to be imposed by this article, the element of "conducting criminal act of terrorism" is not necessary to be proved, because in Article 10A paragraph (3) it is mentioned that if these elements are proven, then the criminal punishment will be more severe, which is four (4) years at minimum and fifteen (15) years at the maximum. Article 10A paragraph (4) also regulates regarding the act of every person who imports to and/or exports other things from the territory of Indonesia, besides which has been mentioned in paragraph (1) and (2) which can be used to conduct a criminal act of terrorism with a threat of imprisonment punishment of three (3) years at minimum and twelve (12) years at maximum.

Second, Article 12A which regulates the involvement of a person in an organization which conducts Criminal Act of Terrorism. In Article 12A paragraph (1) it is threaten by a criminal sanction every person who plans, drives, or organizes a criminal act of terrorism with other person in the country or outside the country. While in paragraph (2) it is threatened by a criminal sanction every person who intentionally becomes a member or recruits a person to become a member of a corporation which has been determined and/or stipulated by the court as a terrorism organization. Besides regulates the people who are intentionally become a member or recruit people in corporation, paragraph (3) also threaten with a criminal sanction, the founder, leader, management, or person who is controlling the corporation.

Third, related with **military training, paramilitary, or other training with the intention to plan, prepare, or conduct, and/or participate in a war outside the country for criminal act of terrorism** in Article 12B. Paragraph (1) of this Article regulates every person who organizes, provides, or joins the said training either in or outside the country. While paragraph (2) criminalizes people who intentionally recruiting, harboring, or sending people to undergo the said training as mentioned in Article 12B paragraph (1). Paragraph (3) expands the stipulation on criminal punishment against people who intentionally makes, gathers, and/or spreads writing or document, either electronically or non-electronically to be used for the training. What is interesting in the new provisions of criminal act of terrorism is that the threat of criminal sanction in a form of revocation of right to own a passport and cross border passage for five (5) years at the longest.

Fourth, regarding the **spreading of things to provoke others**. Article 13A threaten with a criminal sanction every person who has relationship with a terrorism organization and intentionally is spreading spoken words, attitude or behavior, writing or display with the intention to provoke other people or group of people to conduct violence or threat of violence which can cause a criminal act of terrorism.

Forms of new acts which are categorized as criminal act of terrorism in the Amendment to Terrorism Law can be seen in the below table:

Article Provision	Criminal Act	Criminal Sanction
Article 10A paragraph (1)	Unlawfully importing to Indonesian territory, make, receive, acquire, handover, control, carry, owning supply in their person or owning in its possession, store, transport, hide, or exporting from Indonesia a chemical weapon, biological weapon, radiology, microorganism, nuclear, radioactive or its components, with the intention to conduct a criminal act of terrorism.	Criminal sanction of imprisonment for 3 years at minimum and 20 years at maximum, lifetime imprisonment, or capital punishment.
Article 10A paragraph (2)	With the purpose of trading potential materials as an explosive material or trading chemical weapon, biological weapon, radiology, microorganism, nuclear material, radioactive or its components to conduct a criminal act of terrorism as mentioned in Article 9 or Article 10.	Criminal sanction of imprisonment of 2 years at the minimum and 7 years at the maximum.
Article 10A paragraph (3)	If potential material or component in paragraph (2) is proven to be used in criminal act of terrorism	Criminal sanction of imprisonment of 4 years at the minimum and 15 years at the maximum

