



Reform of The Criminal Law Implementing the Double Track System Sanctions Against Terrorism Financing Persons to Prevent Illegal Investments

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ABSTRACT. In order to stop illegal investments that are intended to fund terrorist organizations, the goal of this writing is to determine how Terrorism Funding Crimes offenders can be held accountable for their actions through the imposition of Double Track System sanctions. This kind of research uses a statutory approach and is classified as normative legal research, a conceptual approach, and a case approach. Based on the analysis of this research, the application of the Double Track System Sanctions in the crime of financing terrorism which is an Extra Ordinary Crime, is to provide justice for perpetrators and victims as well. and achieving the goal of punishment by creating a deterrent effect for perpetrators through criminal sanctions and improving perpetrators through imposing action sanctions by implementing Double Track System sanctions that are oriented towards improving psychology, mentality improvement and improving the knowledge of perpetrators of terrorist financing crimes. So that it can prevent the public from falling into participating in illegal investments to fund terrorist organizations.

Keywords: Law Reform, Criminal, Terrorism

1 Background to The Problem

The crime of financing terrorism is a criminal act that has a structured, systematic and massive modus operandi. The Modus operandi used is with approaches to religion, the approach of certain groups and streams so that the process of punishment for perpetrators of terrorism financing must get more serious treatment, especially in the imposition of sanctions. The flow of funds used by perpetrators of terrorism financing can flow and be directed to terrorist organizations, of course it can increase the ability of terrorist organizations to carry out their actions. By approaching the case against criminal acts of terrorism financing in this case is the case of terrorism financing by the defendant Dwi Djoko Wiwoho we can understand that we do not know the depth of a can cause us to fall into criminal acts such as criminal acts of terrorism financing as follows quoted through the site Tempo.com :

TEMPO.CO, (Dwi Djoko, former Batam officials accused of ISIS terrorism on trial) Jakarta-the ISIS terrorism defendant who is a former director of the One-Stop

Integrated Services (PTSP) Batam Enterprise Agency, Dwi Djoko Wiwoho underwent his first trial on Tuesday, March 13, 2018. Public Prosecutor Jaya Siahaan read out the indictment against Dwi. He was charged with committing the crime of terrorism by deliberately using violence and intending to cause an atmosphere of terror against people. "As well as providing assistance to terrorism perpetrators by hiding information," Jaya said at the West Jakarta District Court on Tuesday, March 13, 2018. Dwi Djoko has been missing since August 2015. At that time he applied for leave to his superiors head of BP Batam Mustafa Widjaja. He was supposed to enter office September 2, 2015.

Later it was only known after the police came to BP Batam and said Dwi Djoko was involved in ISIS. The National Counter-Terrorism Agency (BNPT) also stated that Djoko was positive to be a follower of ISIS and had joined Iraq. He and his family were rescued and returned to Indonesia. The public prosecutor also charged Dwi Djoko with committing the crime of financing terrorism by deliberately providing, collecting, giving or lending funds to commit acts of terrorism. For his actions, Dwi was charged with terrorism crimes Article 15 in conjunction with Article 7 of Law No. 15 of 2003, article 13 letter c of Law No. 15 of 2003 and terrorism financing crimes Article 5 in conjunction with Article 4 of Law No. 9 of 2013. The trial was presided over by Presiding Judge Heri Sumanto. When Heri asked about the exception, it agreed not to make an exception. "We will not make exceptions," said Dwi Djoko's lawyer, Ashludin. Heri said the trial of the ISIS terrorism case would be held again on Tuesday, March 20, 2018 with the agenda of calling witnesses.¹

Terrorism financing is a crime in the economic field, funds that can be for terrorism financing can be sourced from individuals and businesses through illegal investment and money laundering. So that the source of funds from terrorism financing is very wide, in order to create a safe business world from terrorism financing crimes need to be considered when the perpetrators of terrorism financing have been successfully arrested and convicted in order to pay attention to the process of punishment that does not solely punish the perpetrators through prison alone.

