



Asian Law Students' Association  
National Chapter Indonesia

# LOCAL CHAPTER

LEGAL WRITINGS



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# **Human Trafficking From the Perspective of Indonesia's Law and How Digital Technology Could Provide Sustainable Solutions**

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The Palermo Protocol defines human trafficking as the recruitment, transportation, transfer, harboring, or receipt of persons, using the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation. The same protocol also stated that exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs.<sup>1</sup> Furthermore, the UN General Assembly adopted the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children in November 2000. Other international instruments that regulated this matter are the International Labour Organization Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, and the Protocol to the Convention of the Right of the Child on the Sale of Children, Child Prostitution, and Child Pornography.<sup>2</sup>

Indonesia's Law No. 21 of 2007 about Eradication of the Crime of Human Trafficking (PTPPO Bill) defined human trafficking as an act of recruiting, accommodating, shipping, moving, or receiving a person with a violent threat, use of violence, kidnapping, confining, faking, scamming, abusing a position in power, or debt-trapping which resulting in the consent of the person who holds the power over another person, whether it happened inside or outside of the State, for human exploiting or resulting

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<sup>1</sup> Winkler, Stephen J. 2021. *Human Trafficking Definitions, Data, and Determinants*. N.p.: World Bank Group, p 3

<sup>2</sup> Gozdiak, Elzbieta M., and Elizabeth A. Collett. 2005. "Research on Human Trafficking in North America: A Review of Literature." In *Data and Research on Human Trafficking: A Global Survey*, 99-124. 1/2 ed. Vol. 43. Geneva, Switzerland: International Organization for Migration, p. 101

in the exploitation of another person. These definitions, according to Rachmad Syafaat, also included illegal adoption of children to later be sold and exploited, a contract marriage that involved “reserving” a woman to be a wife of the buyer, making children engaged in the forbidden drugs business, buying underaged workers, sexual pedophilia exploitation, women and children pornography, women and children trafficking for forced labor, buying women and children to do scrounging jobs, and using women and children to be sex workers.<sup>3</sup>

Human trafficking is one of the most profitable illegal businesses in the world, just after narcotics business and fire-armed trade business, with a profit of over seven billion US dollars. Other factors that make human trafficking has a high rate all around the globe are various, from the high level of poverty, the hope of finding a more prosperous life somewhere else--probably abroad, the low chance of decent jobs in their origin country, the neatly-organized crime syndicate, the instability of politics inside the country, to traditional slavery in remote areas. On the other side, children's pornography tourism is one of the most promising businesses, due to the high demand for children sex workers, many people are attracted to enter the market, therefore making the human trafficking business more prolific than ever. Based on research, UNICEF estimated there are over a million of women and children in Indonesia as a victim of sexual exploitation, one of the crimes categorized as human trafficking. Even the 30% of the victims are children under the age of 18, they are exploited to be sex workers, either in Indonesia or other countries. Not only Indonesia has actively exported its citizens in illegal ways, but Indonesia is also known as a receiver of trafficked and exploited persons from China, Thailand, Hongkong, Uzbekistan, Dutchland, Poland, Venezuela, Spain, Ukraine, and many more.<sup>4</sup>

Based on Indonesia's Law No. 13 of 2003 about Labor Employment, workforce labor is every person who can work and provide goods or services. This group of both men

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<sup>3</sup> Wulandari, Cahya, and Sonny S. Wicaksono. 2014. “Tindak Pidana Perdagangan Orang (Human Trafficking) Khususnya Terhadap Perempuan dan Anak: Suatu Permasalahan dan Penanganannya di Kota Semarang.” *Yustitia*, no. 90 (Desember), p. 17

<sup>4</sup> Sinaga, H. O. 2011. “Fenomena Human Trafficking di Asia Tenggara.” *Karya Ilmiah*. Jatinangor: Padjajaran University, p. 12

and women from the age of 15 to 55 years old is also called a productive workforce. If many of its residents are between the age of 15 to 55 or the prime-working age, the workforce labor is more likely to be having a surplus as well. The abundance of workforce labor is believed to bring a significant impact on the economy, thus making the country prosperous.<sup>5</sup> Indonesia, which is also one of the most populated countries in the world, has a population of 270 million and a total labor force of about 134 million. Despite the belief in a high number of the prime working-age population going to make a country prosper, the fact on the field shows not-so optimistic results. This sad truth can be seen in Indonesia, which has only a 47.88% labor force participation rate, meaning about 52.12% of the workforce labor are unemployed, despite their prime-working age. Currently in Indonesia, from its million residents, there are 37 million of the population that lived below the poverty line. Unemployment also plays a big part in the addition of the poor population in Indonesia, as this sometimes leads to desperation or even depression. This poor condition is used by the human trafficker to lure people to “work” for them, without realizing they are used as an object of a human trafficking crime. The traffickers give the victims some sweet promises, such as if they follow the order from the trafficker to move to some other places, they will be able to find a more profitable job or they can gain the chance of learning abroad if they join the trafficker’s program. After the victims fall into their trap, the trafficker will use their travel agent to send off their victims, and when they have arrived, instead of working as a respectable profession as promised by the trafficker, they are forced to work as a prostitute with a much lower salary than promised. The innocent victims who only accepted the offer by the trafficker to fix their family's economy had to be an object of an absolute inhumane crime.<sup>6</sup>

Not only do they need to face the danger of losing their lives in the hand of the trafficker, but the victims also have to bear both physical and psychological effects from the human trafficking, often last even when the danger is over and the victims have been

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<sup>5</sup> Anggoro, Moch H., and Yoyok Soesatyo. 2015. “Pengaruh Pertumbuhan Ekonomi dan Pertumbuhan Angkatan Kerja Terhadap Tingkat Pengangguran di Kota Surabaya.” *Jurnal Pendidikan Ekonomi (JUPE)* 3, no. 3 (June), p. 6

<sup>6</sup> Sinaga, H. O., *Op.Cit.*, p. 7

rescued. The trauma left by their trafficker is caused by the coercion used to control the victims, including starvation, beatings, rape, and gang rape. Not being limited to their trafficker, victims are also known to get violence from their buyers. Physical effects, from broken bones, concussions, burns, brain trauma, to even gynecologic health problems, are often found in the victims. The psychological impact of victimization includes Post-Traumatic Stress Disorder (PTSD), depression, anxiety, panic disorder, suicidal ideation, and substance abuse. Asking for help from others may not have been a choice for some of the victims. Many blamed themselves for what had happened. In addition, the traffickers typically rule over their victims by confiscating their identification, cell phones, and money, forbidding communication with family or friends, and monitoring and restricting movement for the victims.<sup>7</sup>

The Universal Declaration on Human Rights (UDHR) covered basic human rights, such as the right to life, liberty, and security of a person (Art. 3); prohibition of slavery or involuntary servitude (Art. 4); prohibition of torture or cruel, inhuman, or degrading treatment or punishment (Art. 5); right to a standard of living adequate for health and well-being, including food, clothing, housing, and medical care, and necessary social services (Art. 25), and other civil, political, economic, and cultural rights that should be enjoyed by anyone in the international community and should not be violated at all. Similar to the UDHR, Indonesia's constitution of 1945 (UUD 1945) also includes human rights for its citizens in its chapter, Chapter XA about Human Rights that contains ten articles. Some of its articles are the right to live and to defend one's life and existence (Art. 28A); the children's right to live, to grow and to develop, the right of protection from violence and discrimination (Art. 28B para. 2); the right to work and to receive fair and proper remuneration and treatment in employment (Art. 28D para. 2); the right to protect one's self, family, honor, dignity, and property, the right to feel secure against and receive protection from the threat of fear to do or not to do something that is a human right (Art. 28G para. 1); the right to be life, freedom from torture, freedom from enslavement (Art. 28I para. 1). The crime of human trafficking violates many of the basic human rights, since the

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<sup>7</sup> Kaylor, Leah. 2015. "Psychological Impact of Human Trafficking and Sex Slavery Worldwide: Empowerment and Intervention." *Academia.edu.*, p. 3-4

crime involving tricking a person to do something against their will, the use of coercion and violence to have or maintain control over a person, and occasionally involve captivating or taking the victims hostage to fulfill the criminal needs.

Indonesia's PTPPO Bill has determined the scope of the crime of human trafficking. This law forbids every migration to or from Indonesia for exploitation, adopting children with certain words of assurance for exploitation, and sending off a child to or from Indonesia and forcing them to deliver sexual acts to take profits from it. We can conclude that for an act to be classified as a crime of human trafficking, the act needs to fulfill every element of crimes, this includes the act itself, the wrongful method to achieve the purpose, such as the use of violence, kidnapping, scamming, the purpose of the act, in this case, exploitation to earn profit from human trafficking.<sup>8</sup> The crimes that have been regulated by this law have determined the sentence for the criminals to imprisonment for a maximum of fifteen years and a fine for a maximum of 600 million rupiahs.

