

# Accountability of Criminal Actors Terrorism Funding

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## ABSTRACT

The word terrorist and terrorism comes from the Latin word *terrere* which means more or less shaking or vibrating. The word terror can also cause horror. Of course, the horror of the victim's heart and mind. Furthermore, the term terrorism is a concept that has a sensitive connotation because terrorism causes the killing and misery of innocent people. However, until now there is no definition that can be universally accepted. Understanding terrorism for the first time discussed in the *European Convention on the Suppression of Terrorism* (ECST) in Europe in 1977 there was an expansion of the meaning paradigm from *Crimes Against State* to *Crimes Against Humanity*. *Crimes Against Humanity* includes criminal acts to create a situation that results in individuals, groups and the general public in an atmosphere of terror. The association of terrorism with the issue of human rights violations, because of the consequences of terrorism, many of the interests of mankind are sacrificed, innocent people are made the cost of savagery and peace of life between human beings is clearly at stake. In this case there is a religious social community that introduces forms of religious implementation as a struggle strategy. The writing of this article is normative by tracing and systematically reviewing the laws and regulations associated with the criminal responsibility of financing terrorism, as well as the opinions of experts from various literature both books, articles and other freelance related to criminal law.

**Keywords:** accountability, criminal act, theoretical.

## 1. INTRODUCTION

Events that took place on September 11, 2001, were the hijacking of four commercial aviation aircraft carried out by terrorists and crashing the three planes into the WTC (*World Trade Center*) which was a symbol of the strongest defense of the United States of America. Actually the targets or targets of the terrorists have four main buildings, but in the last case, the terrorists failed to carry out the action. In carrying out its actions terrorists did not only knock down the two buildings mentioned above but the incident also killed about 3,000 innocent people. The four aircraft used in carrying out acts of terrorism were *American Airlines* Flight 11, which crashed into the tower of the *World Trade Center* southern, *American Airlines* Flight 175, which crashed into the tower of the *World Trade Center* southern, *American Airlines* Flight 77, which crashed into *The Pentagon* and *United Airlines* Flight 93, who hit the ground. The terrorists want to crash a plane into the *US Capitol Building* or the White House. Passengers on the plane tried to take over the plane, and the terrorists crashed the plane quickly when the plane crashed.

After the attack, the United States government gave the statement that those responsible for all of the above were al-Qaeda led by Osama Bin Laden, who lived in Afghanistan, and since

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the incident the United States government has beaten the "War Against Terrorism". The United States calls on Afghanistan to immediately hand over Osama Bin Laden to the United States government, but the Afghan government does not grant the United States' wishes. Feeling that as a world police and superpower, the United States then attacked Afghanistan. As a result of the attacks carried out by the United States government the world also welcomed anti-US protests and this did not only occur in Muslim countries. But if asked to reveal evidence about Bin Laden's involvement in the events of September 11, 2001, the United States refused with unclear reasons. The White House only has a standard pretext, not wanting to disclose it for fear of being caught by Osama's network. According to Ari Fleicher, spokesman for the White House, providing evidence means giving valuable information to those who object to American actions and making it easier for them to hide, then continue the next action. US President George Walker Bush announced that the perpetrators of terrorism were none other than the al-Qaeda organization led by Osama Bin Laden.

This event not only happened in America but also happened to our country, on Saturday night on the day of the Bali Pancasila Power in bombs again, precisely in the neighboring Kuta and Jimbaran. Sadly every year in the last three years there have been acts of terrorism, the 2002 Bali bombing, the 2003 Marriot Hotel bombing, and the 2004 bombing of the Embassy in Jakarta. dead or injured. Indonesia is among the countries that are severely harmed by acts of terrorism, not only lives, physical, material but also images.

In addition to individuals, even Islamic institutions cannot be victimized. Many Islamic institutions whose assets were frozen and their activities stopped due to allegations of having links with al-Qaeda and Taliban. The Al Haramain Foundation in Saudi Arabia which used to be very popular with foreign Muslim students because they often provide free Islamic books and the Koran is now blocked. The internet site has not been accessible for a long time. Not only that, some Indonesian Muslim student institutions abroad, despite being outside the 1267 list, did not escape the supervision of the *International Police*. When the Ambon and Poso cases in Indonesia began in the early 2000s there were many Indonesian individuals in Western Europe, America, Japan and Australia, who raised humanitarian funds to alleviate the suffering of refugees. The amount collected and sent is often very large (especially compared to the rupiah exchange rate) and inevitably raises suspicion from the *International Police*. So, there were several humanitarian aid administrators in France, Germany and America who were questioned by the police. In addition to Middle Eastern, North African and Southeast Asian citizens, Muslim institutions and individuals domiciled in Western Europe and North America are not spared from this list. Rabih Al Hadaad, head of the *Global Relief Foundation* in Michigan USA, a humanitarian aid channeling agency that has been actively supporting Chechen refugees, Bosnia, Palestine, and Afghanistan, has been