The punishment of the perpetrators of terrorism financing by imposing prison sanctions does not guarantee justice for the community because the perpetrators can repeat their actions again and even more skillful in doing their actions, so in this case there is a need for sanctions to make the perpetrators aware of the thoughts and streams that are radicalism so that later the perpetrators can realize their mistakes. The purpose of imprisonment is to punish the perpetrator, not to correct the perpetrator of the crime of financing terrorism for his safety.

The Terrorism Financing Law only applies a single Track system and does not allow for sanctions, so neither the general public nor those who commit terrorism financing crimes benefit from legal protection or certainty. Therefore, it is necessary to promote criminal law reform in order to update the Terrorism Financing Law in relation to the sanction system regulated in the Terrorism Financing Law and the significance of putting in place the Double Track System to stop the flow of funds and illicit investments made again by those who carry out terrorism financing and its network. In light of the foregoing context, the author can sum up the issues that will be examined in this academic paper with the following issues:

Formulation of The Problems:

1. How is the responsibility of perpetrators of terrorism financing through the application of Double Track system sanctions?
2. How are efforts to prevent illegal investments aimed at financing terrorist organizations through political policies to reform criminal law?

Research Objectives

The purpose of this study is:

1. This study set out to identify and examine the accountability of those who commit crimes related to financing terrorism.
2. The next study's goal is to identify and evaluate the advantages of using Double Track system sanctions to deter illegal investment.

2 Research Methods

This study's research was of the normative legal variety. The normative legal research considered in this study relates to the non-regulation of sanctions actions in the act of financing terrorism-related crimes that are considered necessary to be applied to those crimes' perpetrators. Law, case, and conceptual approaches are used as problem-solving strategies. Legislation, books, and other primary legal sources as well as secondary legal sources were used in this study. Legal dictionaries are secondary legal resources.

3 Research Result

3.1 Application of sanctions to hold those responsible for financing terrorism accountable Double Track System.

Criminal responsibility for those who commit crimes related to financing terrorism is placed on both individuals and corporations as legal subjects. The law No. 9 of 2013 on the prevention and eradication of criminal acts of terrorism financing (hereafter referred to as the act of terrorism financing) does not include sanctions action as a sanction that complements the criminal sanctions in the conviction process that be based on the theory of joint conviction as has been embraced by Van Bammelen in his book *Andi Hamzah* which states that "Crime aims to exact revenge and secure the community." The goal is secured and maintained through action. In order to prepare for the prisoner's return to public life, criminal and action were both taken.² so in this instance the part.

Sanctions Double Track System impact changes to the perpetrator and provide legal protection for the perpetrator and for the victim, criminal sanctions ensure that the perpetrator is accountable for his actions by undergoing a criminal and provide a de-

terrent effect on the perpetrator and in the case of the implementation of criminal sanctions the community is guaranteed legal protection by the state. While action sanctions ensure that the perpetrator after carrying out the punishment process by imposing the perpetrator's actions will not repeat his mistakes again. Legal protection, in the words of Satijpto Raharjo, "is giving protection for Human Rights (HAM) that harm others and that protection is given to the community in order to enjoy all the rights granted by law."

According to Satijpto Rahajo, the imposition of a criminal offense against those who finance terrorism provides victims with legal protection. Meanwhile, legal protection must also be given to the rights of perpetrators by providing rehabilitation to perpetrators who still have the right to be repaired by imposing sanctions for actions with an orientation to repair the perpetrators in the future. According to Maria Theresia Geme's theory, which defines legal protection as "related to the actions of the state to do something with (impose state law exclusively) with the aim of providing certainty for the rights of a person or group of people," the imposition of sanctions for this action is imposed on the state."