As the highest institution in a state, the government has to respect, protect, and fulfill every human right of its citizens. Derived from the PTPPO Bill, Indonesia's government has established Government Regulation (Peraturan Pemerintah) No. 9 of 2008 about Procedure and Mechanism of Service Centre for the Witnesses and Victims of Human Trafficking. Presidential Regulation (Peraturan Presiden) No. 69 of 2008 has also given the authorization to form a task force for preventing and processing the crimes of human trafficking. Although human trafficking has been strictly forbidden with various law instruments, this phenomenon is not easy to prevent or even to process the cases. To this day, the high rate of human trafficking in Indonesia is still high due to various reasons. First, there has been a lack of operative regulation to elaborate the PTPPO Bill even further. There should be more additions in operative law instruments, such as Government Regulation, Presidential Regulation, Regulation of the Chief of the Indonesian National Police, Ministry Regulation, and many more. Second, the concept of decentralization and regional autonomy often leads to inconsistency in handling and preventing human

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<sup>8</sup> Nuradho, Ahmad. 2018. "Penempatan Pekerja Migran Indonesia di Luar Negeri yang Dilakukan Perseorangan Sebagai Bentuk Tindak Pidana Perdagangan Orang Dihubungkan dengan Undang-Undang Nomor 18 tahun 2017 Juncto Undang-Undang Nomor 21 Tahun 2007." *Thesis*, p. 40

trafficking in Indonesia. Third, the lack of socialization towards the law-enforcement forces. The fact shows that in many cases, the PTPPO Bill is not used to handle human trafficking crime, the instrument used was Indonesia's Criminal Code (KUHP).<sup>9</sup>

Various solutions that have been offered by any parties have not been effectively dealing with human trafficking. But, with the more digitalized world and expanding access to technology and the internet, technologies, such as artificial intelligence (AI), analytics, blockchain, and cloud computing, can be used to solve this extraordinary crime. Besides, digital technology has improved humanity in various fields of study, including criminal law. For instance, with blockchain it is possible to find applications in email encryption, verifying processes, and securing evidence that was transmitted via a digital platform. This adaption to a more digital study should be utilized wisely by legal practitioners, especially when dealing with extraordinary crimes, like human trafficking. AI technology can be used to track certain patterns of human trafficking in a country or even predicts where the trafficker operated. The key to this solution is that it needs every stakeholder to participate actively and with consistency, they need clear purposes and the same goal. When digital technology is used tactfully, sustainable solutions regarding human trafficking can be implemented. With sustainable solutions, it is possible to wipe out the crime of human trafficking entirely.

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<sup>9</sup> Hidayati, Maslihati N. 2012. "Upaya Pemberantasan dan Pencegahan Perdagangan Orang Melalui Hukum Internasional dan Hukum Positif Indonesia." *Jurnal Al-Azhar Indonesia Seri Pranata Sosial* 1, no. 3 (March), p. 172-173

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# Evaluate the Controversy of Indistinct Definition and Classification of Terrorism on The Law of Terrorism in Indonesia

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## Background

Nobody can forget the 'Bom Bali I' event. A devastating moment which took 202 innocent lives, has had a big impact, not only for the island of Bali itself, but also the development of the law of terrorism in Indonesia. The massive explosion that happened in three different places in Bali took over the world's attention as the victims were from various countries namely Australia, United Kingdom, as well as Indonesia. International condemnation had encouraged President Megawati Soekarno Putri to order the police to solve this problem as soon as possible within one month. Six days later on 18 October 2002 President Megawati signed the Government Regulations in lieu of Law Number 1 of 2001 Concerning the Eradication of Criminal Acts of Terrorism which became the forerunner of the formation of The Law of Terrorism. Moreover, the formation of The Law of Terrorism was also based on the ratification of International Convention for the Suppression of The Financing of Terrorism 1999.<sup>1</sup>

Bombing event as one of the form of terrorism is a criminal act that threaten the national and international peace and security. Regarding this, preventing actions are needed. In the international world, this bombing event is condemned by The United Nation Resolution 1189 (1998) Adopted by the Security Council. Moreover, the fact that there is much universal terrorism instrument in this world shows seriousness in dealing terrorism clearly. As for the Government of Indonesia, take the measures to prevent such act by ratifying seven out of 16 universal terrorism instrument and by enacting the Law of Terrorism. As stated before, the formation of the Law of Terrorism was triggered by the Bali Bombing I. Several months after it was signed, Government Regulations in lieu of Law Number 1 of 2001 was enacted into Law Number 15 of 2003. The law was expected to reduce the number of terrorism, but in reality it is contradictory. On 14 January 2016 at Gedung Sarinah, Jalan MH Thamrin, Central Jakarta an explosion and bomb attack occurred. In reaction to this, Coordinating Minister for Political,

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<sup>1</sup> Dasrila W. D. Siregar. Tinjauan Yuridis Tentang Pembedaan Tindak Pidana Politik dengan Tindak Pidana Terorisme. 2019

Legal, and Security Affairs at that moment, Luhut Binsar asked the house of representative to revise Law Number 15 of 2003 in order that the new law can prevent terrorist acts in preventive manners with the result that the attacks do not occur. In respond, the anti-terrorism bill was included in the national legislation program. During the discussion of the revision of this law, there were occurred many bombings, including bomb terror attack in three churches in Surabaya and Rusun Wonocolo Sidoarjo on 13 May 2018 as well as Surabaya Police Headquarters bomb attack on 14 May 2018. Reflecting on these incidents, President Joko Widodo urged the House of Representative to ratify the revision of the Law Number 15 of 2003 and threatened to issue a Government Regulations in lieu of Law if it was not ratified by June.

In the end, on 22 June 2018, Law Number 5 of 2018 on Amendments to Law Number 15 of 2003 Concerning the Stipulation of Government Regulations in lieu of Law Number 1 of 2001 Concerning the Eradication of Criminal Acts of Terrorism into Law was enacted. However in the revision process and even until its stipulation, this Law has drawn a lot of controversy because there are some articles that are considered to have multiple interpretations. These articles include, among others, the definition of terrorism itself and the classification of acts of terrorism. The vague of terrorism can have a negative impact, such as the case in the United States in 2002 where there was a vague and uncorroborated attacks on the Brookly Bridge and the Statue of Liberty resulting local-law enforcement action to issued an alert.<sup>2</sup> With the issuance of warning, checkpoints were carried out at the city's major bridges and tunnels as well as patrols on the water under Brookly and Manhattan Bridges and around Liberty Island. This impact on traffic jam and solitudes within the new yorkers. The worst case scenario regarding the vague of terrorism is the threat to human rights.

## Issues

Based on the background that had been stated, the issues which will be discussed are:

1. How is the regulation of the definition and classification of terrorism act in the Law of Terrorism?
2. How is the compatibility of the definition and classification of terrorism act in the Law of Terrorism with universal terrorism instrument that have been ratified by Indonesia?

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<sup>2</sup> New york times, trace of terror: New York; Security Tightened in New York After Vague Threats of Terrorism, Dan Barry and Al Baker, 2002

## Analysis

### 1. Controversy in the regulation of the definition and classification of terrorism act in the Law of Terrorism

Terrorism is known as an extraordinary crime. Loebby Lukman stated that terrorism is an extraordinary crime because it differentiation perception between the perpetrator and the victim, the peprpetrator known as a hero by its group whereas the victim regarded as a traitor.<sup>3</sup> According to tKamus Besar Bahasa Indonesia, terrorism is also defined as a person who uses violence to inflict pain. This understanding is still considered very broad, because the definition of 'using violence' is not yet clear. Furthermore, in Black's Law Dictionary, terrorism is defined as “an activity that involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if intimidate or coerce a civilian population, (ii) to influence the policy of a government by assassination and kidnapping”.<sup>4</sup> A criminologist, Ezzat E. Fattah, defines terrorism as a word to describe systematic terror, especially acts to regulate, suppress or conquer.<sup>5</sup> Then Hoffman also gave his opinion about the notion of terrorism, namely a political activity that has the aim of creating public fear and is designed in such a way by the mindmaster to influence human being through others in several series of events.<sup>6</sup>

