

## Implementation of Terrorism Criminal Sanctions Methods According to Resolution 2560

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### ABSTRACT

This study aims to find out the application of methods of sanctions against terrorism crimes according to resolution 2560 and national law. The method used in this study is a type of normative research that uses a legal approach as well as case studies. The results of this study show that the application of the 2560 sanctions method is still based on the previous resolution of resolution 2368 (2017) which asks all Member States to more actively submit a list of requests to the identification committee based on previous resolutions on improving the method of sanctions against terrorism crimes.

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## 1. Introduction

The primary responsibility of the UN Security Council is to maintain international peace and security. The Security Council consists of fifteen members, five of whom are permanent members, one of whom is the United States, while Indonesia is a non-permanent member. The Security Council has several number supporting bodies, one of which is the Counter-Terrorism and Non-Proliferation Committee.<sup>1</sup>

The crime of terrorism always uses threats or acts of violence that threaten the safety of life without choosing who is the victim. Victims of terrorism crimes are not limited to the loss of life, but also the destruction and destruction of property, the environment, economic resources, but can also cause social and political shock, can even undermine the existence of a nation. The use of various types of weapons, ranging from explosives, chemical weapons, biological weapons, may even be the use of nuclear weapons has been commonly practiced in the crime of terrorism. The crime of terrorism is generally committed in a threatening manner, committed by people who are trained, systematic, organized, and often also cross-country.<sup>2</sup>

Against the fight against terrorism, the international community devotes its most important attention to concrete forms of support realized through the international community's commitment to preventing and combating terrorism. Indonesia has also issued Indonesian Law No. 6 of 2006 on the Ratification of the International Convention on the Eradication of Bombing by Terrorists (International Convention Against Terrorist Bombing) and the Convention on the Suppression of Financing Terrorism.<sup>3</sup>

Terrorism today becomes a common enemy that the international community aspires to always eradicate. On December 29, 2020, in its last session 2020, the UN Security Council passed consensus Resolution 2560 on improving the working methods of Sanctions Committee 1267, initiated by Indonesia and the United States.<sup>4</sup> The Sanctions Committee 1267 is the un security council's subside

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<sup>1</sup>Safira Nur Halima, dkk. "Peranan Dewan Keamanan PBB Terhadap Kasus Kejahatan Perang Dalam Konflik Bersenjata Non Internasional Di Nigeria". Diponegoro Law Jurnal. Volume 5 Nomor 3. 2016. Hlm. 5

<sup>2</sup>Eep Syaifullah Fatah, dkk. 2003. "Mengenang Perppu Anti Terorisme". Hlm 15

<sup>3</sup>Aziz Syamsuddin. 2014. "Tindak Pidana Khusus". Jakarta: Sinar Grafika. Hlm. 87

<sup>4</sup>Humas Sekretariat Kabinet Republik Indonesia. "Dewan Keamanan PBB

body responsible for establishing and overseeing the implementation of sanctions against individuals and entities affiliated with ISIL/Da'esh and Al-Qaeda.<sup>5</sup>

Some of the core points of Resolution 2560 are:

- Encourage the improvement of justice, as well as the effectiveness of the functions and working methods of the sanctions committee on terrorism;
- Stressing the importance of sanctions mechanisms as part of counter-terrorism efforts;
- Encourage States to continue implementing sanctions and to maintain a sanctions list;
- Underline the importance of development, maintaining security, and respect for human rights in comprehensive counter-terrorism efforts;
- Stress the importance of respect for the UN Charter and International Law in counter-terrorism efforts; and
- Assigned the Monitoring Team Committee 1267 to prepare recommendations that will later be used to improve one aspect of rules and procedures in the Sanctions Committee.<sup>6</sup>

As chairman of the 1267 sanctions committee for two years, Indonesia has the support of all UNSC member states which is a reflection of trust and recognition of Indonesia's experience and track record in counter-terrorism. Resolution 2560 is also a cover for the State of Indonesia as non-permanent membership of the UN Security Council for the period 2019-2020. One reason Indonesia initiated resolution 2560 is that Indonesia wants to improve the system of working methods of the 1267 sanctions committee.