Article 10A paragraph (4)	Importing to and/or exporting from the Territory of Indonesia a good other than what are mentioned in paragraph (1) and paragraph (2) which can be used to conduct a criminal act of terrorism	Criminal sanction of imprisonment of 3 years at the minimum and 12 years at the maximum.
Article 12A paragraph (1)	With the purpose to conduct a criminal act of terrorism in the territory of Indonesia or in other country, plan, drive, or organize a criminal act of terrorism with a person located in the country and/or outside the country or foreign state.	Criminal sanction of imprisonment of 3 years at the minimum and 12 years at the maximum.
Article 12A paragraph (2)	With the purpose to become a member or recruit a person to become a member of corporation which has been determined and/or stipulated by the court as a terrorism organization.	Criminal sanction of imprisonment of 2 years at minimum and 7 years at maximum.
Article 12A paragraph (3)	Founder, leader, management, or a person who is controlling a corporation as mentioned in paragraph (2)	Criminal sanction of imprisonment of 3 years at minimum and 12 years at maximum.
Article 12B paragraph (1)	Intentionally organize, provide, or join a military training, paramilitary training, or other training either in the country or outside the country, with the intention to plan, prepare, or conduct criminal act of terrorism, and/or participate in a war outside the country for criminal act of terrorism	Criminal sanction of imprisonment of 4 years at minimum and 15 years at maximum.
Article 12B paragraph (2)	Intentionally recruit, harboring, or sending people to undergo training as mention in paragraph (1)	Criminal sanction of imprisonment of 4 years at minimum and 15 years at maximum.
Article 12B paragraph (3)	Intentionally make, gather, and/or spreading writing or document, both electronic or non-electronic to be used in training as mentioned in paragraph (1)	Criminal sanction of imprisonment of 3 years at minimum and 12 years at maximum.
Article 13A	Having a relationship with a terrorism organization and intentionally spreading spoken words, attitude or behavior, writing, or display with the purpose to provoke people or group or people to conduct violence or threat of violence which can cause a criminal act of terrorism.	Criminal sanction of imprisonment of 5 years at maximum.

### c. Inclusion

Besides revisions related to criminal sanction and also additional new criminal acts that are categorized as a criminal act of terrorism, in the Amendment to Terrorism Law it is also available changes related to inclusion. In the Amendment to Terrorism Law, an act of a person who intentionally moves other person and also conducts unlawful conspiracy

to hide the actor of criminal act of terrorism and hides information regarding criminal act of terrorism is also threaten by criminal sanction, different with provisions of the Law on Terrorism.

Articles on inclusion in the Amendment to Terrorism Law can be seen in the below table:

Article 14	Every person who intentionally moves other person to conduct a criminal act of terrorism as mentioned in Article 6, Article 7, Article 8, Article 9, Article 10, Article 10A, Article 12, Article 12A, Article 12B, Article 13 paragraph b and paragraph c, and Article 13A is punished by criminal sanction in accordance with Article 6, Article 7, Article 8, Article 9, Article 10, Article 10A, Article 12, Article 12A, Article 12B, Article 13 paragraph b dan paragraph c, and Article 13A.	Punished by criminal sanction based on provision as mentioned in each article.
Article 15	Every person who conducts an unlawful conspiracy, preparation, attempt, or assistant to conduct a criminal act of terrorism as mentioned in Article 6, Article 7, Article 8, Article 9, Article 10, Article 10A, Article 12, Article 12A, Article 12B, Article 13 paragraph b and paragraph c, and Article 13A is punished by criminal sanction in accordance with the provisions mentioned in Article 6, Article 7, Article 8, Article 9, Article 10, Article 10A, Article 12, Article 12A, Article 12B, Article 13 point b and point c, and Article 13A.	Punished by criminal sanction in accordance with the said stipulations in every article.
Article 16A	Every person who conducts a criminal act of terrorism by involving a child	Criminal sanction increased by 1/3.

#### d. Protection to Parties Involved in a Case of Criminal Act of Terrorism

Parties involved in a case of criminal act of terrorism such as investigator, public persecutor, judge, lawyer, informer, expert, witness, and social affairs officer along with their family according to the Amendment to Terrorism Law must be given protection by the state from potential threats which are dangerous to self, life, and/or their possession. This protection is provided either before, during, or after the process of case examination, based on mandate from Article 33 paragraph (1) of the Amendment to Terrorism Law. Previously, based on Law on Terrorism, such protection could be given to witness, investigator, public prosecutor, and judge who examined the case along with their family, and did not cover lawyer, informer, expert, and social affairs officer.

Form of protections that are granted to these parties in Article 34 paragraph (1) of Law on Terrorism is given in a form of protection to personal security from mental and physical threat, confidentiality of identity of the witness, and providing a statement during the examination in the trial session without face to face encounter with the suspect. While in the Amendment to Terrorism Law, form of protections which are given to investigator, public prosecutor, judge, and social affairs officer along with their family are differentiated with the form of protection given to informer, expert, and witness along with their family, as follows:

Investigator, public prosecutor, judge, and social affairs officer with their family	Informer, expert, and witness with their family
<ul style="list-style-type: none"> <li>• Protection to personal security from mental and physical threat</li> <li>• Confidentiality of identity <b>Other form of protections which are specifically proposed by the investigator, public prosecutor, judge, and social security officer*)</b></li> </ul>	<ul style="list-style-type: none"> <li>• Protection to personal security from mental and physical threat</li> <li>• Confidentiality of identity</li> <li>• Providing statements during examination in the trial session without face to face encounter with the suspect.</li> <li>• <b>Providing statements without the presence of witness which is conducted remotely through an audio-visual communication device*)</b></li> </ul>

\*) New form of protection which previously did not exist in the Law on Terrorism.