In Indonesian laws and regulations, the definition of terrorism can be found in Law Number 5 of 2018 jo. Law Number 15 of 2003 Article 1 number 2, namely "actions that use violence or threats of violence that create an atmosphere of terror or widespread fear, which can cause mass casualties, and/or cause damage or destruction to strategic vital objects, the environment. life, public facilities, or international facilities with political ideological motives or security disturbances". After the ratification of this law revision, many people criticized article 1, one of which was Al Araf, a Director of Imparsial. He argues that this understanding has multiple interpretations and can be misused to ensnare those who are critical of the government because it includes elements of 'political motives, ideology, or security disturbances'. The same

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<sup>3</sup>Folman P. Ambarita (Penanggulangan Tindak Pidana Terorisme) vol. 7 No. 2 Desember 2018

<sup>4</sup>Henry Campbell Black, 1990, Black;s Law Dictionary 6th Edition, West Publishing, St. Paul-Minn, Page 1473

<sup>5</sup> Petrus Reinhard Golose, 2014, Deradikalisasi Terorisme, Yayasan Pengembangan Kajian Ilmu Kepolisian, Jakarta, Page 3

<sup>6</sup> Ibid, page 3

thing was conveyed by the activists of the Islamic Student Association who submitted a material review of this law. Faisal Alhaq as the applicant said that the provisions in this article can be used by government regimes that do not like certain political views to pursue practical politics and power, even though the political views are not necessarily contrary to the Constitution and Pancasila. Of course, if this happens, it will end in human rights abuse, as it is understood that every human being has the right to criticize. In response to this, member of the Special Committee for the Draft Law on Combating Terrorism, Nasir Djamil, argued otherwise that adding a motive to the definition of terrorism would clarify the meaning of the act. This is because terrorist groups always have political and ideological motives. It is clear to see, the opinion of Nasir Djamil is in line with the definition of terrorism given by Hoffman, which both contain political elements in it.

2. Definition and classification of terrorism act in the Law of Terrorism are in line with universal terrorism instrument

In the instrument of universal terrorism, the notion of terrorism can be found in several conventions. In the League of Nation Convention for the Prevention and Punishment of Terrorism 1937 Article 2, Terrorism is defined as “(1) Any willful act causing death or grievous bodily harm or loss of liberty to: (a) Heads of States, persons exercising the prerogatives of the head of the State, their heredity or designated successor; (b) the wives or husbands of the above-mentioned persons; (c) persons charged with public functions or holding public positions when the act is directed against them in their public capacity. (2) Willful destruction of, or damage to, public property or property dedicated to a public purpose belonging to or subject to the authority of another High Contracting Party. (3) Any Willful act calculated to endanger the lives of members of the public. (4) Any attempt to commit an offense falling within the foregoing provisions of the present article. (5) The manufacture, obtaining, possession, or supplying of arms, ammunition, explosive or harmful substances with a view to the commission in any country whatsoever of an offense falling within the present article.” When compared with the definition of terrorist in the Indonesian Law, it can be seen that the convention emphasizes threats that harm the head of state and his family and public officers, but in Law Number 5 of 2018 jo. Law Number 15 of 2003 does not specify who the target of terrorism is. This is deemed not to cause problems in the future because the element of "mass victims" can already include

the head of state and his family. Other elements in the definition of terrorism in this convention have been regulated in the following article of Law Number 5 of 2018 jo. Law Number 15 of 2003.

In addition, the notion of terrorism is also seen in the United Nation Security Council Resolution Number 1566 (2004) which defines terrorism as “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose. to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offenses within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of political, philosophical, ideological, racial, ethnic, religious or other similar nature.” Broadly speaking, the elements in this resolution are close to the elements in Law Number 5 of 2018. However, in this resolution there are elements that state that there is no justification under any circumstances based on political considerations while Article 5 Law Number 5 of 2018 contains elements of “ criminal acts of terrorism regulated in this law must be considered as not political crimes”. This can be interpreted that there is still the possibility that an act that is considered an act of terrorism is not an act of terrorism.

The last thing that will be discussed comes from The Arab Convention on the Suppression of Terrorism 1998. In this convention, terrorism is defined as “any act or threat of violence of an individual or collective criminal agenda, causing terror among people, causing fear by harming themes, or placing theri lives, liberty or security in danger, or aiming to cause damage to the environment or to public or private installations or property or to occupy or to seize them, or aiming to jeopardize a national resources”. With a side to side comparison, it will look not exactly the same, but if it was seen through element by element, the actual definition of terrorism in the Law of Terrorism is in line with this convention, however this convention does not mention the motive for the act of terrorism. Both contain elements of violence, elements of causing terror and/or fear, causing damage to the environment, public installations/facilities.

## Conclusion

Terrorism is a crime against humanity that must be quickly and responsively prevented, one of the efforts is to make various types of regulations both internationally and nationally. In

terms of international regulations, there are 16 universal terrorism instruments in the world, while in terms of national regulations, the Indonesian government has ratified the seven out of 16 international instruments mentioned above, in addition to the enactment of Law No. 5 of 2018 jo. Law No. 15 of 2003. The making of this law was also based on the Bali Bombing I incident which shocked Indonesia and the world. However, in the ratification of this law, several criticisms have been made, especially on the definition of terrorism.

The definition of terrorism contained in article 1 number 2 of law number 15 of 2018 is still considered to have multiple interpretations and can be misused. The placement of the motive element in this definition is considered to be able to turn off the community's criticism of the government, it is feared that human rights abuse will occur. This is because the government can arbitrarily ensnare people it does not like with this article so that they can play instant politics. However, by the legislators, the inclusion of the motive element in the definition of terrorism will clarify the meaning of the word itself.

In relation to the universal terrorism instrument, was found some conformity with the definition of terrorism in Law No. 5 of 2018 jo. law number 15 of 2003. In the League of Nation Convention for the Prevention and Punishment of Terrorism 1937 Article 2 several elements were found to be regulated in subsequent articles in this terrorism law. Then in the United Nation Security Council Resolution Number 1566 (2004) it was also found that the harmony between it elements are of political crimes can look like acts of terrorism but is not terrorism. In The Arab Convention on the Suppression of Terrorism 1998, it also can be found some compatible elements, hence it safe to say that the definition of terrorism in The Law of Terrorism are in line with the definition which this convention gave.

### Suggestion

The regulation of the definition and classification of terrorism in the Law of Terrorism is actually sufficient to give meaning to terrorism itself. But the problem here is how to use those elements. A good understanding and interpretation is needed, especially in terms of determining whether a crime is a criminal act of terrorism. The government as the holder of power needs to provide socialization and understanding to state officials in order to not arbitrarily use this regulation to ensnare someone for personal gain. Awareness of every civil servant is also needed to avoid power abuse. This is done to maintain public trust in the government

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**Abimanyu Rhesa Agatha**

**Age Limits for Children in the Use of Social Media as a Form of Personal Data Protection**

**1. Background**

Indonesia has entered the era of the digital revolution, which initially appeared around the 1980s. This has brought changes to all economic activities in Indonesia, including all activities carried out by society. The distribution of information was only carried out in one direction through certain authorized parties. However, the rapid growth of the internet allows people to find any information available.<sup>1</sup> With the digital revolution, information and data distribution in communicating and obtaining information can be completed briefly.<sup>2</sup>

A computer creates software in the form of applications that are connected to the internet. The application will later become a place for information and data distribution to make it easier for someone to interact beyond their country's territorial borders as long as they are connected to the internet.<sup>3</sup> Social media is an implementation of this application. According to the view of Dr. Rulli Nasrullah M.Si. social media is "a medium on the internet that allows users to present themselves and interact, cooperate, share, communicate with other users, and form virtual social bonds." The author argues that the notion of social media makes it easier for people to express their opinions in public spaces, exchange information, places to look for entertainment, to be able to carry out political campaigns.

Based on Hootsuite's data (We Are Social), in 2020, there were 160 million social media users in Indonesia.<sup>4</sup> This is part of Indonesia's internet users, which reached around

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<sup>1</sup> Erika Dwi Setia Watie, 'Komunikasi dan Media Sosial', *Jurnal The Messenger*, Vol. III, No. 1, 2011, p. 69.

<sup>2</sup> Makarim, E, 'Kerangka Kebijakan dan Reformasi Hukum Untuk Kelancaran Perdagangan Secara Elektronik (E-Commerce) di Indonesia', *Jurnal Hukum dan Pembangunan*, Vol. 44, No. 3, 2014, p. 25.

<sup>3</sup> Siti Yuniarti, 'Perlindungan Hukum Data Pribadi di Indonesia', *Jurnal BECOSS (Business Economic, Communication, and Social Sciences)*, Vol. 1, No. 1 September 2019, p. 147-154.