Resolution 2560 not only assigns analytical support to the sanctions monitoring team to provide specific recommendations to the committee but also continues to encourage all member states to keep ISIS in Iraq and Da'esh and al-Qaeda's sanctions list reliable and updated and utilizes exemptions for sanctions measures by relevant security council resolutions.

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Sahkan Resolusi Penanggulangan Terorisme Prakarsa Indonesia". <https://setkab.go.id/dewan-keamanan-pbb-sahkan-resolusi-penanggulangan-terorisme-prakarsa-indonesia/>. Diakses pada 16-02-2021

<sup>5</sup> ibid

<sup>6</sup> ibid

## 2. Problem Formula

Based on what has been outlined in the discussion above, the researcher formulated a formulation of the problem of how to apply the method of criminal sanctions according to resolution 2560.

## 3. Method

Based on the research object to be achieved, this study uses normative research methods, namely research on positive legal norms. This research is conducted by reviewing the rule of law that is authoritarian that uses literature as a theoretical concept and the opinion of legal experts on the problems analyzed.

## 4. Implementation of The Method of Sactions Against Terrorism Crimes According to Resolution 2560

- Methods of sanctioning terrorism crimes according to UN Security Council resolution 2560

In maintaining international peace and security, the most important security council responsibility is to take precautions or take action under Chapter VII of the Charter of the United Nations.<sup>7</sup> In this regard, article 39 of the Un Charter has been the basis of the extent of the potential decision-making of the Security Council to order actions following Chapter VII of the UN charter when there is a threat of peace or violation of peace to a State or entity that is not a State.<sup>8</sup>

In the performance of its duties, the authority of the Security Council is concentrated in 2 (dual) categories, namely, peaceful resolution of disputes and enforcement measures.<sup>9</sup> The authority of the Security Council to impose a sanction in international law is based on Chapter VII of the Un Charter, particularly in article 41.<sup>10</sup> Although there is no explicit mention of the terminology of sanctions in the UN Charter, Article 41 of the UN Charter has been planned by charter makers to have flexible characteristics as a basis for the Security Council to take measures in safeguarding international peace and security, one of which is the imposition of sanctions.<sup>11</sup>

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<sup>7</sup> J.G. Starke. 2010. *Pengantar Hukum Internasional Edisi Kesepuluh, Terjemahan Bahasa Indonesia*. Jakarta: Sinar Grafika. Hlm. 81

<sup>8</sup> Vera Gowlland-Debbas. Op.cit

<sup>9</sup> Malcolm N. Shaw. 2009. *International Law (Sixth Edition)*. New York: ambridge University Press. Hlm. 195

<sup>10</sup> Security Council Report. 2013. "UN Sanctions".

[http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special\\_research\\_report\\_sanctions\\_2013.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_sanctions_2013.pdf)

<sup>11</sup> Ibid

Sanctions imposed by the Security Council on States or non-State entities are usually outlined in the form of resolutions, namely decisions issued by the UN Security Council through a vote of permanent and non-permanent Member States, and have legally binding powers which mean that each UN Member State is obliged to comply with and implement the decision.<sup>12</sup> In chapter VII of the UN Charter, there are 2 (two) types of sanctions, namely economic sanctions and military sanctions.

Economic sanctions are carried out without the use of military violence whose actions are detailed in article 41 of the UN Charter as follows: the termination of economic, communication, air, sea, rail, telegram, and telephone posts, radio, and other communiqués that can be done either partially or completely and to sever diplomatic relations.<sup>13</sup> While military sanctions under article 42 of the UN Charter have been detailed as follows: The Security Council can take military action by air, sea, and land, hold demonstrations, blockades, military operations either by air, sea or day, where the application of such sanctions must go through the stages stipulated in Article 42.<sup>14</sup>

Under article 39 of the UN Charter, the Security Council can impose sanctions if there is a violation of peace, aggression, and threats to peace. The situation that illustrates the violation of the peace is the condition in which there is a battle of the armed forces between the State, and there is an armed attack against the regime of the independent government.<sup>15</sup> Aggression can also trigger the Security Council to act on international peace and security.<sup>16</sup>