forced to stay in detention for months because of allegations of channeling aid to terrorists. Even though he and his organization only distributed blankets, food ingredients and medicines. The allegations imposed on him were unclear (later the allegations were transferred to *overstay*, aka immigration violations), which also included restrictions on access to meet family and lawyers. Enaam Arnout, a Syrian-born US citizen was also brought to justice on February 3, 2003 on charges of raising funds for Osama Bin Laden and other terrorist organizations. In fact, according to Arnout, the *Benevolence International Foundation*, whose organization is based in Bridgeview, Illinois, only distributes humanitarian assistance to oppressed people, widows and orphans in Islamic countries. The only reason for Arnout's detention was that he had known Usamah Bin Laden in the 1980s.<sup>4</sup>

The whole world has been infected with anti-terrorism fever. As a reaction to the anti-terrorism fever in the form of being beaten up constantly by tackling the war on terrorism, international pressure spearheaded by the United States has urged countries in the world to pay attention to the fight against terrorism, among others by making anti-terrorism laws in each country. The efforts made by the international community in the context of combating terrorism are not only criminalizing acts of terror committed by terrorists, but also criminalizing terrorism financing activities (*financing of terrorism*) or *terrorist financing*.<sup>5</sup>

Appeared by several experts, as stated in a meeting of FATF (*Financial Action Task Force*) on November 19-20, 2001 which took place in Wellington, New Zealand, there were two methods of financing for the activities of terrorists. The first method is to involve obtaining financial support from the state and then channeling the funds to supported terrorism organizations (*state-state-sponsored terrorism*) has declined in recent years. Funds can also be obtained from individuals who have large financial assets. As an example of a terrorist attack on 11 September 2001. Osama Bin Laden, who is believed to be the mastermind behind the attack, was accused of contributing funds from his personal wealth to establish and support the Al-Qaeda terrorist network. Together with the Taliban regime that formerly ruled Afghanistan. The second method is obtaining directly from activities that make money. These activities include committing various criminal acts. This method is no different from the activities carried out by criminal organizations in general. However, in contrast to criminal organizations in general, terrorist groups receive funds from lawful income (not related to crime).<sup>6</sup>

The United Nations in the *World Ministerial Conference on Organized Transnational Crime*, which was held in Naples, 21-23 November 1994, with the theme *Problems and Danger*

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<sup>4</sup> [www.suaramerdeka.co.id](http://www.suaramerdeka.co.id), February 14, 2003.

<sup>5</sup> Financial Action Task On Money Laundering, **Report On Money Laundering Typologies**, 2001-2002, February 1, 2002, p. 2-3.

<sup>6</sup> Ibid.

*Posed by Oranized Transnational Crime in The Various Regions of the World*, among others stated that terrorism is one type of *Activities of Transnational Criminal Organization* is a crime that is highly feared because of threats to sovereignty, society, individuals, national stability, the values of democratization, privatization, and development.<sup>7</sup> Therefore, it is not surprising that the word terrorism is so interesting to be discussed and debated, especially after the tragedy of September 11, 2001 in the United States and the tragedy in Bali on October 12, 2002, the conversation was carried out by various groups ranging from legislative, executive, judicial, police , lawyers, academics to the pedicab drivers.

In response to international pressure, which has intensified after the Bali bombing which was allegedly committed by the Jamaah Islamiyah group, the Indonesian government made a Government Regulation to replace the Republic of Indonesia Law No.1 of 2002 concerning Eradication of Terrorism and Government Regulation in Lieu of Law No.2 of 2002 concerning the enactment of Government Regulation in lieu of Law No. 1 of 2002 concerning the Eradication of Terrorism, in the October 12, 2002 bombing incident in Bali, the two government regulations were replaced by the House of Representatives as the Act Law No. 16 of 2003 (has been declared invalid by the Constitutional Court) concerning the stipulation of Government Regulation in Lieu of Law No. 2 of 2002 concerning the enactment of Government Regulation in Lieu of Law No. 1 of 2002 concerning Eradication of Terrorist Crimes, In blasting events b om Bali in October 12 became the Law.<sup>8</sup>

After the PERPU No. No.1 of 2002 was made on October 18, 2002, it turned out that PERPU No.1 of 2002 had been enacted into Law No.15 of 2003 concerning the Eradication of Terrorism Crimes and was later amended by Law Number 9 of 2013 concerning Prevention and Eradication of Terrorism Funding Crime in it has also regulated the prohibition on terrorism financing.