As stated by Chairul Huda, "criminal responsibility is the responsibility of the person against the crime committed," it is essential that the criminal's ability to be held accountable for the crime imposed by the state is established before the criminal can be found guilty.⁵ It was stated by Simons who defined *Strafbaarfeit* as "eene strafbaar gestelde, on-rechtmatige, met schuld in verband staande handeling van een toerekening vat bar person" (an act that is forbidden by law, against the law, is committed by someone who is guilty, and among the related streams that analyze criminal liability are monistic and monism streams, among others).

Possibility of crime under positive law Law enforcement uses the Criminal Code (hereafter referred to as the Criminal Code) as a source of evidence to establish whether the perpetrator is capable of being held accountable or not. The Criminal Code's articles 44, 48, 49, 50, and 51 define criminal liability. While in terms of imposing a crime on the perpetrators of terrorism financing should not be separated from the terms of criminal liability as conveyed by Galingan, according to Galingan if this requirement is ignored and does not appear minimal circumstances that indicate the maker can be denounced, then the law and its institutions have failed to fulfill their functions.

According to Kornelia Melansari D. Lewokeda's article in the legal journal titled "Criminal Responsibility Related to the Granting of Delegation of Authority," criminal liability is first and foremost a state that an offender experiences when committing a crime. Connecting the Crea-tor's circumstances to the appropriate actions and penalties is another aspect of criminal liability. Consequently, the study was carried out in two directions:

- 1) criminal liability is placed in context as factual conditions of conviction, hence the preventive aspect.
- 2) Criminal liability is a repressive aspect of criminal law because it is a legal repercussion of the existence of such factual requirements. Criminal liability concerns the conditions that must be met in order for a conviction to exist, as well as the associated penalties.

2) Prevention efforts against illegal investments that aim to finance terrorist organizations through political policies to reform criminal law.

The Terrorism Financing Act, Law No. 9 of 2013 (hereinafter referred to as the Terrorism Financing Act), is currently in effect (*Ius Constitutum*), but it does not regulate the Double Track system of sanctions in the sanctions system, so as we can see, the theory of retaliation against terrorist financing criminals is still valid:

"Anyone who knowingly provides, collects, provides, or lends funds, directly or indirectly, with the intent that the funds will be used in whole or in part to commit the crime of terrorism, terrorist organizations, or terrorists shall be punished for committing the crime of financing terrorism with a maximum imprisonment of 15 (fifteen) years and a maximum fine of Rp1, 000, 000, 000.00 (one billion rupiah).

The regulation of criminal sanctions in Article 4 of the Terrorism Financing Law clearly stipulates that everyone who commits a terrorism financing offense is subject to imprisonment and fines, we can analyze the article that the sanction system uses a cumulative system or a combination of imprisonment and fines together without exception. This is a form of retaliation. Immanuel Kant, Hegel, Herbart, Stahl, Leo Polak, and several other scholars explain the theory of revenge where the theory of revenge says that the criminal does not aim for the practical, such as fixing criminals. It is the crime itself that contains the elements for the imposition of the criminal. Criminal absolutely exists because a crime is committed. It is not necessary to think about the benefits of dropping the criminal. Any crime must result in the imposition of a criminal sentence on the offender.

Not all criminal acts that are punishable by law are pure crimes; instead, those who finance terrorism frequently do so in response to encouragement from others to support the organization or act of terrorism. With the encouragement of teachings and heresies so that the perpetrator is persuaded to do so which even though the act is wrong, the basis of the perpetrator wanting to do it is a lack of understanding of the true teachings. So it is not fair when the perpetrator is sentenced to criminal punishment alone without improving the knowledge of the perpetrator whose goal is that the perpetrator will not repeat his actions again. If the state does not guarantee improvements to the knowledge of the perpetrator while the perpetrator of the crime of financing terrorism admits that he does not understand the true teachings then the state has done unfair to the perpetrator of the crime of financing terrorism. John Rawls once said, As with philosophical systems, justice is the first virtue of social institutions. If a theory is false, it must be rejected or revised, just as laws and institutions, no matter how effective or well-run they are, must be changed or eliminated if they are unjust. Every person has an inviolability rooted in justice that even society's well-being cannot override.¹¹