Through security council practices in its resolutions, threats to international peace and security as the basis of the Security Council in imposing sanctions under Chapter VII of the UN Charter exist in situations such as internal conflicts, violations of human rights and international war law, violations of democratic principles, arms control and terrorism.<sup>17</sup>

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<sup>12</sup> Pasal 25 Piagam PBB

<sup>13</sup> Sumaryono Suryokusumo. Op.cit

<sup>14</sup> ibid

<sup>15</sup> Bruno Simma, et al., 2002. (eds) *The Charter of the United Nations A Commentary, Second Edition*. Volume I. Oxford: Oxford University Press. Hlm. 710

<sup>16</sup> Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition. Pasal 1 Resolution of the General Assembly No.A/RES/29/3314 tanggal 14 Desember 1974.

<sup>17</sup> Bruno Simma. Op. cit

Under Chapter VII of the UN charter, the Un allows the Security Council to take action against terrorism-related activities in carrying out its duties as the main guardian of international peace and security.<sup>18</sup> In carrying out its duties, the Security Council's assessment in determining acts of terrorism that threaten international peace and security has continued to develop, especially since 1990.<sup>19</sup>

The development of the Security Council assessment to determine acts of terrorism that threaten international peace and security can begin from the Lockerbie case where the Security Council through Resolution No. 713 (1992) qualified terrorism as an act that could damage international relations and endanger security between Countries to threaten international peace and security.<sup>20</sup>

In Resolution No. 1267 (1999) on the Taliban's time in power in Afghanistan, the Security Council stated that the reluctance to take action to prevent acts of terrorism or punish the perpetrators constitutes a threat to international peace and security and is a violation of Article 2 paragraph (4) of the UN Charter.<sup>21</sup> In addition, the Security Council also stated that the act of financing, planning, and sedition to carry out terrorist activities is a violation of the objectives and principles of the United Nations.<sup>22</sup>

Although the definition and qualifications of the Security Council to what actions are included in international terrorism continue to be developed, the legality and acts of terrorism both supported by states and not have been specified in various international treaties on counter-terrorism, the national criminal law of each State, international law of war (at the time of terrorism committed in armed conflict) and Article 2 paragraph (4) of the Charter of the United Nations.<sup>23</sup> Until 2001, on the background of the events of September 11, 2001, the Security Council

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<sup>18</sup> Bardo Fassbender, "The UN Security Council and International Terrorism", dalam Andrea Bianchi (eds.), *Enforcing International Law Norms Against Terrorism*, Portland: Hart Publishing, 2004, hlm. 100.

<sup>19</sup> Kenneth Manusama. 2006. *The United Nations Security Council in the Post-Cold War Era, Applying the Principle of Legality*. Leiden: Martinus Nijhoff Publisher. Hlm. 183

<sup>20</sup> *ibid*

<sup>21</sup> *Ibid*

<sup>22</sup> Malcolm N. Shaw. Op.Cit. hlm 196

<sup>23</sup> Kenneth Manusama. Loc. cit

through Resolution No. 1373 (2001) stated unequivocally that any act of international terrorism constitutes a threat to international peace and security.<sup>24</sup>

At present, the UN Security Council deals with issues related to the prevention of the spread of nuclear weapons, opposition to terrorism, violations of democratic principles, and human rights violations against population groups as completing their duties in maintaining international peace and security.

The terms for adding the names of persons and entities in the Consolidated List are set out in UN Security Council Resolution 2368 (2017) issued in 2017 specifically in Paragraphs 1-9 and 50-59. In addition, the provisions governing the mechanism for adding names of people and entities to the list are also contained in the Guidelines of the Al-Qaeda and Taliban Sanctions Committee of the United Nations No. 1967 sections 4 and 6.<sup>25</sup>

Under these provisions, countries that are members of the United Nations can apply to the U.N. Al-Qaeda and Taliban Sanctions Committees to add the names of persons (individuals) and entities, either non-incorporated entities or incorporated entities on the Consolidated List. The application for name addition can be addressed to 3 different entities, namely individuals, groups (non-incorporated entities), and legal entities.