### e. Prevention Program of Criminal Act of Terrorism

Chapter on prevention of criminal act of terrorism is a new chapter which is mentioned in the Amendment to Terrorism Law. Article 43A of the Amendment to Terrorism Law elaborates that conducting prevention of criminal act of terrorism is an obligation of the government, which is conducted through three programs, namely national readiness, contra radicalization, and deradicalization. Every prevention efforts are conducted through a continuous anticipative measure which is based on the principle of protection of human rights and prudential principles.

#### National Readiness Program

According to Article 43 of the Amendment to Terrorism Law, national readiness is a condition of alertness and readiness to anticipate the occurrence of criminal act of terrorism through a planned process, integrated, systematic, and continuous. Paragraph

(4) of this article elaborates that national readiness is conducted through empowerment of the society, enhancement of apparatus' ability, protection and enhancement of facility and infrastructure, development of research on terrorism, and mapping of areas prone to radical terrorism views. All these programs are conducted by the government through related ministries or agencies under the coordination of body that carries out affairs in the field of terrorism prevention.

### **Contra Radicalization Program**

Contra Radicalization, bases on Article 43C is a process that is planned, integrated, systematic, and continuous which is implemented against people or group of people who are prone to be exposed by radical terrorism views which is intended to stop the spreading of radical terrorism views. These are carried out indirectly through a contra narration, contra propaganda, or contra ideology. In the elucidation of Article 43C paragraph (3) is it further mentioned that contra narration, contra propaganda, or contra ideology are various efforts to resist radical terrorism views in a form of spoken words, writing, and other literacy media. All contra radicalization programs are conducted by the government which is coordinated by a body that carries out the affairs in the field of terrorism prevention by involving related ministries/agencies.

### **Deradicalization Program**

Deradicalization program is a program carried out in order to prevent criminal act of terrorism, beside the national readiness and contra radicalization. This program is carried out in order to minimize occurrence of criminal act of terrorism. Based on Article 43D of the Amendment to Terrorism Law, deradicalization is a process that is planned, integrated, systematic, and continuous which is conducted to eliminate or reduce and reverse radical terrorism views which is happened.

Deradicalization is a program intended to terrorism suspect, defendant, guilty party, convict, and ex-convict and person or group of people who are already exposed with radical terrorism views. Person or group of people who are already exposed with radical terrorism views according to elucidation of Article 43D paragraph (2) point f is person or group of people who have radical terrorism views and having potential to conduct criminal act of terrorism. Implementer of this program is the government which is coordinated by a body that carries out affairs in the field of terrorism prevention by involving related ministries/agencies. In Article 43F it is reasserted that implementer of the national readiness, contra radicalization, and deradicalization is part of function given to the National Agency for Terrorism Prevention.

Deradicalization for the suspect, defendant, guilty party, and convict according to Article 43D paragraph (4) of the Amendment to Terrorism Law is conducted through four (4) stages. First, identification and assessment, which are capturing detail descriptions of exposure

level of a person related with their roles and involvement in the group or network so that it can be find out the level of radical terrorism. Second, rehabilitation which is a recovery and healing to reduce the level of radical terrorism of a person. Third, re-educate which is a guidance or an empowerment of a person which is a series of activities to revert a person who has been exposed to radical terrorism views so that they can return to their family and society.

In the other side, deradicalization for ex terrorism convict or person or group of people who has been exposed by radical terrorism views. Deradicalization based on Article 43D paragraph (5) is conducted through three stages. First is the phase of guidance on national insight, then followed by phase of guidance on religious insight, and/or entrepreneurship. All these stages are conducted based on identification and assessment.