The loading of the provisions of Article 11, 12 and Article 13 letter a in PERPU No.1 of 2002, means that the Indonesian government not only criminalizes terrorism, but also criminalizes terrorism(*financingfinancing of terrorism*). Even PERPU No.1 of 2002 provides exceptions for investigators, public prosecutors, or judges from the provisions of bank secrecy as stipulated in the Banking Law in the event that these officials request information from banks regarding the assets of everyone known or reasonably suspected of committing criminal act of terrorism. Provisions on the exemption from the bank secrecy provisions are regulated in Article 30 paragraph (2) of PERPU No.1 of 2002. Meanwhile in Article 29 paragraph (1) PERPU No.1 Year 2002 stipulates that investigators, public prosecutors, or judges are authorized to instruct banks and financial

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<sup>7</sup> M. Arief Amirullah, **Money Laundering**, Cet.II, Bayumedia Publishing, Malang, 2004, p.38 Op.cit  
<sup>8</sup> , p.298.

service institutions to block the assets of any person known or reasonably suspected to be the result of a crime, terrorism and / or criminal matters relating to terrorism.<sup>9</sup>

A criminal act of terrorism is an act intentionally using violence or threats of violence that creates an atmosphere of terror or widespread fear of people or creates a victim who is of a mass nature, by seizing freedom or loss of life and property of others, or causing damage or destruction to vital objects that are strategic or environmental or public facilities or international facilities. Terrorism financing is property that is used directly or indirectly for terrorism activities which is equated as a result of a criminal act. This has become an obligation for the state to criminalize acts of terrorism and terrorism financing. Criminalization is intended to be an act of being able to be convicted before. Given the impact of criminal acts of terrorism and terrorism financing is very terrible.

Based on the description from the background above, the writer is interested in presenting some formulation of the problems related to financing terrorism, namely:

1. What is the concept of terrorism financing according to the positive legal provisions in Indonesia, so that one can be said to be a terrorist financing agent?
2. How is criminal responsibility for people who provide financial assistance for Terrorism Crimes?

## **2. FINANCING TERRORISM BY POSITIVE LEGAL PROVISIONS IN INDONESIA**

### **a. Terrorism Organizational Structure.**

Until now, the definition of terrorism is still a debate even though there are arguments that formulate, which are set forth in the legislation. Speaking of the definition of terrorism, there are as many as the number of writers discussing it, each defining it based on their respective perspectives and arguments in terms of politics, law, sociology, psychology, and so on. This clear definition of terrorism is needed so that there will be no multiple interpretations that result in harming the interests or targets of responding to human rights that should be respected by all civilized people.

The association of terrorism with the issue of human rights violations, because of the consequences of terrorism, many of the interests of mankind are sacrificed, innocent people are made the cost of savagery and peace of life between human beings is clearly at stake. In this case there is a religious social community that introduces forms of religious implementation as a struggle strategy.

Although there is no unity of opinion regarding the definition of terrorism internationally in the writing of this thesis, some terminological definitions from some experts on terrorism will be

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<sup>9</sup> Ibid, h.299.

presented, including: the notions put forward by Herbert M. Levine<sup>10</sup> in his book *World Political Debated*, explaining that:

*Terrorism has another meaning: use of violence by sub-state actors against civilians and political figures for the purpose of ending a regime's rule and establishment of a new government. Terrorism, in this sense, is a form of unconventional war. Because non-government forces in sets battles. Rather, they must engage in activity that are expected secret and newsworthy.*

Terrorism in this sense is the use of power by non-state factors towards civil or political leaders to overthrow the ruling regime and build a new government. Terrorism is an unconventional form of war. Because terrorism is not quite dangerous militarily, for the government, they never expect to get success, if it directly smells physical with the power of the government. Therefore they divert activities into something that is unpredictable, secret and interesting enough to be reported.

As with the opinion of Herbert M. Levine above, Paul Wilkinson distinguishes two notions of terrorism, namely between terrorism and terrorism, and between political terrorism and other forms of terrorism. Terrorism according to Paul Wilkinson<sup>11</sup> is a systematic, neat act of terror carried out by certain organizations.

In some countries and international organizations for juridical purposes to avoid the never-ending debate on the definition of terrorism, providing a definition of terrorism materially means formulating definitions based on the consequences of acts of terrorism. For more details, we can see in several international conventions that provide definitions of terrorism, including: International Conventions made by the organizations of South Asian countries (SAARC), namely the *SAARC Regional Convention on Suppression of Terrorism* ratified by each member country, in which intended in Article 1 of the convention, which in its translation can be known that terrorism is an act that is against the law (criminal) according to the law of each member country and also not included as a political activity. So according to this convention terrorism crimes as mentioned are considered not as political crimes or crimes that are related to political motives so that extradition cooperation is possible.