John Rawls said Justice is a truth in a thought. If the theory is elegant and economical but the theory is not correct then it must be revised and so is the law. If there are unfair laws and institutions, a revolution must have occurred. The authors discovered the injustice of the state's treatment of criminals in this instance of terrorism financing through a Terrorism Financing Act so that it is necessary to revise the current Terrorism Financing Act (*Ius Constitutum*). Unfortunately, if the revision is not carried out, the perpetrator is only punished with imprisonment which results in the perpetrator

being able to repeat his actions again on the basis of the perpetrator's mistakes that are not corrected through the application of action sanctions.

Prevention of crime can be done by making efforts to reform the law by making a policy of prevention of crime so that later there is no crime that is repeated by a former convict or person who has never been convicted. So that through the policy can seek prevention of crime, in this case by seeking the application of sanctions Double Track System convicted of terrorism financing can be aware of their criminal acts and not repeat by making new ways with investment modes that are veiled with terrorism crimes and terrorism financing crimes. Legal politics is important for changing current criminal law policies because it looks into what changes should be made to the law to make it more in line with societal legal sentiments.¹² Therefore, it is crucial in this situation to examine the legal phenomena that take place in the community, and the study's findings can be used as a guide in the quest for legal reform, especially in the area of criminal law on financing terrorism.

Political law by reforming the criminal law in addition to aiming to improve the law on the developments of society and strive for the best goals of the criminal law also provides legal certainty to the perpetrators and victims of the certainty of sanctions imposed on the perpetrators and also to the public who are suspects and defendants are not treated arbitrarily. According to Sudikno Mertokusumo, justice is shielded from capricious behavior by legal certainty, which implies that under certain conditions, a person will be able to obtain what is anticipated.

Legal reform and norm-changing measures, such as the Single Track System of sanctions currently in use, do not ensure that the goal of punishment can be successfully accomplished. By implementing the Double Track system of sanctions, the goal of punishment can be achieved and is more convincingly demonstrated to have been achieved. There is a need for criminal law reform in the Terrorism Financing Law along with sanctions in offenses covered by the Terrorism Financing Law. Criminal sanctions that are oriented to retaliation and legal protection within a certain time based on how long the perpetrator is penalized while the perpetrator's guilt is not treated by applying action sanctions. Legal reform of norms that can be read in "letterlijk" and are concrete, then behind that norm also contains an abstract value as the soul of a norm. As conveyed in his book Muhammad Rustamaji Barda Nawawi Arief's thoughts on the development of criminal law (IHP) which targets the value aspect of a norm. Barda Nawawi Arief said that in the study of jurisprudence on law, the 'norm aspect is an external aspect or outward aspect that appears and is manifested in the formulation of legislation. While the 'value' aspect is the inner aspect, or the inner aspect or obligation that is behind or behind the norm.¹⁴

Criminal law reform in the Terrorism Financing Law by applying Double Track system sanctions is not solely for other purposes than achieving the purpose of conviction. The application of Double Track system sanctions by applying imprisonment is very important and must be maintained, without prison sanctions by only applying sanctions the action cannot be done properly and will pose a threat to the community because the perpetrators have not been repaired through sanctions the action is already freely living in the community. While action sanctions have their own value, namely to correct the mistakes of the perpetrator, whether it is a mistake in the sense

of lack of understanding of Science, religious teachings, morality and ethics can be corrected through action sanctions. the goal is that later if the perpetrators are deemed worthy of being returned to the community, they can do better and not build a more structured terrorism financing crime relationship so that the steps for implementing the Double Track system sanctions are oriented towards preventing Illegal investments whose purpose is terrorism crimes.