#### **f. Involvement and Roles of Indonesia National Army**

Indonesia National Army (TNI) is one of new agencies which is given tasks by the Amendment to Terrorism Law to handle terrorism actions. In the elucidation of the Amendment to Terrorism Law, it is elaborated that handling of criminal act of terrorism is the shared responsibility of related agencies, including among other TNI.

Based on provision in Chapter VIIB on Institutional Article 43I, the tasks of TNI in handling terrorism action are part of military operation besides of war. These tasks are conducted within the corridor of main tasks and functions of TNI as determined by Law on TNI. The Amendment to Terrorism Law in Article 43I paragraph (3) further mandates provision on implementation to handle terrorism actions will be regulated through a Presidential Regulation.

The same provision is also can be seen in Law No. 34 of 2004 that mentions TNI as a tool for state defense that functions as: a) deterrence of every form of military threats and armed threats from outside and inside the country against sovereignty and integrity of territory and survival of the nation; b) enforcer to every form of threat as mentioned in paragraph (1) point a; and c) restore of condition of state security that is disturbed due to security disturbance

.<sup>7</sup> And one of the main tasks of TNI is military operation besides war, which in point three is mentioned among other to handle terrorism action.<sup>8</sup>

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<sup>7</sup> See Article 6 paragraph (1) of Law No. 34 of 2004 on Indonesia National Army

<sup>8</sup> See Article 7 paragraph (2) point (b) number (3) of Law No. 34 of 2004 on Indonesia National Army

## 4. Fair Trial

### a. Arrest

Arrest of every person allegedly conducts criminal act of terrorism in the provision of Article 28 paragraph (1) of the Amendment to Terrorism Law can be done for fourteen days at maximum, based on sufficient preliminary evidences. This arrest can be extended by the investigator by applying for an extension of arrest to the Chief of District Court who its legal territory covers the location of the investigator for 7 days. The period of time of the arrest in the Amendment to Terrorism Law is longer than what was stipulated by the Law on Terrorism. Previously, in Article 28 of Law on Terrorism, it was mentioned that:

*"the investigator can conduct an arrest to very person who is strongly alleged for criminal act of terrorism based on sufficient preliminary evidences as mentioned in Article 26 paragraph (2) for maximum 7 x 24 days (seven times twenty four) hours."*

In the Amendment to Terrorism Law there are new stipulations which state that implementation of arrest to a person who allegedly conducts a criminal act of terrorism must be conducted by upholding the principles of human rights in Article 28 paragraph (3) which states the following:

*"implementation of arrest of a person who allegedly conducts a criminal act of terrorism as mentioned in paragraph (1) and paragraph (2) must be conducted by upholding the principles of human rights."*

The elucidation of Article 28 paragraph (3) states that an arrest is conducted by considering the basis of human rights among other must be treated humanely, not tortured, not viciously treated, and not undermined their honor as a human being. This paragraph later on is followed by paragraph (4) which states that:

*"Every investigator who violates the provisions mentioned in paragraph (3) is punished by criminal sanction based on provisions in laws and regulations."*

### b. Detention

In regards to time period of detention which can be done to a suspect/defendant in a criminal act of terrorism, there are changes in the period of time of detention that has become longer if compared with the old Law on Terrorism. Detention of a suspect and/or defendant of a criminal act of terrorism can be done in the phase of investigation, prosecution, and court examination.

In article 25 paragraph (2) is mentioned that a detention of a suspect for the purpose of investigation is conducted at maximum within a period of one hundred twenty (120) days. This timeframe can be extended by the investigator by applying for an extension application to the public prosecutor to sixty (60) days. Further, in the provision of paragraph (4) it is

mentioned again that the period of time of detention is as mentioned in paragraph (2) and paragraph (3), an application for an extension can be submitted again to the chief of court by the investigator for a maximum period of 20 days.

While in the phase of prosecution, according to Article 25 paragraph (5), the public prosecutor has the authority to conduct detention against the defendant for a period of time of 60 days at the longest. If the period of detention is not sufficient, then an extension of 30 days can be requested by the public prosecutor by applying for an application to the Chief of the District Court.

Another new stipulation in regards to detention is the obligation for every investigator to conduct an arrest against the suspect of criminal act of terrorism by upholding the principles of human rights as asserted by Article 25 paragraph (7). Further elaborated, that what is meant by the principles of human rights in this article is among other that the suspect is humanly treated, not tortured, not cruelly treated, and not its dignity as a human being is not undermined. Every investigator who violates this stipulation, is punishable by a criminal sanction in accordance with the laws and regulations.