According to international conventions made by the organizations of the *United States of America*, namely in the *Convention to Prevent and the Act the Terrorism Taking the Form of Crimes Against Persons and Related Extortion that is of International Significance* ratified by each each member country, in which as referred to in Article 1 of the convention, in its translation it can be seen that terrorism is an act that is against the law (criminal) according to the law of each member country and also not intended as a political activity. So according to this convention

<sup>10</sup> Jati Prihantono, **State Accountability as State-sponsored Terrorism**, Faculty of Law, Indonesian Islamic University, Yogyakarta, 2003, p.29

<sup>11</sup> Kompas, September 11, 2002

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According to international conventions made by the organization of the *States of the Organization of American States*, the *Convention to Prevent and Punish the Act of Teaching Taking the Form of Crimes Against Persons and Related Extortion that is of International Significance* ratified by each each member, in which as referred to in Article 1 of the convention, in its translation it can be seen that terrorism is an act which is a criminal act according to each member country, especially crimes of kidnapping, murder and other attacks and aimed at attacks physical to someone where the state has obligations under international law to protect these people. The crime has international influence regardless of the motive of the crime.

And finally, international conventions made by organizations, *European Union* namely the *European Convention on the Suppression of the Terrorism* ratified by each of its members, in which as meant in Article 1 of the Convention, the translation can be known. that terrorism is an act which is a criminal act according to each member country which is not a political crime or a crime that is inspired based on politics or crimes motivated by politics. So according to this convention terrorism crimes as mentioned are not included as political crimes or crimes inspired by politics and crimes motivated by politics.

Even though until now there has been no understanding of the meaning of terrorism that is satisfying by all parties. Article 6 of Regulation No. 1 of 2002 approved by the House of Representatives of the Republic of Indonesia into Law Number 9 of 2013 concerning Prevention and Eradication of Terrorism Funding Crimes regulates acts that are prohibited as criminal acts of terrorism are:

“Anyone who deliberately uses violence or threats of violence creates atmosphere of terror or fear of people en masse, by seizing independence or loss of life and property of others, or causing damage or destruction to vital objects that are strategic or environmental or international public facilities or facilities, sentenced to capital punishment or life imprisonment or imprisonment of at least 4 (four) years and a maximum of 20 (twenty) years”.

Based on the explanation of Law Number 9 of 2013 concerning Prevention and Eradication of Crime in Terrorism Funding, terrorism is a crime against humanity and civilization and is one of the serious threats to the sovereignty of each country because terrorism is a national one which poses a danger to security, world peace and detrimental to the welfare of the community so that it needs to be carried out in a planned and sustainable eradication so that the rights of many people can protect and be upheld.

From various opinions and views regarding the definition of terms related to terrorism above, it can be concluded that terrorism is organized violence, placing violence as an awareness, thinking method as well as a means of achieving goals.

**b. The Concept of Financing Terrorism.**

Efforts made by the international community in the context of combating terrorism in addition to criminalizing terrorism carried out by terrorists also criminalize financing activities of terrorism (*Financing of Terrorism*) or financing of terrorists (*terrorist financing*).

The existence of a number of recent events related to or carried out because of terrorism activities in the world has made the entire international community experience an anti-terrorism fever. The United States, which is a "Super Power Single" country, is currently urging the international community to pay attention and care for efforts to eradicate terrorism by making terrorism laws.

The law does not only criminalize acts of terror committed by terrorists, but also criminalizes terrorism financing activities (*financing of terrorism*) or financing to terrorists (Yustianti and Roesli 2018). At the international level the prevention of financing against terrorism has been carried out at a *plenary meeting* held in Hong Kong on February 1, 2002. The meeting agreed that terrorists and those who help terrorists must be prevented from accessing the international financial system. During the meeting the FATF issued new international standards in order to eradicate terrorist financing, the international standard was called a *special recommendation on terrorist financing special*. The recommendation is that financing terrorism and the actions of terrorists can be detected, prevented and eradicated. The recommendations generated in the *Special Recommendation on Special Terrorist Financing* :

1. Immediately take steps to ratify and implement relevant UN provisions.
2. Criminalize the financing of terrorism, terrorist acts, and terrorist organizations.
3. Freeze and seize terrorist assets.
4. Report suspicious transactions related to terrorism.
5. Providing assistance to law enforcement officers from other countries and other authorities in the context of investigating the financing of terrorism.
6. Enact provisions regarding anti-money laundering on alternative remittance systems.
7. Affirming the actions that have to be taken must be related to the identification of customers conducting wire transfers both international and domestic wire transfers.