As the concept of Double Track System sanctions is both, namely criminal sanctions and sanctions action, the expected goal of punishment in the application of Double Track system sanctions is equality between criminal sanctions and sanctions imposed jointly. One of the two types of sanctions is not fully utilized by the Double Track System. The two types of sanctions are on an equal footing under this two-track system. Within the framework of the Double Track System, the emphasis on the parity of criminal and action sanctions is actually related to the idea that the elements of reproach/suffering (through criminal sanctions) and usurpation (through action sanctions) are equally significant.

Combined theory analyzes the purpose of the imposition of criminal sanctions and action sanctions together is to achieve the purpose of punishment that is to avenge the actions of the perpetrator and fix the perpetrator, as this theory is embraced by Van Bammelen described in his book *Andi Hamzah* namely "criminal aims to avenge mistakes and secure society. Action intends to secure and maintain the goal. So criminal and action, both aimed at preparing to return the convict to public life". The combined theory of the purpose of punishment as has been embraced by Van Bammelen indicates that the sanction of imprisonment is also an important sanction to be applied to the perpetrators of the crime of financing terrorism in order to avenge mistakes and secure the public from the actions of the perpetrators so we can not deny that the importance of sanctions aimed at maintaining the purpose of the convict.

In an effort to reform criminal law that can be used as a guideline is the renewal of criminal law which has first been carried out, namely the renewal of the new Criminal Law Code, namely Law Number 1 of 2023 on Criminal Law which in it has regulated related to sanctions actions clearly so that the direction of development of criminal law is currently not oriented to retaliation but through the improvement of prisoners through the imposition of sanctions actions as regulated in Article 103 of Law Number 1 of 2023 on criminal law Criminal Law Act Article 103

(1) Measures that may be imposed together with principal criminal form:

- a. counseling; b. rehabilitation; c. job training;
- b. Treatment at the institution; and/ or e. improvement due to criminal acts.

(2) Actions applicable to each person referred to in Article 38 and Article 39 form:

- a. rehabilitation;
- b. submission to someone;
- c. treatment in institutions;
- d. submission to the government; and / or
- e. treatment in a psychiatric hospital.

(3) Type, period, Place, and / or implementation actions referred to in Paragraph

- (1) and paragraph stipulated in the court decision.

The National Agency for Counter-Terrorism (BNPT), which has the primary responsibility and function of developing curricula or policies against terrorism financing crimes as regulated in Article Article 8 paragraph 2 of Government Regulation Number 77 of 2019 on the Prevention of Terrorism Crimes and legal protection against investigators, public prosecutors, judges, and correctional officers, is an integral part of efforts to reform the Terrorism Financing Law. which states: "BNPT prepares curriculum, methods, and integrated education and training modules as mentioned in Paragraph (1) by collaborating with pertinent ministries and institutions."

Legal reforms have also been made to the penitentiary law, which is currently Law Number 22 of 2022 on Penitentiary (hereinafter referred to as the penitentiary law) which in principle has changed which is regulated in Article 3 of the penitentiary law, regulates:

The criminal justice system is based on principle:

- a. vindication;
- b. nondiscrimination;
- c. humanity;
- d. mutual cooperation;
- e. independence;
- f. proportionality;
- g. loss of independence as the only one suffering; and
- h. professionalism.

In letter G of Article 3 of the Penal Code it is explained that the loss of independence is the only suffering. What we can understand is that in the reform of the punishment system there is no longer a principle of punishment either through imprisonment, confinement and so on that puts forward the principle of violence as a deterrent effect. Criminal is intended to ensure sanctions action is running well before the inmates return to the community and criminal aims to protect the community for crimes that can be repeated by the perpetrator when the sanctions action has not been fully lived by the perpetrator/inmate.