Phases	Law on Terrorism			Amendment to Terrorism Law		
	Time Period	1 <sup>st</sup> Extension <sup>1</sup>	2 <sup>nd</sup> Extension II <sup>2</sup>	Time Period	1 <sup>st</sup> Extension <sup>3</sup>	2 <sup>nd</sup> Extension <sup>4</sup>
Investigation	6 months			120 days	60 days	20 days
Prosecution	60 days			30 days		
	-					
<b>Total</b>	<b>6 months</b>			<b>290 days (± 10 months)</b>		

### c. Tapping

An investigator in a criminal act of terrorism has authorities among other to conduct tapping. This authority is already existing in the provisions of the Law on Terrorism, however it is renewed by the Amendment to Terrorism Law by few substantial changes, such as regarding the time period of the tapping that is conducted. The authority to conduct tapping is mentioned in Article 31 paragraph (1) letter b of the Amendment to Terrorism Law which states:

*"Based on sufficient preliminary evidences, an investigator is authorized to conduct conversation tapping through telephone or other communication devices which are allegedly used to prepare, plan, and conduct a criminal act of terrorism, and to find out the whereabouts of a person or a terrorism network."*

Based on stipulation in Article 31 paragraph (2), tapping can be done after acquiring a stipulation from the Chief of District Court which its jurisdiction area covers the location of the investigator who approves the tapping based on a written application by the investigator

or the superior of the investigator. However, Article 31A states that in case of urgency, the investigator can do the tapping in advance to a person who is allegedly preparing, planning, and/or conducting a criminal act of terrorism and after the implementation within a period of 3 days at the latest must ask for a stipulation from the Chief of District Court which its jurisdiction area covers the location of the investigator.

Provisions on mechanism in the Amendment to Terrorism Law are more detailed if compared with provisions which were available in the Law on Terrorism, which were only included in Article 31 paragraph (3) that the act of tapping should be reported or be accounted to the superior of the investigator.

In regards, to time period of a tapping that can be done, stipulations in the Amendment to Terrorism Law provide longer time for the investigator to conduct the tapping. Previously, in Article 31 paragraph (2) of Law on Terrorism, it was mentioned that tapping can be done for a period of one (1) year at the longest. In Article 31 paragraph (3) of the Amendment to Terrorism Law, it is mentioned that tapping can be done for a period of one (1) year and can be extended 1 time for a period of 1 year at the longest.

Further, new stipulation occurred in the Amendment to Terrorism Law related with the tapping is the affirmation regarding the confidentiality of the outcome of the tapping and can only be used for the purpose of investigation by the stipulation of Article 31 paragraph (4) of the Amendment to Terrorism Law. Another revision is related with the accountability and reporting of the tapping, which were previously in the Law on Terrorism were conducted by the investigator to the superior of the investigator, however in the Amendment to Terrorism Law to be exact in Article 31 paragraph (5), the reporting of tapping is conducted by the investigator to the ministry which performs government affairs in the field of communication and information technology.

	Law on Terrorism	Amendment to Terrorism Law
<b>Mechanism (normal)</b>	Can only be conducted based on order by the Chief of District Court	Investigator must apply for a written request to the Chief of District Court. Chief of District Court will issue a permit to conduct the tapping through a stipulation.
<b>Mechanism (urgent condition)</b>	-	Investigator can conduct tapping in advance, within period of 3 days at the latest after the implementation must ask for a stipulation to the Chief of District Court.
<b>Timeframe</b>	1 year	1 year with 1x extension for 1 year
<b>Outcome of tapping</b>	-	Classified and can be used for the purpose of investigation

<b>Accountability</b>	Superior of the investigator
<b>Reporting</b>	Superior of the investigator ministry which performs government affairs in the field of communication and information technology

#### **d. The Loss of Rehabilitation Rights for Defendant who are Acquitted or Dismissed from Legal Charges**

Previously, in the Law on Terrorism through its Article 37, the right to get a rehabilitation was given to every person who is acquitted or dismissed by the court from all legal charges which its decision has binding legal force. Rehabilitation was restoration to an original position, for example honor, reputation, title, or other rights including healing and physical or psychical recovery and reparation of possessions. However, this stipulation by the Amendment to Terrorism Law is removed. Rights to get a psychosocial and psychological rehabilitations are only given to the victim of criminal act of terrorism through Article 35 paragraph (4), both to direct victim<sup>9</sup> and indirect victim<sup>10</sup>, which both definitions are not covering every person who are trialed in a case of criminal act of terrorism but are acquitted or dismissed from all legal charges.