**3. FINANCING TERRORISM ACCORDING TO ERADICATION OF TERRORISM CRIMINAL ACT**

Law Number 9 of 2013 concerning Prevention and Eradication of Terrorism Funding Crimes contains funding for terrorism activities as a criminal act of terrorism, which is formulated in the provisions of Articles 11, 12 and Article 13 of the law this law. The regulation of terrorism

financing as a criminal act of terrorism is regulated so that terrorism acts can be prevented, because the process of carrying out acts of terrorism requires large funds and often the funds collected are the result of other crimes such as robbery or assistance from international terrorism networks.

To know about accountability in terrorism crimes we must understand and understand the hierarchy of terrorism organizations at least. As the opinion expressed by Fraser and Fulton illustrates how terrorism organizations organize themselves into hierarchies consisting of:

The third hierarchy, which in this hierarchy is occupied by active supporters. Compared to the other two hierarchies, many terrorists belong to this hierarchy and constitute the largest internal part of a terrorist organization. The main task, active support is to maintain the continuity of active cadre activities in the field. For that they are usually tasked with maintaining communication networks, providing *Safe House* (hiding places), carrying out intelligence activities and providing logistical and funding support, for example, such as Andri Oktavia, Andi Hidayat, Abdul Rouf, they are Banten groups that provide terrorism funding activities and provide place of residence, for hiding or where to plan action.

The fourth hierarchy, usually occupied by passive supporters. Those who actually do not directly become members of a terrorist organization and are mostly used or utilized by members of terrorist groups without them knowing.

To finance all of its activities, terrorist organizations around the world need relatively large funds. The amount of funds needed to carry out each action makes the terrorist organization's most prominent child in all corners of the world need an outside supply of funds. Funding is usually carried out by their parent organization, but it does not rule out the possibility of this being done by individuals who do this because of the ideological, religious and political goals of equality. The flow of funds is usually in the form of transferring funds through a "banking" financial service provider carried out by the parent organization that is abroad to the organization's children, the transfer of funds is not done in small amounts and many times, the account is not directly transferred to the account on behalf of the organization's children but disguised to account numbers on behalf of companies owned by the organization's subsidiaries, subsidiaries of terrorist organizations move in the same field as companies owned by parent organizations, all members of terrorist organizations are registered as workers in the company, organizational goals disguised in the form of educational, religious and humanitarian organizations. This complicated transfer procession aims to obscure the origin of funds and intelligence itself. It will be difficult to trace the use of these funds, which in turn can be easily used to succeed in their work programs in the form of training and recruitment of members through academics (college students high), in order to carry out the mission of *soft terrorism* (doctrine of ideology of terrorism) carried out by intellectual actors. According to Ermaya Suradinata, it is different from the funding made by individual

terrorist organizations, the funding made by individuals has two forms. The first is done by individual members of terrorists, in the form of fulfilling all the financial needs of the perpetrators of terrorism, by way of giving funds in a row either directly or through transfers through the bank, between the sender and the recipient of the funds only has one link and will not know the connection between each other among members of terrorists, this is similar to giving orders in the military that use a command system, what distinguishes it is that the command system in the military has a clear hierarchy and the terrorist command system is unclear. Second is done by individuals not members of terrorists, in the form of meeting financial needs not as a whole to terrorist organizations and perpetrators of terrorism itself, only in certain moments and not sustainable, there is no connection with the terrorist organization funded, only because of sympathy or ideological equality, religion and political goals.

Funding activities in every act of terrorism are the main backbone of the activity. Based on Article 11, Article 12, Article 13 letter a of the Law on the Eradication of Criminal Acts of Terrorism, every person who intentionally provides and collects funds or assets for acts of terrorism can be convicted.

Crime of terrorism is a stand-alone crime, but there is a connection with money laundering. The connection is the entry of terrorist criminal acts as *apredicate* offense in money laundering, this can be seen in Article 2 paragraph (1) letter n of Law No.15 of 2002 concerning Money Laundering as has been amended by Law No. 25 of 2003. Specifically concerning the issue of funding terrorism activities is also closely related to the crime of money laundering regulated in Article 2 paragraph (2) of the Money Laundering Act which reads:

"Property what is intended directly or indirectly for terrorism activities is equated as the result of a criminal act as referred to in paragraph (1) letter n".

The above provisions aim to detect, prevent, and eradicate criminal acts of terrorism. The ability of the system created by the Act to detect criminal acts of terrorism is not anticipatory (*forward*) but more to support the investigation and investigation of criminal acts of terrorism that have occurred.