<sup>4</sup> Kompas, *Media Sosial, Tak Sekedar Jaringan Pertemanan*, (Jan. 30, 2020, 15.05 PM), URL: <https://kompas.id/baca/riset/2020/06/17/media-sosial-tak-sekadar-jaringan-pertemanan/>, accessed on 24 January 2020.

196.7 million people with a percentage of 73.7%, an increase of 8.9% from 2019.<sup>5</sup> The use of social media is not only accessed by teenagers and adults, yet also by children. About 7000 samples have been provided by the Association of Internet Service Providers in Indonesia (APJII) to people who use the internet, comprising around 15.1 percent are filled by internet users aged 10-19 years. If it is calculated based on the sample, then 1057 people filled the sample, it can be indicated as children.

The development of the internet today is always associated with the protection of personal data. According to Article 1, Number 22 of Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration states that "Personal Data is certain individual data that is stored, maintained, and maintained for the truth and its confidentiality is protected." Indonesia still has no specific regulations regarding the protection of personal data in the use of the internet or social media. Based on survey data conducted by APJII, it is clear that there are internet users under 19 years of age. At that age, they can easily input personal data without the knowledge of their parents.

This raises the question of whether it is appropriate for someone aged from 10 to play the internet and measure one's legal proficiency in using the internet. According to the author's view, ten years of age based on positive law in Indonesia are still categorized as children. Personal data provided to social media application companies will indicate misuse of personal data by irresponsible parties.

Misuse of personal data is very detrimental. Our data can be retrieved, disseminated, used, and even sold for specific purposes. This problem makes the author want to do more in-depth research regarding how old a person is to be legally competent in accessing social media according to Indonesia's positive law. This is done to anticipate misuse of personal data.

## **2. Analysis**

Human rights have given freedom of speech as a form of democracy. Every society has rights conferred in itself, and the state cannot take these rights. Article 28E Paragraph (3) of the 1945 Constitution of the Republic of Indonesia has stated that

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<sup>5</sup> Kominfo, Survei Penetrasi Pengguna Internet di Indonesia Bagian Penting dari Transformasi Digital, Kominfo, (Jan. 30, 2020, 08.00 PM), [https://www.kominfo.go.id/content/detail/30653/dirjen-ppi-survei-penetrasi-pengguna-internet-di-indonesia-bagian-penting-dari-transformasi-digital/0/berita\\_satker](https://www.kominfo.go.id/content/detail/30653/dirjen-ppi-survei-penetrasi-pengguna-internet-di-indonesia-bagian-penting-dari-transformasi-digital/0/berita_satker).

"everyone can freely associate, gather and express opinions." Indonesia has guaranteed freedom of speech for all societies to enforce human rights. Nevertheless, the freedom of speech exercised by society is limited to the freedom of others. Limited means that everyone has limitations in expressing their opinion. In other words that the opinion issued must be "proportionally and can be accounted for". Professor Eddy has expressed this in the ALSA Indonesia Legal Discussion held by ALSA Indonesia.<sup>6</sup>

Freedom of speech is a legal act because its actions have consequences regulated by law. In conveying freedom of speech, everyone must be responsible for actions taken in the public space. It turns out that someone important has an age limitation when they will be legally responsible. Indonesia already has a limit on the age of a person who can be mature from various laws and regulations, yet the regulation is not uniform. Without uniform boundaries, it will lead to a vacuum or vague norms used to maintain national safety. Age limitation is essential to determine whether someone is sufficient or legally to act in legal action. Some of these regulations can be described as follows:

Legal Basis	Provisions
Indonesian Penal Code ( <i>KUHP</i> )	"In the case of a criminal prosecution against an immature person for committing an act before the age of sixteen, the judge can determine ..." (Article 16)
Indonesian Civil Code ( <i>KUHPerdata</i> )	"Immature ones are those who have not reached the age of twenty-one and have not previously married." (Article 330)
Act No. 35 of 2014 amendments to Law Number 23 of 2002 concerning Child Protection	"A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb." (Article 1 number 1)
Act No. 24 of 2013 concerning Amendments to Law Number 23	"Residents of Indonesian citizens and foreigners who have a permanent residence permit who are 17 (seventeen) years old or have been married or

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<sup>6</sup> ALSA Indonesia, Quo Vadis Pengaturan Normatif Mengenai Kebebasan Berekspresi Dalam Ruang Lingkup Akademik di Indonesia?, Youtube (Jan. 30, 2020, 09.35 PM), <https://www.youtube.com/watch?v=HrLidS5IkUY>

of 2006 concerning Population Administration	have been married are required to have an e-KTP" (Article 63 paragraph (1))
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Afterwards The Court Decisions in Indonesia also do not have uniformity in applying adult age. Several court decisions have been decided:<sup>7</sup>

Palembang District Court Decision No. 96/1973 / PN.Plg dated 24 July 1974 <i>jo.</i> The decision of the High Court of South Sumatra in Palembang No. 41/1975 / PT.PERDATA dated 14 August 1975	Children who are not yet 21 years old are considered minors
The decision of the Supreme Court of the Republic of Indonesia No. 477 / K / Sip./1976, dated 2 November 1976	It is a cassation of the high court decision, invalidating the high court decision that the appropriate age to justify his actions is after the age of 18

Regulations or court decisions mentioned above will confuse the public in determining the age of a person who can be considered an adult in general. Some regulations regarding the majority age limit assess the age that is sufficient to be considered an adult is 18 years.

The digital revolution has made innovations to store, acquire, manipulate, and transmit data in a comprehensive, accurate and complex manner, often identified with the data revolution.<sup>8</sup> Data revolution made data collection no longer dependent on what data might be valuable in the future yet is collected to increase data storage capacity and rarely delete data from government and private parties. Currently, data is considered to have a new value, such as tangible assets. Regarding the protection of personal data in Indonesia, the regulation is still sectoral and partial, which can be grouped into:

1. Telecommunications and informatics;

<sup>7</sup> Letezia Tobing, Perbedaan Batasan Usia Cakap Hukum dalam Peraturan Perundang-undangan, Hukum Online, (Jan. 30, 2020, 23.59 PM) <https://www.hukumonline.com/klinik/detail/ulasan/t4eec5db1d36b7/perbedaan-batasan-usia-cakap-hukum-dalam-peraturan-perundang-undangan/>.

<sup>8</sup> Wahyudi Djafar, 'Hukum Perlindungan Data Pribadi di Indonesia: Lanskap, Urgensi dan Kebutuhan Pembaruan', *Kuliah Umum Tantangan Hukum dalam Era Analisis Big Data*, Yogyakarta, Universitas Gadjah Mada, 2019, p. 5.

2. Population and archives;
3. finance, banking and taxation;
4. trade and industry;
5. Health services; and
6. Security and law enforcement.

Indirectly, personal data protection regulations in social media become part of the communications and information technology sector. Initially, it was regulated in Act No. 36 of 1999 concerning Telecommunications. As the electronic system sector progressed, Act No. 11 of 2008 concerning Electronic Information and Transactions (UU ITE) was issued. Referring to Article 26 paragraph (1) of the ITE Law, every transfer of a person's data requires permission from the data owner which can not be done arbitrarily. Even someone who feels aggrieved due to misuse of personal data can file a claim for compensation to the court (Article 26 paragraph (2) of the ITE Law). In an implementation of carrying out evidence in a civil lawsuit in legally questioning the alleged leakage of their data, it is not easy. The ITE Law was amended to Act No. 19 of 2016 by accommodating the principle of "right to be forgotten" in Article 26 paragraph (3), which states, "Every Electronic System Operator is obliged to delete irrelevant Electronic Information and / or Electronic Documents that are in under his control at the request of the person concerned based on a court order." Regulations regarding data destruction are further regulated in the Republic of Indonesia Government Regulation (PP) Number 77 of 2019 concerning the Implementation of Electronic Systems and Transactions.

#### European Data Protection Supervisor

Comprehensive personal data protection arrangements, established by the European Union in 2016, have been ratified in 2018 through the European Union General Data Protection Regulation (EU GDPR). The EU GDPR had replaced the European Union Data Protection Directive (EU DP Directive), which was adopted when the internet

was still in its infancy.<sup>9</sup> The EU GDPR covers almost all processing of personal data. Its regulatory structure includes:

- The scope and range of data protection, including data controllers and processors, and territorial / jurisdictional coverage;
- Definition and types of personal data;
- Principles of data protection, including reasons for data processing;
- Obligations of data controllers and processors;
- The rights of the data owner (data subject); and
- Supervision and enforcement of laws, which are generally equipped with an independent supervisory authority (data protection authority).