#### **e. Stipulation of Suspect**

The term suspect is not often mentioned in the Law of Terrorism and the Amendment to Terrorism Law. On both of these laws, it is not mentioned what is the meaning of suspect according to the laws. To find out the definition of suspect, then stipulations in Article 1 point 14 of the Criminal Procedures Code can be used as a reference which states a suspect as a person who because of its act or condition based on preliminary evidences should be suspected as a criminal act.

In regards to when a person is stipulated as a suspect in a criminal act of terrorism, a specific stipulation regarding this cannot be found in both Law on Terrorism and the Amendment to Terrorism Law.

It is mentioned in Article 25 paragraph (2) of the Amendment to Terrorism Law that:

*"for the purpose of investigation, the investigator is authorized to conduct detention against a suspect for a period of one hundred twenty (120) days at maximum."*

<sup>9</sup> Direct victim according to the elucidation of Article 35A paragraph (2) letter a is a victim who is directly undergo or experience the impact of Criminal Act of terrorism, for example death victim or sustain heavy injury due to bomb explosion.

<sup>10</sup> Indirect victim according to the elucidation of Article 35A paragraph (2) letter b is they who are relying their life to the direct victim, for example a wife who losses her husband is an indirect victim or vice versa.

Hence, when someone is arrested, they will have a status as a suspect because only a suspect who can be detained. Further in stipulation of Article 28 paragraph (1) it is mentioned that:

*"an investigator can conduct an arrest to every person who allegedly conducts a criminal act of terrorism based on sufficient preliminary evidences for a period of fourteen (14) days at maximum."*

This article does not mention at all the term "suspect" but if observed, the phrase "every person who is allegedly conducts a criminal act of terrorism based on sufficient preliminary evidences" is a definition of the term suspect as mentioned in the Criminal Procedures Code.<sup>11</sup> From this article it can be known that every person who is arrested in a criminal act of terrorism, can already be identified as a suspect.

#### **f. Right to Legal Assistance**

An issue regarding this right to legal assistance is cannot be found in both provisions of Law on Terrorism and the Amendment to Terrorism Law. Right to legal assistance is one of the suspect or defendant's rights which is guaranteed by the laws and regulations that is included as a right to a fair and balance trial (fair trial). In the Law on Terrorism, the only issue occurred regarding the rights of the suspect/defendant is the right to acquire rehabilitation if they are based on the court decision is acquitted or dismissed from all legal charges. However, as mentioned before, this right is later on removed by the Amendment to Terrorism Law. If referring to stipulation of Article 25 paragraph (1) of the Amendment to Terrorism Law, which states that investigation, prosecution, and examination in a trial session of a case of criminal act of terrorism are conducted based on criminal procedures rules, except it is otherwise determined by this law, then stipulation regarding the right to legal aid for a suspect or a convict who allegedly conducts a criminal act of terrorism is basically will follow the stipulation in the Criminal Procedures Code.

## **5. Protection for Victims**

Stipulation regarding victims is one of aspects that should be appreciated in the Amendment to Terrorism Law. In the Amendment to Terrorism Law, it is stipulated one special chapter regarding protection of victims, which was previously a chapter on compensation, restitution, and rehabilitation. The fundamental changes in the Amendment to Terrorism Law is the introduction of definition of terrorism victim in Article 1 point 11 and stipulations which states that terrorism victim, both direct or indirect victims, is the responsibility of the state

<sup>11</sup> Related with the differentiation of sufficient preliminary evidences and preliminary evidences. The Constitutional Court in Decision 21/PUU-XII/2014 states that the phrase "preliminary evidences", "sufficient preliminary evidences" must be interpreted as a minimum of two evidences in accordance to Article 184 of the Criminal Procedures Code.

in Article 35A paragraph (1). Direct victim is a victim who is directly undergo or experience the impact of the criminal act of terrorism, such as death victim or heavy injury due to bomb explosion, while indirect victim is those who relying their life to the direct victim, for example a wife who lost her husband who was a direct victim or vice versa. Stipulation of a person as a victim of criminal act of terrorism is conducted by the investigator based on result of crime scene investigation.