#### **4. ACCOUNTABILITY OF ACTORS FUNDING TERRORISM**

Understanding terrorism in the Law Number 9 of 2013 concerning the Prevention and Eradication of Terrorism Funding Crimes is formulated in an abstract (broad) manner, the use of the word "... creates an atmosphere of terror or fear of people extensively or causes casualties that is mass ..... ". Because it is not explained further in terms of what a situation can be said in an atmosphere of terror or cause fear among the wider community or many victims who fall, because a country or region in a state of war also creates an atmosphere of terror, fear and many victims

who fall, so it is likely that multi interpretations will appear in the future. Even though until now there has been no understanding of the meaning of terrorism that is satisfying by all parties.

Article 6 of Law Number 9 of 2013 concerning Prevention and Eradication of Terrorism Funding Crimes regulates prohibited acts as criminal acts of terrorism:

“Every person who deliberately uses violence or threats of violence creates an atmosphere of terror or mass fear of people, by means of seize independence or loss of life and property of others, or cause damage or destruction to vital objects that are strategic or environmental or international public facilities or facilities, subject to capital punishment or life imprisonment or a minimum of 4 (four) imprisonment year and no later than 20 (twenty) years ”.

Based on the explanation of Law No.15 of 2003, terrorism is a crime against humanity and civilization, and is a serious threat to state sovereignty. Terrorism is a trans-national crime that poses a danger to security, world peace and is detrimental to the welfare of the community so that it needs to be carried out in a planned and sustainable eradication so that the rights of many people can be protected and upheld.

Pursuant to Article 11, Article 12, Article 13 letter a of Law No.15 of 2003, every person who deliberately provides and collects funds or assets for acts of terrorism can be sentenced. The formulation of Article 11 of Act Number 9 of 2013 concerning Prevention and Eradication of Terrorism Funding Crimes, confirms:

“Sentenced to imprisonment of at least 3 (three) years and competing for a lot of 15 (fifteen) years, every person who intentionally provides or raising funds for the purpose of being used or it should be known to be used partially or in whole to carry out acts of terrorism as referred to in Article 6, Article 7, Article 8, Article 9 and Article 10”.

From the formulation of Article 11 above, the form of the offense that can be imposed for terrorism financing actors, namely:

1. Every person
2. intentionally
3. provides or collects funds
4. with the aim of being used or it should be known to be used partially or wholly by
5. committing a terrorism crime

The element of each person as intended in Article 1 number 1 of Act Number 9 of 2013 concerning Prevention and Eradication of Terrorism Funding Crimes exists individuals, groups of people both civilian, military and those responsible individually, or corporations. While the intentional elements here relate to the subjective elements of the perpetrator. Where the subjective element in this article is the mental state of the intentional perpetrator. Therefore, in the formulation, it can be said that it has fulfilled the universal requirements regarding the guideline of *mens rea* in the provisions of terrorism, namely intended (intentionally and knowingly). As a core element of offense, the subjective element must be proven.

But the problem that will arise, regarding the proof, that the perpetrator intentionally provides or collects the funds used or should be known to be used in part or in whole to commit acts of terrorism. In general, discussing intentional elements is always related to elements of knowing. More specifically it was determined that the crime was related to the element of knowing from the perpetrator of the identity between the object of terrorism financing and the material elements of the terrorism crime related to the intentional element, knowing this proof is not easy.

The element of providing or collecting funds is aimed at acts in the formulation of criminal acts of terrorism, namely financing terrorism (objective element of this article).

With regard to the legal subject of terrorism financing, including within the corporation, this is based on the provisions of Article 17 in conjunction with Article 18 concerning the accountability of corporate officials. This can be seen in the provisions of Article 18, namely if a criminal act of terrorism financing is carried out by or in the name of a legal entity, company, association, foundation or other organization, the threat of a fine of 1 trillion rupiah can be suspended or revoked.

In Article 12 above the intentional elements and elements provide or collect the same assets as intended in Article 11. Where the elements of providing or collecting assets here are intended to finance the actions referred to in letters a, b, c, d, e, f, and g. The number of qualifications for the use of funds for actions in this article is intended to anticipate or overcome the occurrence of acts that are amenable to the definition of terrorism which are intended for acts in the formulation of criminal acts of terrorism namely financing terrorism.

Terrorism financing formulation according to Article 13 letter a of Law Number 9 of 2013 concerning Prevention and Eradication of Terrorism Funding Crimes, namely:

“Anyone who deliberately provides assistance or convenience to the perpetrators of terrorism, by giving or lending money or property or property other wealth to perpetrators of criminal acts of terrorism, shall be subject to imprisonment of at least 3 (three) years and a maximum of 15 (fifteen) years”.