Bagir Manan has revealed the internal and external functions of the formation of laws and regulations. Internal functions are related to law creation (Recht's chepping), legal certainty, legal reform, and legal integration.<sup>10</sup> The external function is related to the change function, the stabilization function, and the convenience function. In the prospect of modern countries, the existence of laws and regulations is a powerful method to provide direction and regulate society towards the expected goals indeed. Personal data protection arrangements that are not comprehensive and convergent in Indonesia are insufficient to provide optimal and effective personal data protection. If we look at the content of the EU GDPR, Indonesia is far away from ensuring personal data protection.

Through the Indonesian People's Representative Council (DPR), the Academic Draft Law on Personal Data Protection has been formed as a priority National Legislation Program (Prolegnas). It explains the importance of personal data protection regulations in the rapidly growing digital era and has a connection with leaks of personal data, leading to criminal acts.

Personal data protection has a relation with the concept of privacy. The idea of preserving personal integrity and dignity is a concept of privacy.<sup>11</sup> Violations against

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<sup>9</sup> European Union, European Data Protection Supervisor, (Jan. 31, 2020, 12.20 PM), [https://edps.europa.eu/data-protection/data-protection/legislation/history-general-data-protection-regulation\\_en](https://edps.europa.eu/data-protection/data-protection/legislation/history-general-data-protection-regulation_en).

<sup>10</sup> Bagir Manan, *Pemahaman Mengenai Sistem Hukum Rasional*, Makalah, Jakarta.

<sup>11</sup> Wahyudi Djafar and Asep Komarudin, *Perlindungan Hak Atas Privasi di Internet-Beberapa Penjelasan Kunci*, Elsam, Jakarta, 2014, p. 2

privacy occur because of the collection and distribution of personal data. Individuals in the concept of personal data protection have the right to determine whether they will exchange or share their data. Natural person also has the right when determining the conditions for carrying out the transfer of personal data. If we pull the thread further, data protection has something to do with the concept of the right to privacy. Developments regarding the right to privacy can be used to protect personal data.<sup>12</sup> Some of the reasons privacy should be protected are:

1. When in a relationship with other people, in order to preserve their position at a certain level, a person will maintain the privacy of their life;
2. A privacy is needed when a person needs time alone;
3. Privacy is a right that does not depend on others and stands alone, yet will be lost if the person concerned spreads things to the public;
4. Privacy also includes a person's right to have private relations, including how a person establishes a marriage, fosters his family and other people are not allowed to know about this personal relationship so that Warren later called it the right against the word;
5. Privacy violation is considered as a violation that is difficult to assess the loss. If it has interfered with his personal life, the harm will be considered more significant than the physical harm. So that if there is a loss by the victim, the victim will receive compensation.

After the author analyzes the Personal Data Protection Bill, it appears sensitive personal data, including children's data. Sensitive data has been regulated in the European Union Data Protection Directive (EU DP Directive), which is part of data group processing by measuring the level of danger that natural person's perceived. Sensitive data is usually implemented with the explicit consent of the data owner through a written statement. Sensitive data includes information concerning religion, ethnicity, beliefs, political opinions, membership of trafficking organizations, and data relating to a person's health and sex life.

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<sup>12</sup> Human Rights Committee General Comment No. 16 (1988) on the right to respect of privacy, family, home and correspondence, and protection of honour and reputation (art. 17) in Privacy International Report, 2013, p. 1-2.

Despite guaranteeing freedom of speech, Indonesia also has the obligation to protect all of Indonesia's blood spills, as stated in the preamble to the 1945 Constitution. Personal Data Protection regulations is one of ways of safeguarding Indonesia's sovereignty, particularly protecting children's data. Age Restriction as regards to access to social media in particular for children, not appear in the Personal Data Protection Bill. It seems this issue has not been concerned explicitly in Indonesia. Even though the rampant crime on social media often occurs in society, particularly against children. In fact, we assure that society feels the same way.

In reality, the comprehensive Personal Data Protection forthcoming by the regulation is not accompanied by a growing public awareness in protecting personal data. Parents often fail to help their children in accessing their social media, imposing personal data on personal data organizers. Children are generally not aware of the dangers of using social media. Unconsciously, they provide information to the public, such as names, addresses, school data, private numbers, personal photos, etc. At the same time, it leaves them vulnerable to crime on social media.

On average, social media applications set age restrictions which provide a policy of 13 years of age to access social media. Unfortunately, social media applications that develop personal data have no control over age falsification. Cases there is age fabrication in accessing social media, children will desire to obtain access to adult contents. In the case under consideration, the role of the state and parents is necessary to protect children.

There are various activities related to legal actions in social media. Compared with the age of maturity provided by Indonesia's laws and regulations, the age of 13 is not considered legally competent. Besides offering access to communication, social media creates commercial transactions to provide personal data to carry out these transactions. Without recognizing age falsification, children can access transactions or agreements that are not protected by the law, resulting in null and void based on Indonesia's legal regulations.

Crimes against personal data can cause material and immaterial losses, especially to children's data. The provision of personal data carried out by children while accessing social media indicates misuse in various crimes by irresponsible parties. The crime is not in physical form. Still, the crime can be in the form of fake news, cyberbullies, pornography, negative manipulation of information that children may not be aware of.

Providing personal data easily, children can be exploited by someone who is not responsible for understanding the habits or characteristics that the child likes, then their opinion is led to things that are not necessarily positive for the children's mentality. Based on the author's interview with Oriza Sativa, a psychologist who explains that the development of children's thinking skills is 80% starting at the age of 0-5 years and the rest is spent from the age of 6-18 years. After this age, children can be said to be able to think carefully and be considered adults. So with this understanding, children must be provided with protection in accessing social media.

Protection of children is a form of the state to uphold human rights, as explained in the early part of this writing analysis. The 1989 Convention on the Rights of the Child (CRC) has granted children the fundamental rights to express their views and be heard (Article 12), freedom of expression, including the freedom to seek, receive and disseminate information (Article 13), freedom of association and peaceful assembly (Article 12). Article 15), information (Article 17), education (Article 28), and participation in arts and cultural activities (Article 31).<sup>13</sup> Indonesia has a population of around 230 million, one-third of whom are children and growing 3 million each year. Furthermore, children have also received protection from the Indonesian state, which is implemented in Act No. 35 of 2014 as an amendment to Act No. 23 of 2002 concerning Child Protection. In Article 15 of Act No. 35 of 2014, children have the right to receive protection from political abuse, involvement in gun disputes, social unrest, incidents of violence, warfare, and sexual crimes. How is the implementation-related explicitly to the article's provisions because it is not uncommon for abuse to arise from children's activities when playing social media.

The Indonesian Ministry of Communication and Information (Menkominfo) has proposed in the Personal Data Protection Bill the age limit for using social media is 17 years.<sup>14</sup> Hence, someone who is not 17-year-old must get permission in writing when using social media. This discourse should be supported considering that sensitive data has also been explained, one of which is data on children regulated in the bill. Written

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<sup>13</sup> Shehzad Noorani, *Konvensi Hak Anak: Versi Anak-Anak*, Unicef (Jan. 30, 2020, 05.54 PM), <https://www.unicef.org/indonesia/id/konvensi-hak-anak-versi-anak-anak>.

<sup>14</sup> Tommy Sorongan, *Kominfo Usul Pengguna Medsos 17 Tahun Keatas*, (Feb. 2, 2020, 10.23 AM), [https://www.cnbcindonesia.com/tech/20201128182551-37-205421/kominfo-usul-pengguna-medsos\\_-17-tahun-ke-atas-setuju](https://www.cnbcindonesia.com/tech/20201128182551-37-205421/kominfo-usul-pengguna-medsos_-17-tahun-ke-atas-setuju)

permission is part of the state's control against the absence of controls on age falsification held by social media.

Children are an inseparable part of human survival and the continuity of a nation and state. To take responsibility for the sustainability of the nation and state, every child needs to have the broadest possible opportunity to grow and develop optimally, both physically, mentally, and socially. For this reason, it is necessary to make protection efforts through laws and regulations to anticipate and realize children's welfare by providing guarantees for the fulfillment of their rights without discriminatory treatment, one of which is by limiting the age of a child playing social media.

Socializing through social media is freedom of expression. Therefore, the emergence of social media provides no exception to children in cyberspace connected.<sup>15</sup> Social media has become a basic necessity in socializing, and people are aware of its harmful effects. Assuming any restrictions on accessing social media, it will be a sense of anxiety because social media teaches us not to miss the latest trends. It is very dangerous for children; at the moment, social media produces content or advertisements that are not suitable for children that contain violence or pornography. The nature of social media is public and convergent, which makes contact with other social media platforms. Socialization of the wisdom of using social media will not be effective if there are no convergent arrangements regarding the protection of personal data, hence a necessity of age restrictions is aimed to protect crimes against personal data.