The presence of the state for victim of criminal act of terrorism in the Amendment to Terrorism Law is manifested in the responsibility of the state to conduct medical aid, rehabilitation to both psychosocial and psychological, donation for the family in case of the victim is dead, and compensation. These are later on become the rights of the victim of a criminal act of terrorism.

Regarding the mechanism, the Amendment to Terrorism Law in Article 35B paragraph (1) appoints an institution which conducts the affairs in the field of witness and victim protection, in this regard is the Witness and Victim Protection Agency/LPSK, by cooperation with related institutions/agencies as the organizer of medical aid, rehabilitation, donation, and compensation. These aids are given soon after the occurrence of criminal act of terrorism through a procedure determined by the laws and regulations. Article 36B of the Amendment to Terrorism Law also provides a mandate to regulate the procedure of the application, determination of value the damages, payment of compensation and restitution in a Government Regulation.

#### **a. Medical Aid, Psychosocial and Psychological Rehabilitations, and Donation**

Providing medical aid, psychosocial and psychological rehabilitations, and donation to death victim is given by an institution which conducts affairs in the field of witness and victim protection soon after the occurrence of criminal act of terrorism. In regards to the mechanism of providing the aid, rehabilitation, and donation, the Amendment to Terrorism Law provides a mandate to be conducted in accordance with the laws and regulations. This stipulation is included in the Article 35B of the Amendment to Terrorism Law.

#### **b. Compensation**

Stipulation on this compensation is regulated by a separate article in Article 36 which consists of 10 paragraphs. It is mentioned in this article that compensation is given to the victim or the beneficiaries with funding that is borne by the state. Application of the compensation can be done by the victim, family, or its beneficiaries through an institution which conducts affairs in the field of witness and victim protection or if the victim, family, or beneficiaries do not apply for a compensation, conducted by an institution which conducts affairs in the field of witness and victim directly. The application can be submitted since the start of investigation.

The amount of compensation is later on submitted by the public prosecutor based on the amount of damages that is suffered by the victim in the charges and will be given and mentioned also in the court decision. This compensation is given even though the actor of criminal act of terrorism is acquitted or dismissed by a court decision. In case that the actor of criminal act of terrorism is dead or the actor cannot be found, the victim is given a compensation based on a court stipulation.

### c. Restitution

Similar with the provision on compensation in the Amendment to Terrorism Law that is regulated under a separate article, provision on restitution is also separately regulated in a special article. Article 36A is a new article which regulates the right to restitution of victim of criminal act of terrorism.

This restitution is a compensation given by the actor to the victim or its beneficiaries. Application of restitution, identical with the application of compensation, can be submitted since the phase of investigation, however to the investigator, not to an institution which conducts affairs in the field of witness and victim.

The amount of restitution will also be submitted to the public prosecutor in its charges and will be stipulated by the court in its decision. For actor who does not pay the restitution, then will be imposed by a criminal sanction of substitution imprisonment.

## 6. Terrorism Funding

Terrorism funding according to stipulations in the Law No. 9 of 2013 on Prevention and Eradication of Criminal Act of Terrorism Funding is all acts in order to provide, collect, give, or lend fund, either directly or indirectly, with the intention to be used and/or which is known will be used to conduct a terrorism activity, terrorism organization or terrorist. Although criminal act of terrorism funding is separately regulated under a law, the rules on procedures that is prevailing for the settlement of case of criminal act of terrorism funding is based on stipulation in Article 46A of the Amendment to Terrorism Law, following the Amendment to Terrorism Law. Previously, rules on procedures for criminal act of terrorism funding, in accordance with Article 36 of Law on Terrorism Funding was conducted in accordance with the provisions of laws and regulations, unless otherwise determined. Article 46A of Amendment to Terrorism Law states that:

*"Starting when this law is in effect, investigation, prosecution, and examination in trial session of criminal act of terrorism which are included in this law is apply in a manner of mutatis mutandis to investigation, prosecution, and examination in trial session of criminal act of terrorism funding."*

## About The Authors

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