4 Conclusion

1. Criminal liability imposed on perpetrators of criminal acts of terrorism financing, is still prioritizing legal responsibility with the imposition of criminal sanctions with a Single Track System model. Criminal liability is an important thing that must be proven by law enforcement officials in order to create justice in law enforcement and not discriminate and the criminal process runs in accordance with the mandate of the law. In this case, it looks weak if the sanctions applied to perpetrators of terrorism financing crimes are only limited to the imposition of criminal sanctions without being subject to action sanctions. so it is important to reform the law on Terrorism Financing Law.
2. Through the efforts of criminal law reform in the Terrorism Financing Law with the application of Double Track system sanctions, namely the imposition of sanctions in conjunction with criminal sanctions, it can seek rehabilitation or improvement of

the understandings of perpetrators of terrorism financing crimes that have been contaminated with teachings that are contrary to legal norms and national ideology. so that it can suppress the development of illegal investment by former prisoners of terrorism financing to repeat his actions and become a recidivist.

Bibliography

1. Andi Hamzah, 2017, *Hukum Pidana Indonesia*, Sinar Grafika, Jakarta.
2. Chairul Huda, 2011, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan (Cetakan ke-4)*, Kencana Prenada Media Grup, Jakarta.
3. D.J Galingan, 1996, *Due Process and Fair Procedures; A Study of Administrative Procedures*, Oxford, Clarendon Press.
4. H. Salim HS, 2016, *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*, PT.
5. RajaGrafindo Persada, Jakarta.
6. Jhon Rawls, 1990, *A Theory of justice*, Harvard University Press, United States of America.
7. Muladi dan Dwidja Priyanto, 2010, *Pertanggungjawaban Pidana Korporasi*, (Kencana Prenada Media Grup.
8. Margono, 2019, *Asas Keadilan, Kemanfaatan dan Kepastian Hukum dalam Putusan Hakim*, Sinar Grafika, Jakarta.
9. Muhammad Rustamaji, 2019, *Dekonstruksi Asas Praduga Tidak Bersalah (Pembaruan Tekstual Formulasi Norma dan Kandungan Nilainya)*, Penerbit Thafa Media, Yogyakarta.
10. Sholehuddin, 2007, *Sistem Sanksi Dalam Hukum Pidana Ide Dasar Double Track System & Implwmwntasinya*, PT. Rajagrafindo Persada, Jakarta.
11. Surojo Wignjodipuro, 1982, *Pengantar Ilmu Hukum*, Gunung Agung, Jakarta.
12. Scientific Documentation And Publication:
13. Septa Candra, 2013, *Pembaharuan Hukum Pidana : Konsep Pertanggungjawaban Pidana Dalam Hukum Nasional Yang Akan Datang*, Jurnal Cita Hukum Vol. 1 No. 1 Juni 2013, Fakultas Hukum Universitas Muhammadiyah Jakarta.
14. Kornelia Melansari D. Lewokeda, 2018, *Pertanggungjawaban Pidana Tindak Pidana Terkait Pemberian Delegasi Kewenangan*, Jurnal Mimbar Hukum Volume 14 Nomor 28 Agustus 2018 – Januari 2019, Program Studi Magister Ilmu Hukum Universitas Airlangga, Surabaya. Legislation:
15. Undang-Undang Nomor 1 Tahun 1946 Tentang Hukum Pidana (Kitab Undang-Undang Hukum Pidana).
16. Undang-Undang Nomor 22 Tahun 2022 Tentang Pemasarakatan. Undang-Undang Nomor 9 Tahun 2013 Tentang Pencegahan dan Pemberantasan Tindak Pidana Pendanaan Terorisme.
17. Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana. Peraturan Pemerintah Nomor 77 Tahun 2019 Tentang Pencegahan Tindak Pidana Terorisme dan Perlindungan Hukum Terhadap Penyidik, Penuntut Umum, Hakim dan Petugas Pemasarakatan.

Webtography:

18. Dwi Djoko, Mantan Pejabat Mantan Pejabat Batam Terdakwa Terorisme ISIS di adil, <https://metro.tempo.co/read/1069433/dwi-djoko-mantan-pejabat-batam-terdakwa-terorisme-isis-diadili> (Dikutip pada 28 Desember 2022, Pukul 10.50 Wita)

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