The role of parents is also very decisive regarding the formation of children's attitudes. That can be done by limiting children from playing social media. Children must be equipped to understand the value of life and learn about the dangers of playing social media. It is hoped that parents can apply healthy internet play methods by knowing when and for what use of social media for children. The socialization of parents to their children is the first step in protecting personal data.

### **3. Conclusion**

Conducting social media activities is part of the freedom of expression guaranteed by Indonesia's laws and regulations without exception, even for children. Nevertheless,

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<sup>15</sup> Gayatri, G., et al., '*Perlindungan Pengguna Media Digital Di Kalangan Anak Dan Remaja Di Indonesia.*' journal of Research and Development of Communication and Informatics, Vol. 6, no. 1, 2015, p. 1-18.

social media has no control over age restrictions when accessing it. Personal data protection arrangements in Indonesia are not comprehensive enough regarding social media activities, which are a place for data storage for the organizers. This will impact the misuse of personal data, hence age restrictions on the use of social media must be regulated as an effort to protect personal data.

**LOMBA ESSAY INTERNASIONAL:**  
**“URBAN DEVELOPMENT IN SOUTHEAST ASIA:  
AN INSOLENCIE TO SUSTAINING MANGROVE FORESTS”**



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**LAW FACULTY**  
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## **“URBAN DEVELOPMENT IN SOUTHEAST ASIA: AN INSOLENT TO SUSTAINING MANGROVE FORESTS”**

### **I. Introduction**

Has it ever crossed your mind to have a life without the ability to protect yourself when faced with a dangerous situation that could lead to death? This question is a metaphor which could describe coastal life without the existence of mangrove forests. Essentially, a coastal area is defined as the interface between land and sea.<sup>1</sup> Southeast Asia contains approximately 46% of the world's mangrove ecosystem. The mangrove forest which grows throughout the seas of Southeast Asia extends over 4,000,000 ha and constitutes 32.2% of the global mangrove area.<sup>2</sup> These areas are important to nature as a home for biodiversity which provides essential ecological, economic and social services in Southeast Asia. They also play an important role as a source of livelihoods for the local communities living around them. Mangrove forest significantly supports coastal and marine life, acts as a provider of nutrients and nursery ground for various kinds of biota, retains coastal abrasion, and prevents seawater intrusion. It seems really asserted that coast life and mangrove forest are inseparable components which encompass paramount support for the earth.

Unfortunately, numerous issues regarding mangrove forests especially in Southeast Asia show that mangrove deforestation remains substantial. More than 130,000 ha of mangrove forest were lost between the period of 2000 to 2012<sup>3</sup> at an

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<sup>1</sup> Juan Baztan, *et. al*, *Coastal Zones Solutions for the 21st Century* (Oxford: Elsevier, 2015), p. 29

<sup>2</sup> M. Spalding, M. Kainuma, L. Collins, *World Atlas of Mangroves* (London: Earthscan, 2010), p. 14

<sup>3</sup> Adam Fauzi, *et. al*, “Contextualizing Mangrove Forest Deforestation in Southeast Asia Using Environmental and Socio-Economic Data Products”, *Forest* 10, No. 952 (2019): 2.

average rate of 0,18% per year.<sup>4</sup> With this taken into consideration, it is important to note that this is one of the crucial issues faced by the world in discussing problems related to the coastal environment. Certainly, this has become an alarming issue and needs to be highlighted, and rather sought for solution.

## II. Analysis

From the aforementioned evidence, the author attributes that urban development has directly affected mangrove areas and can be considered as the main factor that reduces the area of mangrove forests.<sup>5</sup> In addition, this factor has adversely impacted on the two main aspects of humanity's lives, as socio-economic and environmental aspects.

***Firstly***, urban development could merely lead to unsustainable mangroves exploitation and management that causes possible displacement and loss of livelihood associated with depletion of resources.<sup>6</sup> For instance, although Indonesia is the 75% contributor of mangrove area in Southeast Asia,<sup>7</sup> but according to Global Forest Resources Assessment (FRA) for 2020 by FAO, Indonesia had a loss of 6,800 ha between 1990 to 2000 and 21,100 ha in the most recent decade or about 40% of mangrove loss<sup>8</sup> due to urban development. It massively happened in its capital city, Jakarta. The 1990 land reclamation activity in North Jakarta Bay has blatantly impacted on mass degradation of mangrove forests. Its first reclamation project decreased the

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<sup>4</sup> Daniel R. Richards and Daniel A. Friessa, "Rates and drivers of mangrove deforestation in Southeast Asia, 2000–2012", *PNAS* 113, No. 2 (2016): 346.

<sup>5</sup> Christopher Makowski and Charles W. Finkl, *Threats to Mangrove Forests Hazards, Vulnerability, and Management* (New York: Springer International Publishing, 2018), p. 28.

<sup>6</sup> *Ibid.*, p. 150.

<sup>7</sup> Rahmawaty, *Papers: "Upaya Pelestarian Mangrove Berdasarkan Pendekatan Masyarakat"*, (Medan: Universitas Sumatera Utara, 2006), p. 5

<sup>8</sup> Eric Madeja, 'FAO Reviews 30 Years of Global Forest Data', (Global Mangrove Alliance, 2020), accessed on 20 July 2021 <<https://www.mangrovealliance.org/news/30-years-of-global-forest-data/>>

mangrove area by around 38,79 ha or 44% in 2010 until 2015 and it was changed into urban areas for particular affluent communities.<sup>9</sup> This degradation has a great significance to the people living in North Jakarta. Especially, people who were working as fishermen and financially relied their livelihood on the existence of mangrove forests, suffered an economic loss of 18.524.199 million Rupiah per hectare per year.<sup>10</sup> Moreover, it was truly devastating that more than 125.000 people lost their jobs and were forcibly relocated by the local Government.<sup>11</sup> Ultimately, the decrease of earnings for those people will lead to an escalation of the social gap between the poor and the wealthy.

Another case was found in the neighboring countries of Indonesia, Malaysia. The country comprises mangrove forests of approximately 641,886 ha, around 17% (about 106,544 ha of land) which is located in the Malaysian Peninsular, consisting of 57 reserves occurring throughout the Straits of Johor.<sup>12</sup> However, it was discovered that in the western peninsular, mangrove forests area decreased an approximate 15% from 1980 to 1990 and another 4% in 1996.<sup>13</sup> Moreover, the west coast of Johor experienced huge infrastructural development, many of which being done by replacing mangroves. This construction was aimed for industrial areas where a huge number of imported

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<sup>9</sup> Indra Setya Putra, "Dampak Pulau Reklamasi Terhadap Sedimentasi Dan Potensi Perkembangan Mangrove Di Pesisir Teluk Jakarta (Muara Angke)", *Jurnal Sumber Daya Air* 15, No. 2 (2019): 87.

<sup>10</sup> Andrian Ramadhan, *et. al.*, "Economic Loss of Fisher and Fish Farmers Due to Reclamation of Jakarta Bay", *J. Sosek KP* 11, No. 1 (2016): 6.

<sup>11</sup> Nonik Susanti, "Upaya *Greenpeace* Menjaga Kawasan Pantai Indonesia Terkait Proyek Pulau Reklamasi Teluk Jakarta", *JOM FISIP* 5, No. 1 (2018): 14.

<sup>12</sup> Abd. Hamid Bin Abd. Shukor, 'The Use of Mangroves in Malaysia', (Department of Fisheries Ministry of Agriculture Malaysia, 2005), accessed on 20 July 2021

<[https://repository.seafdec.org.ph/bitstream/handle/10862/966/RTCmangrove\\_p136-144.pdf?sequence=1&isAllowed=y](https://repository.seafdec.org.ph/bitstream/handle/10862/966/RTCmangrove_p136-144.pdf?sequence=1&isAllowed=y)>

<sup>13</sup> N. R. Loneragan, *et. al.* "Prawn Landings and Their Relationship with the Extent of Mangroves and Shallow Waters in Western Peninsular Malaysia", *Estuarine, Coastal and Shelf Science* 63, No.1-2 (2005): 187–200.

foreign workers are employed for different development industrial projects. Those migrant workers kept doing harmful things without any consideration for the environment. Solely because they are not the natives of Johor, they thought that they had no responsibility to protect the environment in their working area. Reinforced by Noor Shaila Sarmin's statement that they built shelters arbitrarily and other daily services for their livelihoods arised adverse effects to the mangrove area and the local socio-economic condition.<sup>14</sup> This massive migration causes high pressure to the existing social services, increases social conflicts and pollution. Hence, ill-suited human activities are the main factor in the mangrove loss due to deforestation,<sup>15</sup> including related activities to land use for livelihood as the arbitrary industrial and residential.<sup>16</sup>

**Secondly**, mangrove deforestation is disadvantageous for the environment, such as land destruction, the disappearance of beaches and an increase in erosion and abrasion towards the coastal zone.<sup>17</sup> For instance, mangrove loss in Indonesia produces 190 million metric tons of CO<sub>2</sub> annually to the Southeast Asia region.<sup>18</sup> This accounts for 20% of land-use emissions in Indonesia. Moreover, it contributes to 42% of the global greenhouse gas emissions from the destruction of coastal ecosystems, including marshes, mangroves and seagrass. Another case was found in Malaysia. Sabah that comprises of 58,6% of the nation's mangrove or more than half of the total area of mangrove in Malaysia, has loss at rate of 1705.56 ha per year (0,58%) which notably

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<sup>14</sup> Noor Shaila Sarmin, "Local Community's Perception of Mangrove Change Impact on Their Socioeconomic Condition in Johor, Malaysia", *IOP Conf. Series: Earth and Environmental Science* 187, (2018): 8.