Requests for the addition of names in the list must be equipped with the following conditions:<sup>26</sup>

- a. findings and special considerations that indicate that the name of the person or entity already meets the criteria to be categorized as a suspected terrorist;
- b. details of any relationship with any individual or entity currently on the list;
- c. information about the actions or other relevant activities of the individual/entity;
- d. the nature of supporting evidence (e.g., intelligence information, law enforcement, the judiciary, media, acceptance by the subject, and so on);

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<sup>24</sup> Bruno Simma. Op. cit

<sup>25</sup>Security Council Committee Pursuant to Resolution 1267 (1999), 1989 (2011), and 2253 (2015) Concerning ISIL (DA'ESH), Al-Qaida and Associated Individuals Groups Undertakings and Entities, "Procedures for Listing", [https:// www.un.org/sc/suborg/en/sanctions/1267/aq\\_sanctions\\_list/procedures-for-listing](https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list/procedures-for-listing), diakses tanggal 2 Januari 2022.

<sup>26</sup>*Ibid.*



- e. evidence or supporting documents.

Once all conditions are met, the U.N. Al-Qaeda and Taliban Sanctions Committee will review the request to approve the request for an addition or reject it. Once the application is approved, the Secretary of the Committee will announce an updated list on the applicant country and all members of the UN.20 Secretariat within three working days will ask the International Criminal Police Organization (INTERPOL) to issue a Special Notice of the UN Security Council for any names added to the list.

Security Council Resolution No. 2368 (2017) has been determined in paragraph 1 that all States shall implement the measures specified in paragraphs 8(c) of Resolution 1333 (2000), paragraphs 1 and (2) of Resolution 1390 (2002), and paragraphs 1 and 4 of Resolution 1989 (2011) related to the actions of ISIL, Al-Qaeda and other individuals, groups, companies, and entities related to it, These actions are:

- a. Asset freeze, deciding the entire State to freeze immediately; and other financial assets or sources of income, including income processed from the use of property controlled directly or indirectly by individuals, groups, companies and other entities related to ISIL and Al-Qaida or by persons acting on behalf of such individuals, groups, companies or entities, and the State shall ensure no profits are derived from the sources mentioned.
- b. Travel bans, deciding on all countries to prevent individuals in association with ISIL and Al-Qaida from coming into its territory or stopping through its territory unless the individual is required for judicial proceedings or other conditions determined by the Sanctions Committee.
- c. The arms embargo shall decide all States to prevent the transfer, sale, or transfer of any material that is weapons, ammunition, vehicles, and military equipment, as well as spare parts of any armament carried out by individuals, groups, companies, or entities associated with ISIL and Al-Qaida from the territory of the country, or by its citizens outside its territory, or using ships and aircraft using its national flag, States and states shall prohibit the provision of any military materials or exercises against individuals associated with ISIL and al-Qaida.

About Chapter VII of the Un Charter, the Security Council can determine measures without using military force to comply with decisions made by the



Security Council.<sup>27</sup> The situation that could justify the Security Council to take action under Chapter VII of the UN Charter is if there is a breach of the peace, as well as a threat to international peace and security.<sup>28</sup> One of them is the crime of terrorism. The crime of terrorism has been recognized by the Security Council through Resolution No. 1373 of September 28, 2001, and Resolution No. 1377 of November 12, 2001, as a threat to international peace and security.

- methods of sanctions for terrorism crimes according to Resolution 1267

United Nations Security Council Resolution 1267 was adopted on October 15, 1999. After repeating resolutions about the situation in Afghanistan, the DKPBB branded Osama bin Laden and his associates' terrorists and established a sanctions regime against people and groups associated with Al-Qaida, Osama bin Laden and/or the Taliban wherever they were.