From the formulation of Article 13 here is almost the same as the elements contained in the formulation of Article 11 and Article 12 which is related to the act of financing terrorism activities.

From the formulation of Article 13 here, it is almost the same as the elements contained in the formulation of Article 11 and Article 12, which are related to the act of financing terrorism activities.

With regard to the formulation of Article 11, Article 12 and Article 13 concerning the financing of terrorism here it is closely related to the formulation of Article 2 paragraph (2) of Law No. 25 of 2003 concerning Money Laundering, which states that:

“Property that is used directly or not directly for terrorism activities is equated as a result of criminal acts as referred to in paragraph (1) letter n”.

Based on Article 15 of Law Number 9 of 2013 concerning Prevention and Eradication of Terrorism Funding Crimes, every person who conducts an attempt to commit a criminal act of terrorism as Article 6, Article 7, Article 8, Article 9, Article 10, Article 11 and Article 12 can be sentenced to the same criminal offense as a criminal. The trial offense can be called an offense not finished, ie the offender cannot do everything he has to do to complete the intended action and fail to complete it.

Based on the criminal provisions contained in Law No.15 of 2003, the type of criminal sanction is not as broad as in the Criminal Code, namely capital punishment (Article 6, Article 8, Article 9, Article 10), imprisonment (Article 6 to Article 23), fines (Article 18 paragraph 2), revocation of certain rights (Article 18 paragraph 3) and giving restitution to victims (Article 36 paragraph 1).

In Law Number 9 of 2013 concerning Prevention and Eradication of Criminal Acts of Terrorism Funding, the criminal application of perpetrators is alternative, meaning that it implements one of the criminal sanctions based on the article that violates and also applies special minimum criminal provisions. This provision is based on origin 6 to Article 24. Specific minimum criminal provisions are provisions that deviate from general criminal law (KUHP), namely Article 12 paragraph (2), which states "the shortest prison time is one day ...". Based on Articles 19 and 24, special minimum provisions, capital punishment and imprisonment for life, do not apply to terrorists under 18 years of age.

Article 19 of Law No.15 of 2003, affirms:

“Provisions concerning the imposition of special minimum crimes as referred to in Article 6, Article 8, Article 9, Article 10, Article 11, Article 12, Article 13, Article 15, Article 16 and purposes concerning the imposition of capital punishment or life imprisonment as referred to in Article 14, does not apply to perpetrators of terrorism who are 18 (eighteen) years old”.

Article 24 of Law Number 9 of 2013 concerning Prevention and Eradication of Terrorism Funding Crimes, affirms:

“Provisions concerning the imposition of special minimum crimes as referred to in Article 20, Article 21 and Article 22 do not apply to perpetrators of terrorism under the age of 18 (eighteen years)”.

In the offense of terrorism, evil conspiracy to commit terrorism, including criminal acts of terrorism. Evil agreement is the agreement of two or more people in the form of a plan to commit a crime. So, this provision is to prevent acts of terrorism. Indeed, this provision deviates from criminal law, because malicious agreement includes the preparation stage and cannot be convicted

(Article 53 of the Criminal Code). But in this case, terrorism crimes are different from crimes regulated in the Criminal Code, because terrorism crimes are organized, hidden and transnational crimes, moreover the target of their terror acts is directed at innocent civilians and public facilities, which results in many victims fall (wounds or death) and enormous material losses. Therefore, the security apparatus must go one step ahead of them (terrorist organizations) and not only move when they have carried out acts of terror and result in unwanted casualties. But in the application of capital punishment or life imprisonment or a maximum of 20 (twenty) years imprisonment against the perpetrators of evil conspiracy is an act that violates the principle of justice, because the perpetrator has not implemented the target to be addressed. Therefore, the application of sanctions above is very heavy and unfair.

Article 15 of Law Number 9 of 2013 concerning Prevention and Eradication of Crime in the Financing of Terrorism, which affirms:

“Anyone who commits a malicious agreement, trial or assistance to commit a criminal act of terrorism as referred to in Article 6 to Article 12 with the same criminal offense criminal act”.

Article 88 of the Penal Code:

“It is said that there is a malicious agreement, if two or more people have agreed to commit a crime”.

Based on Article 36 paragraph 1 of Act No.15 of 2003:

“The perpetrators of criminal acts of terrorism are obliged to provide restitution, namely compensation given by the perpetrator to the victim or his heir. This aims to uphold justice for the perpetrators and victims or the families of the victims”.

Article 36 paragraph 1 of Act Number 9 of 2013 concerning Prevention and Eradication of Terrorism Funding Crimes:

“Every victim or heir due to a crime of terrorism has the right to receive compensation or restitution”.