<sup>15</sup> M. Ilman, P. Dargusch, P. Dart Onrizal, "A Historical Analysis of The Drivers of Loss and Degradation of Indonesia's Mangroves", *Land Use Policy* 54, (2016): 450

<sup>16</sup> J.H. Primavera, "Mangrove, Fishponds, and the Quest for Sustainability", *Science* 310, (2005): 57–59.

<sup>17</sup> Juan Baztan, *et. al*, *Op. cit*, p. 16

<sup>18</sup> Cifor, 'Mangroves: A Global Treasure Under Threat', (Forest News, 2015), accessed on 20 July 2021 <<https://forestsnews.cifor.org/31178/indonesian-mangroves-special-fact-file-a-global-treasure-under-threat?fnl=>>>

higher than the recent estimated global rate of mangrove loss which is about 0,16%-0,39% annually.<sup>19</sup> This directly causes the release of large amounts of carbon emissions into the atmosphere. On the other hand, coastal flooding and erosion are undoubtedly two of the most evident, critically triggered by the projected sea-level rise due to the mangrove loss by urban development.<sup>20</sup> Moreover, inappropriate land utilization which is mostly done through mangroves' deforestation, continues to cause coastal erosion and flood, specifically seen in Thailand, particularly in Samut Prakan, Samut Sakhon, Samut Songkhram, Phetchaburi, and Chacheongsao provinces.<sup>21</sup> Hence, improper urban development has a hazardous contribution to the environment.

### **III. Conclusion**

In conclusion, urban development which encroaches upon mangrove ecosystems in Southeast Asia has directly affected various fields of livelihoods in coastal areas particularly on socio-economic and environmental aspects. Destructive activities by humans like the use of mangrove land for urban development has been one of the most visible reasons for the accelerated disappearance of the mangrove. Along with the growth of urban infrastructures in coastal areas, the role of mangroves has extremely been converted and causes drastic damage to the coastal environment and habitat for several marine and other organisms. Therefore, it is necessary to carry out community awareness and encourage cohesiveness between the government and the community by jointly protecting coastal life through preserving yet cultivating mangroves. The

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<sup>19</sup> Charissa J. Wong, *et. al*, "Estimating Mangrove Above-Ground Biomass Loss Due to Deforestation in Malaysian Northern Borneo between 2000 and 2015 Using SRTM and Landsat Images", *Forest* 11, No. 1018, (2020): 1-15.

<sup>20</sup> Carmela Mariano, *et. al*, "Sea Level Rise and Coastal Impacts: Innovation and Improvement of the Local Urban Plan for a Climate-Proof Adaptation Strategy", *Sustainability* 13, No. 1565, (2021): 2.

<sup>21</sup> Natshuda Pumijumnong, *Papers*: "Mangrove Forest in Thailand", (Salaya Phutthamonthon: Mahidol University, 2014), p. 64; Department of Marine and Coastal Resources and Mangroves for the Future IUCN, Thailand National Strategy and Action Plan 2011-2013, (2011), p. 30

government at all levels should be accountable to the local people by ensuring proper implementation of settlement development policy. Along with policies issued related to coastal life, careful planning is needed to preserve the remaining mangrove forests which are vital for the long-term sustainability of not only the flora and fauna in the area but also for the future quality of human life. It is good management where the public could help, hand-in-hand alongside with the Government as well the Non-Government bodies in protecting our mangrove forests.

In fact, ASEAN Mangrove Network already entailed each country in Southeast Asia to fully adhere to this program by taking any necessary measures to prevent all destructive activities of mangroves in the coastal environment, utilizing and managing natural resources that must be subject to sustainable development. Now, it is only our turn to fully implement this regional network as further for a better understanding of mangrove responses to different stressors and enhance overall adaptive capacity in coastal socio-ecological systems.

Additionally, rehabilitation and restoration could also be taken as an approach to offset continuing mangrove losses due to coastal development. Moreover, people are not entirely aware of the fact that we are losing more mangrove forests than what we're planting in terms of rehabilitating, this indicates that efforts from various players such as the government and Non-Government, alongside the locals are essential in ensuring the protection of our valuable mangrove forests for future generations. Hence, it is our common responsibility to preserve mangrove forests, spread the awareness of the residents and understand the socio-economic condition of the locals including those responsible to all stakeholders on the importance of mangrove revegetation and the replanted area for better future generations.

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# REVIEWING THE IMPLEMENTATION OF TERRORISM LAW

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## A. Background

Indonesia as an archipelagic country certainly not only has advantages but also deficiencies, one of which is less than optimal security surveillance. Since 1998, Indonesia has received various terrorist attacks, such as the Atrium Monday Jakarta Building in 1998, Plaza Hayam Wuruk and the Istiqlal Mosque in Jakarta in 1999, the GKPI Church and the Medan Catholic Church as well as the house of the Philippine Ambassador in 2000, the explosion of several churches on Christmas Eve in 2001, to the bombings. Bali I on October 12, 2002, which marked the beginning of the Indonesian government's serious move to tackle the problem of terrorism. Evidently, with the issuance of Presidential Instruction No. 4 of 2002<sup>1</sup> concerning the Criminal Acts of Terrorism, which essentially orders the immediate establishment of various efforts to tackle terrorism attacks in Indonesia, a legal basis was established that aims to protect and expedite steps by state officials in an effort to overcome acts of terrorism. The legal basis is Government Regulation in Lieu of Law of the Republic of Indonesia Numbers 1 and 2 of 2002. The Coordinating Ministry for Political and Security Affairs will also immediately establish an anti-terror task force from the police, TNI, and Intelligence.

In 2004 the National Police Headquarters then formed the task force of the Special Detachment 88 Anti-terror (Densus 88) under the auspices of the Indonesian National Police through the Decree of the National Police Chief No. 30/VI/2003. Densus 88 has the task of dealing with cases of terrorism that occurred in Indonesia and exercising its authority in accordance with Articles 26 and 28 of Law no. 15 of 2003 concerning Stipulation of Government Regulation in lieu of Law No. 1 of 2002 concerning Criminal Acts of Terrorism in force at that time, which authorized Densus 88 to conduct investigations and arrests with

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<sup>1</sup> Windiani, R. 2017. Peran Indonesia Dalam Memerangi Terorisme. *Jurnal Ilmu Sosial*, 5(2), 135-152, page 136

information and preliminary evidence obtained from intelligence within a specified period of time.

The presence of Densus 88 provides a sense of security in the community, because the government has formed an anti-terror task force that can take action against terrorism acts quickly before an atmosphere of threat arises in an area. However, in his actions there were pros and cons of what Densus 88 did to terrorists. Because apart from arresting terrorists, they also do not hesitate to shoot dead every terrorist who resists. This raises whether the act of shooting dead terrorists is considered a form of self-defense and not a criminal act or is still considered a gross violation of human rights because it kills a person and can be prosecuted. So it will be a crime when Densus 88 deliberately shoots dead terrorists and the purpose of law enforcement by dragging terrorist actors to court loses their existence because the perpetrators have been tried first with hot lead that kills lives before reaching the court. The procedure for arresting terrorists was also questioned, because many of the wanted terrorists ended up being shot dead. Of course, this is considered a gross violation of human rights and can lead to protests and criticism from the public and the international community. Supervision and clarity in legal instruments in the form of legislation is the key in regulating the apparatus in acting and guaranteeing legal protection not only for the officers on duty but also for victims of terrorism and terrorism perpetrators.

## **B. Formulation of the Problem**

1. What is the legal basis for Densus 88 in carrying out its duties and authorities?
2. How is the implementation of the legal basis of each state security apparatus against terrorism?