- methods of sanctions for terrorism crimes according to Resolution 1333

United Nations Security Council Resolution 1333, adopted on 19 December 2000. After repeating all resolutions on the situation in Afghanistan, which included Resolution 1267 (1999), the DKPBB imposed a ban on military assistance to the Taliban, closed its camps, and ended the right of protection to the movement.

- methods of sanctions for terrorism crimes according to Resolution 1363

United Nations Security Council Resolution 1363, adopted on 30 July 2001. After repeating all resolutions on the situation in Afghanistan, the DKPBB asked the Secretary-General to put together a mechanism to monitor the implementation of sanctions against the Taliban.

- methods of sanctions for terrorism crimes according to Resolution 1373

The resolution aims to defeat terrorist groups in a variety of ways. The resolution aims to contain terrorist groups in a variety of ways. This is in light of the provisions of resolutions 1189 (1998), 1269 (1999), and 1368 (2001) on crime. UN member states to share intelligence on terrorist groups to help fight international terrorism. The resolution also calls on all states to adjust their national laws so that they can ratify all international conventions on existing crimes. He stated that all States "must also ensure that terrorist acts are designated as serious

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<sup>27</sup> Sumaryono Suryokusumo. 2012. *Studi Kasus Hukum Organisasi Internasional*. Bandung: PT. Alumni. Hlm. 21

<sup>28</sup> Pasal 39 Piagam PBB

criminal offenses in domestic laws and regulations and that the seriousness of such acts should be applied in the punishments given."

The resolution established the Security Council's Counter-Terrorism Committee (CTC) to comply with the country's compliance with its provisions.

It also aims to limit immigration laws, which state that "before granting refugee status, all States shall take appropriate measures to ensure that asylum seekers do not plan, facilitate or participate in terrorist acts. Furthermore, states must ensure that refugee status is not abused. by the perpetrator, organizer or facilitator of terrorist acts, and that political claim is not recognized as a reason to refuse extradition requests against suspected terrorists."

However, the resolution failed to define 'terrorism', and the working group initially only added Al-Qaeda and the Afghan Taliban regime to the sanctions list. It also raises the possibility that the ruling regime could label even nonviolent activities as terrorist acts, thereby violating human rights.

- methods of sanctions for terrorism crimes according to Resolution 1390

United Nations Security Council Resolution 1390, adopted on January 16, 2002. After repeating resolutions on the situation in Afghanistan and terrorism, the DKPBB imposed tougher sanctions on Osama bin Laden, Al-Qaeda, the Taliban, and others associated with them.

- methods of sanctions for terrorism crimes according to Resolution 1452

United Nations Security Council Resolution 1452, adopted on 20 December 2002. After repeating resolutions on Al-Qaeda, the Taliban, and terrorism, the DKPBB decided that financial sanctions against the organization would not be applied to food, leasing, medicine and health care, health insurance, and professional salaries.

- methods of sanctions for terrorism crimes according to Resolution 1455

United Nations Security Council Resolution 1455, adopted on 17 January 2003. After repeating resolutions on Al-Qaeda, the Taliban, and terrorism, the DKPBB imposed the implementation of the action against these groups. The resolution was the first RDKPBB adopted in 2003.

- methods of sanctions for terrorism crimes according to Resolution 1526

United Nations Security Council Resolution 1526, adopted unanimously on 30 January 2004. After repeating resolutions on terrorism, the DKPBB tightened sanctions against Al-Qaeda, the Taliban, Osama bin Laden and related parties and groups.

- methods of sanctions for terrorism crimes according to Resolution 1566

United Nations Security Council Resolution 1566, adopted on 8 October 2004. The DKPBB denounced terrorism as a serious threat to peace and strengthened anti-terrorism legislation.

- methods of sanctions for terrorism crimes according to Resolution 1617

United Nations Security Council Resolution 1617, adopted on 29 July 2005. After repeating resolutions on terrorism, the DKPBB renewed sanctions against Al-Qaeda, the Taliban, Osama bin Laden, and related people and groups over the next seventeen months.

Acting under Chapter VII of the United Nations Charter, the Council urged countries to continue sanctions against Al-Qaeda, the Taliban, Osama bin Laden, and related groups. Sanctions include asset freezes, travel bans, and the prevention of arms sales. It also defines the nature of entities to be "attributed to" Al-Qaeda, the Taliban, Osama bin Laden.