The elements of providing or collecting funds in Article 12, elements of providing or collecting assets in Article 12 and elements of giving or lending money or goods or assets as intended in Article 13 in financing terrorism activities require proper verification to prove whether the elements what is meant in Article 11, Article 12, and Article 13 is intended for terrorism activities or not. This has the effect that in law enforcement related to the accountability of terrorism financing here is very difficult.

The element of financing actions in the crime of terrorism in reality is very difficult to prove in the trial of a case of a criminal act of terrorism. This is due to knowing that someone who provides funds or collects funds or provides or lends money or goods requires hard work from the

public prosecutor based on sufficient preliminary evidence obtained from investigations and investigations.

In the procedural law of criminal acts of terrorism, especially the perpetrators of terrorism financing, the defendant did not find a reverse verification system to prove whether he was financing terrorism or not. Cause that proves here to be the duties and responsibilities of the public prosecutor.

Criminal acts only show prohibited and threatened acts with a crime. The principle in its accountability in criminal law is "not convicted if there is no fault (*Geen straf zonder schuld; actus non facit reum nisi mens rea*)", which is commonly used in the sense of: "no crime without subjective errors or mistakes without reproach". The principle of error is defined as: "no crime without objective improper actions, which can be harmed to the perpetrator". The principle of error is a fundamental principle in criminal law, because of a mistake, criminal becomes legal. To get a crime, the intentional or at least absolute negligence is implied. So, intentional or negligence is a necessity to be able to conclude an error.

As for the error term according to Simons, is the existence of state *psychic* a certainty to the person who commits a criminal act and the relationship between the situation and the act carried out in such a way that the person can be reproached for doing that. So for the existence of an error, the relationship between the state of mind and his actions (or with a condition that accompanies the act) which causes the reproach must be intentional or negligent. Deliberation (*dolus*) and negligence (*culpa*) are forms of error (*schuldvormen*).

## **5. METHODS**

The writing of this article is normative by tracing and systematically reviewing the laws and regulations associated with the criminal responsibility of financing terrorism, as well as the opinions of experts from various literature both books, articles and other freelance related to criminal law. So from a variety of reviews a conclusion is drawn that will answer the existing problems.

In this writing, the problem approach taken is through a *conceptual approach* which is an approach that is focused on the provisions of the legislation.

The interpretation method used in this study is a systematic interpretation that is a method of looking for legal regulations or some specific articles by linking the rule of law with other articles and a grammatical interpretation that is an interpretation that takes into account general words according to grammar, or the relationship between words with other words. Attract the theoretical and positive legal rationale to test the truth of the criminal responsibility of perpetrators of terrorism financing according to the criminal act of terrorism.

## 6. CONCLUSION

In Law Number 9 of 2013 concerning Prevention and Eradication of Terrorism Funding Crimes contains funding for terrorism activities as a criminal act of terrorism. This is formulated in the provisions of Article 11, 12 and Article 13 of this law. The regulation of terrorism as a criminal act of terrorism is aimed at preventing terrorist acts. The act of criminal terrorism is a separate crime, but there is a connection with the crime of money laundering. The connection is the amendment of terrorist criminal acts as a criminal act originating from a crime of money laundering, this can be seen in Article 2 paragraph (1) letter n of Law No.15 of 2002 concerning Money Laundering Crimes as amended by Law No. 25 of 2003. Specifically concerning the problem of funding terrorism activities, it is also closely related to the crime of money laundering which is regulated in the manner regulated in Article 2 paragraph (2) of the Law on Money Laundering.

Every person who commits a criminal act as formulated in Law Number 9 of 2013 concerning Prevention and Eradication of Terrorism Funding Crimes can be convicted because terrorism crimes are organized, systematic, planned crime, so the perpetrator knows and wishes for his actions.

Combating acts of terror and funding if we compare water and fish, this parable was introduced by Mao Zedong. What is meant by fish are terrorist cells while water is the national community in a country with all its existence. Moreover, the water is mapped to a portrait of Indonesia, so the picture is of a community of 210 million people, spread over 17,508 islands, 300 sub-ethnicities inhabiting only a thousand islands and in waters covering 5 million square kilometers. For this reason, the government is expected as soon as possible to:

- a. Formulate restrictions on terrorism and terrorism financing that can be used as a reference nationally and internationally.
- b. The need for bilateral-regional concepts with neighboring countries, and cooperation at the international level based on a shared commitment to fight international terrorism and its funding.
- c. Optimizing the role of banks in terms of cutting the flow of funds to support acts of terrorism.
- d. The need to form a national body that comprehensively works to formulate policies and operating networks to fight terrorism.

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