## **C. Analysis**

1. The legal basis of Densus 88 in carrying out its duties and authorities

Densus 88 operates under the orders of the Indonesian National Police as a police unit with a special task of handling terrorism cases. Densus 88 also has the same main task as the police unit in accordance with Article 13 of Law Number 2 of 2002, namely "a) maintaining security and public order, b) enforcing the law, and c) providing protection, protection, and services to the community." .

The legal basis under which Densus 88 was authorized to act initially was article 26 and article 28 of Law No. 15 of 2003 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism. However, since 2018, Law Number 5 of 2018 concerning Amendments to Law No. 15 of 2003 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Crimes into Law. In which there is also a change in Article 28 to:

1. Investigators may arrest any person suspected of committing a crime of terrorism based on sufficient preliminary evidence for a maximum period of 14 (fourteen) days.
2. If the period of arrest as referred to in paragraph (1) is insufficient, the investigator may apply for an extension of the arrest for a maximum period of 7 (seven) days to the head of the district court whose jurisdiction covers the domicile of the investigator.
3. The arrest of persons suspected of committing the Crime of Terrorism as referred to in paragraphs (1) and (2) must be carried out by upholding the principles of human rights.
4. Every investigator who violates the provisions as referred to in paragraph (3) shall be punished in accordance with the provisions of the legislation.

Further stated in Article 28 A, that regulates "The public prosecutor conducts research on the case file for the Crime of Terrorism within a maximum period of 21 (twenty one) days from the time the case file from the investigator is received."

In essence, the changes stipulated in article 28 are by adding and requesting an increase in the period of arrest, emphasizing the principle of human rights in taking action against terrorists and the consequences of violations if they do not respect human rights principles. Upholding the principle of human rights in paragraph 3, which means that arrests made by law enforcement officers must be in accordance with basic human rights by paying attention to every action and treatment humanely, not torturing terrorist actors, and not treating them cruelly and not degrading human dignity. The article pays more attention to the efforts of the apparatus in hunting down and arresting terrorists as well as prioritizing human rights to avoid any abuse of authority with a specific purpose compared to Article 28 of Law no. 15 of 2003 which only explains the provisions for the period of arrest. However, on the other hand in article 7 paragraph 2 of Law No. 34 of 2004 concerning the Indonesian National Armed Forces explains that one of the main tasks of military operations other than war is overcoming acts of terrorism. Thus, there is ambiguity between Densus 88 and the TNI to deal with terrorism, because the Terrorism Law does not specifically regulate the cooperation relationship between

state security apparatus and/or a clear division of main tasks to tackle terrorism based on the level of threat or other provisions. For example, the attack carried out by the Kelompok Kriminal Bersenjata/Armed Criminal Group (KKB) before being declared a terrorist. confusion arose between who had the right to hunt down the KKB first. So the impact is waiting for a decision from the government to clearly define what KKB is.

## 2. Incompatibility of Detachment 88's Authority with Human Rights Principles

In June 2018 there was a shooting death of one suspected terrorist in Makassar who fought back using sharp weapons when asked. These cases often involve shootings in places where the priority of terrorist policies is the criticism leveled at Detachment 88. However, apart from these criticisms, Densus 88 and the apparatus are the main components in implementing state security and in using firearms. The Terrorism Law does not explain the act of being forced to shoot dead or just a warning to terrorists, which aims as a precautionary measure (preventing) the fall of more lives. In the basic police force, the police force has the right to use firearms as regulated in articles 47 and 48 of the Regulation of the Head of the State Police of the Republic of Indonesia Number 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in Performing the Duties of the Republic of Indonesia. In article 47 it explains the purpose of the situation that allows the police to use firearms, where article 47 states that:

(1) The use of firearms may only be used if it is truly intended to protect human life.

(2) Firearms for officers may only be used for:

- a. in the case of facing extraordinary circumstances;
- b. defend oneself from the threat of death and/or serious injury;
- c. defending others against the threat of death and/or serious injury;
- d. prevent the occurrence of serious crimes or those that threaten people's lives;
- e. detain, prevent or stop a person who is or is about to perform an act that is very dangerous to life; and
- f. deal with life-threatening situations, where more lenient measures are not sufficient.

Meanwhile, Article 48 explains the guidelines for the use of firearms by stating that:

*"Every Police officer in carrying out police actions using firearms must follow the procedures for using firearms as follows:*

*a. officers understand the principles of law enforcement of legality, necessity and proportionality.*

*b. before using firearms, officers must give clear warnings by:*

*1. mention himself as an officer or member of the National Police who is on duty;*

*2. give a clear and unequivocal warning to the target to stop, raise his hand, or put down his weapon; and*

*3. Allow sufficient time for warnings to be obeyed.*

*c. In a very urgent situation where the delay in time is estimated to result in death or serious injury to the officer or other people around him, the warning as referred to in letter b does not need to be carried out."*

The act of shooting death by Densus 88 is also protected in article 48, article 49 paragraph 1, article 50, and article 51 paragraph 1 of the Criminal Code<sup>2</sup>.

Article 48

*"Whoever commits an act because of coercion (Overmacht) is not punished."*

Article 49 paragraph 1

*"Not punished, whoever commits an act of forced defense for himself or another person, honor, decency or property for himself or for others, because there is an attack or threat of attack that is very close at that time which is against the law" (Noodweer).*

Article 50

*"Whoever commits an act to carry out the laws and regulations."*

Article 51

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<sup>2</sup> Salem, A. 2018. Penggunaan Tindakan Tembah di Tempat Terhadap Pelaku Terorisme oleh Densus 88 di Kaitkan dengan Asas Praduga, 1(2), 111-120

*"Anyone who commits an act to carry out an order for a position given by the competent authority is not punished"*

However, all regulations that provide protection for members of the police, especially Densus 88, from shooting dead terrorists are not explained further about the limits of these actions. Therefore, Densus 88 could be charged with gross human rights violations that led to mass killings of terrorists. In addition, most of the theorists who put up a fight ended up being shot dead on the spot, leaving a small number of terrorists who were later tried in court.

Procedures for arresting suspected terrorists must also be monitored so that violence or other forms of human rights violations do not occur. As in the case of Munarman's arrest on April 29, 2021. During the arrest, Munarman, who was at his residence, was then attacked and immediately made a forced arrest in handcuffs. According to Munarman's attorney, the arrest was carried out without a summons so that it violated the provisions of Article 19 paragraph 2, namely: "About the alleged perpetrator of a violation, no arrests shall be made unless he has been legally summoned twice in a row and does not fulfill the summons without a valid reason. legal" so that the arrest of Munarman carried out by Densus 88 is considered a violation of human rights because it eliminates the freedom of others. This is why there is a need for clarity regarding the arrest procedure which is explicitly discussed in Law No. 15 of 2018 concerning Terrorism

#### **D. Conclusion**

In the face of terrorism attacks, the government must immediately prepare excellent law enforcement officers complete with legal basis for the implementation of their authority, equipped with clarity on the appointment of officers who act on terrorism In carrying out its duties and authorities, Densus 88 is given legal protection using firearms to stop terrorist resistance and prevent more casualties and as a form of self-defense, but it is not explained about the limits on shooting to death aimed at preventing gross human rights violations of mass murder. Procedures for conducting arrests and investigations as well as various procedures related to court proceedings should be explicitly explained in the Terrorism Act. UU no. 15 of 2018 concerning Terrorism needs more revisions and improvements so that there will be no Obscurity or impediments in protecting law enforcement officers, terrorist actors and victims of terrorism.

#### **E. Suggestion**

In dealing with terrorism cases, a state security apparatus is needed which is protected by a legal basis and good and thorough supervision. In law no. 15 of 2018 concerning Terrorism, the definition of terrorism is the key in determining which apparatus' authority will move. However, when the definition has too broad a meaning or raises many pros and cons, it is better for other articles that will explain more explicitly so as not to cause multiple interpretations that hinder the handling of terrorism. From improving the definition of terrorism, it is also necessary to add a division of levels of acts of terrorism, because not all terrorism is armed, not all terrorism is grouped, not all terrorism commits gross human rights violations, so a classification of acts of terrorism is needed so that the main tasks of each institution do not overlap or be too dominate among the others. In law enforcement efforts, the state security apparatus is allowed to use violence and firearms to bring order to the community. However, there is a need for supervision and guarantees for civil society so that there is no arbitrariness by the security forces to commit violence, including even to terrorists. In terms of procedures related to investigations, arrests, trials, and even provisions for shooting terrorists, it must also be clearly stated in the terrorism law in order to avoid arbitrary actions and override human rights in every action taken by the apparatus to enforce the law.

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