The resolution then addresses the role of the Al-Qaida and Taliban Sanctions Committee and its subsidiary, the monitoring team, in dealing with suspects and terrorist groups. The measures include a checklist for states to fulfill their obligations to the committee, and for states that forward names to the list to use a "case statement" explaining the reasons behind the request.

The task of the monitoring team, whose mandate was extended by 17 months, is contained in the resolution annex.

- methods of sanctions for terrorism crimes according to Resolution 1624

United Nations Security Council Resolution 1624, adopted at the 2005 Dunai Summit on 14 September 2005. In the resolution, the DKPBB calls on all countries to cooperate to strengthen international border security by improving terrorist monitoring and passenger security procedures.

- methods of sanctions for terrorism crimes according to Resolution 1699

United Nations Security Council Resolution 1699, adopted on 8 August 2006. In the resolution, the DKPBB called on the Secretary-General to take steps to increase cooperation between the United Nations and Interpol.

- methods of sanctions for terrorism crimes according to Resolution 1730

United Nations Security Council Resolution 1730, adopted on 19 December 2006. After declaring the role of sanctions, the DKPBB asked the Secretary-General to gather vocal points in the Secretariat to realize "fair and clean" procedures to put people and entities on the sanctions list and to revoke them.

- methods of sanctions for terrorism crimes according to Resolution 1735

United Nations Security Council Resolution 1735, adopted on 22 December 2006. After repeating the resolutions on terrorism, the DKPBB agreed on actions to support the identification and control of terrorists.

- Methods of sanctions for terrorism crimes according to the existing legal system in the world

The Anglo-Saxon legal system is a legal system based on jurisprudence, the decisions of previous judges which later became the basis of subsequent judges' rulings. In the Anglo-Saxon legal system, judges had broad authority to interpret the rule of law and created new legal principles that were useful as a handle for other judges in deciding similar cases.<sup>29</sup>

The application of sanctions methods in some countries such as the United States that impose the death penalty on Americans without a fair trial if involved in terrorism. Australia gave decades in prison to terrorism defendants and Ireland sentenced 4,000 years to the country's largest terrorist group.

The main principle of the Continental European legal system was that it gained binding power because it was a law systematically composed of codification. The main legal system is the law established by the legislative body.<sup>30</sup>

In some countries that adhere to the continental European legal system such as France which executes proven suspects, and conducts trials in absentia to people who help prepare weapons and cars. Then the Netherlands gave sanctions in the form of revoking dutch citizenship status to terrorist suspects. Also in Indonesia

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<sup>29</sup> <https://kantorkukum-akp.com/berita-macam-macam-sistem-hukum-di-dunia> . Diakses pada 14-11-2021

<sup>30</sup> *ibid*

has a variety of punishment qualifications including the death penalty, imprisonment, imprisonment, and fines.

- Methods of sanctioning terrorism crimes in the context of human rights

The most basic principle in human rights is the right to life and the defense of life. The position of the right to life is to view the death penalty as to reject it completely on the grounds of human, humanity, and the rights attached to it. In the Universal Declaration of the Human Right to life contained in Article 3, the declaration is explicitly described as "everyone has the right to life, liberty, and security of person" with the intention that everyone has the right to life, liberty, and security. Even so in a basic declaration recognized as a norm by the civilized states of the world, it does not directly contain a rejection of the death penalty. According to William A. Schabas, the main purpose of the declaration does not specify the rejection of the death penalty is an attempt to promote the abolition of the death penalty naturally by the world states in due course, even though the abolition of the death penalty is in principle the position of the United Nations (UN) and many world states.<sup>31</sup> Apart from the same declaration, the same rights give the following general restrictions:

*"in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely to secure due recognition and respect for the rights and freedoms of morality, public order, and the general welfare in a democratic society"*

With the intention that every person in exercising his or her rights and freedoms shall only be subject to the restrictions prescribed by law to ensure the proper recognition and respect of the rights and freedoms of morals, public order, and the general welfare in a democratic society.

Restrictions on matters categorized as rights and independence on some points. The rights and freedoms of individuals shall not go beyond provisions that can only be limited by law ensuring the creation of security and the establishment of the rights and freedoms of others.<sup>32</sup> In line with Article 73 of the Human Rights Act No. 39 of 1999 which explains that freedom is not interpreted as an unlimited concept, restrictions on individual freedom are an inevitability and even an

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<sup>31</sup> Anggara, dkk., Politik Kebijakan Hukuman Mati di Indonesia dari Masa ke Masa, The Institute for Criminal Justice Reform, 2017

<sup>32</sup> ibid

attempt to guarantee the freedom of others or freedoms that are more principled and broad.

Some opinions are in line with the general perspective of human rights in rejecting the death penalty. As in the opinion of Prof. J.E. Sahetapy who explained the position of criminal punishment as a means and tool used to free convicts. Vengeance against a crime according to him is not a goal of a criminal conviction. Vengeance in the concept of the death penalty will not bring balance unless it only satisfies the lust, resentment, or disingenuous feelings of the victims. Precisely by not being sentenced to death the government can try to clean the perpetrator to return to good, like a medically treated patient. With the death penalty, the function of punishment to treat and improve people certainly will not happen.<sup>33</sup>

There are several alternative offers for the death penalty. The alternative is an effort to find a middle ground to avoid human rights violations in the legal context and even philosophical to religious doctrines as previously stated. Namely, the performance of existing prosecution instruments by maximizing and implementing the effectiveness of law enforcement involves community components to ensure the application provides a deterrent effect, or in Prof. Sahetapy's explanation previously the application to be a cure for the disease of crime. But this alternative in the case of terrorism crimes will face a variety of real challenges. The application of confinement logically means that the penitentiary must accommodate convicted terrorism cases continuously until the end of the prison term. Security considerations such as the case of terrorism convicts in Mako Brimob Head Two one example. Or also economic considerations about state production in the period of settlement of terrorism convicts. Therefore we need to return to the main debate and become the subject of the death penalty in the context of terrorism can be drawn following the analysis of Indonesia's national strategic interests.

One of the other assumptions of the death penalty is the creation of a deterrent effect. In flattering the abolition of the death penalty various studies explain the assumption deterrent effect in the imposition of the death penalty as a deterrent effect on crime is a mere myth. The type of punishment that is usually used as a comparison in declaring the death penalty more deterrent effect is a life sentence. The death penalty is considered to have a great ability to cause fear among

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<sup>33</sup> D. Prakoso, and Nurwachid, *Studi Tentang Pendapatpendapat Mengenai Efektifitas Pidana Mati di Indonesia Dewasa Ini*, Ghalia Indonesia, 1984

potential people in committing the same crime. Gerber and Johnson explain in their book *The Top Ten Death Penalty Myths* that the deterrent effect of the death penalty is an argumentative belief believed by the government or as a group without looking factually at the effects caused.<sup>34</sup> The truth of the death penalty gives a deterrent effect that is crudely accepted as truth.

In the case of terrorism, we need to re-examine factual data on the increase or decrease in acts of terrorism in Indonesia in concluding the myth of the death penalty deterrent effect. Moreover, as well as we can see that in many cases terrorism the main driver is often not physical but abstract advantages based on understanding and ideology. The case of the deterrent effect certainly raises a big question concerning its efficacy against perpetrators of murder due to economic factors and murder with ideological factors.

## 5. Conclusion

Based on the results of discussions and research conducted by researchers, the bias is concluded, the application of sanctions methods according to resolution 2560 is still based on the previous resolution, namely resolution 2368 (2017) which asks all member states to more actively submit a list of requests to the identification committee. And also based on previous resolutions, namely on improving the method of sanctions against terrorism.

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<sup>34</sup> Bungasan Hutapea, Alternatif Penjatuhan Hukuman Mati di Indonesia Dilihat dari Perspektif HAM, *Jurnal HAM*, 2016.



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