The Implementation of Law Enforcement In Combating Terrorist Financing in Indonesia

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**Recommended Citation**

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THE IMPLEMENTATION OF LAW ENFORCEMENT IN COMBATING TERRORIST FINANCING IN INDONESIA

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Abstract

Law enforcement in Indonesia terrorism has encountered enormous difficulties when it comes to combating financing. In contrast, the terrorists who have been imprisoned found that the punishment given by the judge in the court and the deradicalization programs offered by BNPT, the National Counter Terrorism Agency, does not deter them from recidivism. The research question: whether or not the implementation of law enforcement in combating terrorist financing in Indonesia has made the terrorists’ deterrent? The methodology used in this research is a qualitative method that employs two case studies through in-depth interviews to determine whether or not the implementation of law enforcement in combating terrorist financing through penal and non-penal laws in Indonesia has made ex-convict terrorists refrain from joining the terrorist organization again. The findings show a gap in the law that needs to be filled to make the implementation of law enforcement in combating financing terrorism working properly. Concerning human rights principles, the former convict of terrorist funding is a victim of economic, social, cultural, psychological, and political injustice. The main reason for the former convicts of terrorist funding joining terrorist funding groups is because they experience being mistreated by their families, their communities, and even their government, in this case, the Indonesian government.

Keywords: effectiveness, financing terrorism, Indonesia, law enforcement, progressive law

Submitted: 27 August 2023 | Revised: 23 January 2024 | Accepted: 27 January 2024

I. INTRODUCTION

The international community identifies that blocking terrorist financing is critical to combating domestic and international terrorism. International instruments have required states to criminalize the financing of terrorism.\(^1\) Finance is terrorism’s lifeblood. The threat of so-called ‘new terrorism’ lies not only in the weapons the terrorists can yield but also in their ability to procure and use those weapons through innovative, discreet, and complex fundraising and fund-transfer techniques. Like any commercial venture, access to finance

and the means of transfer is crucial for the sustenance of terrorist organizations and vital in formulating and implementing their activities.\textsuperscript{2} Terrorist groups or organisations have been described as needing three essential components: men, money and munitions.\textsuperscript{3} Terrorist organisations could use the money they have for the purposes of command and control, training, providing safe haven or safe houses, recruitment, propaganda, travel, technology, communication, and conducting terrorist attacks.\textsuperscript{4} Terrorism related financial activity represents a significant international security threat that must be countered in order to fight terrorism and safeguard the legitimate financial system.\textsuperscript{5}

The World Bank cites financial terrorism as the “financial support, in any form, of terrorism or those who encourage, plan or engage in terrorism.”\textsuperscript{6} Money laundering and terrorism financing are closely related because the techniques used to launder money are similar to those employed in concealing the sources and applications of terrorist funding. Whether the source of terrorist finance is legitimate or not, terrorists hide their origins, thereby achieving continuity in financing and blocking detection.\textsuperscript{7} There are three stages terrorist groups use to fund their networks and operations: raising, moving, and operating funds. Some gain funds from criminal and legal activities such as members’ salaries, entrepreneurial ventures, and charity donations.\textsuperscript{8} The threat posed by terrorist financing requires the government to be involved in resolving this matter. The government has a responsibility to ensure the security of its citizens. It should also be concerned about terrorism financing because it carries risks and harms to individuals’ rights.\textsuperscript{9} Hamed Tofangsaz in his dissertation titled “Suppression of Terrorist Financing: Over Criminalisation Through International Law” highlights penal law on combating financing terrorism from Anglo-American Countries. However, he does not mention about the implementation of law

\textsuperscript{2} Nicholas Ryder, \textit{The Financial War on Terrorism, A review of counter-terrorist financing strategies since 2001} (New York: Routledge, 2015), 1.


\textsuperscript{7} Ibid.


enforcement in combating the financing of terrorism.\textsuperscript{10} Kira Borg’s analysis of an international and national initiative on combating financing terrorism in the European Union by the Financial Intelligence Analysis Unit (FAU) related to special references of the Financial Action Task Force (FATF). She also analyzes the role of credit institutions in combating financing terrorism. She finds that the responsibility for detecting and combatting financing terrorism relies on the effectiveness of programming Combatting Financing of Terrorism.\textsuperscript{11} Compared to Borg, this article will analyze the implementation of law enforcement in combating terrorist financing in Indonesia by using two case studies through in-depth interviews. Through interviews, this article gains on how the case studies’ subjects became terrorist funders, and how they raise, use, and move funds. This article also finds a gap in the law that needs to be rectified to make the implementation of law enforcement in combating the terrorist financing in Indonesia.

This paper poses the question if the implementation of law enforcement in combating terrorist financing in Indonesia has deterred criminals, as there are cases of ex-convicts recidivating after serving time. Terrorist activities are possible threats to state sovereignty and national security. The primary legal basis for combating terrorist financing is the International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention). The Terrorist Financing Convention was adopted in 1999 and entered into force in April 2002.\textsuperscript{12} The text of the Terrorist Financing Convention stems from the work of an Ad Hoc Committee, which was established pursuant to General Assembly Resolution 51/210 to elaborate on an international convention for the suppression of terrorist bombings and nuclear terrorism. Although the initial mandate of the Ad Hoc Committee did not include terrorist financing, General Assembly Resolution 51/210 called on States to adopt measures:

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“to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such financing is direct or indirect through organizations which also have or claim to have charitable, social or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering.”

In countering terrorist financing, the mental element of intent is the crux of the terrorist financing offence. It means that the perpetrator must provide or collect funds “with the intention that they should be used or in the knowledge that they are to be used” to carry out the enumerated terrorist acts. Therefore, the needs and challenges of the legal structure and substance is vital in analyzing on how to combat terrorist financing. An example is how the implementation of the terrorist financing law and a particular legal provision has been working together to deter ex-convicted terrorists from repeating their offences. The methodology used in this research is a qualitative method that employs two case studies through in-depth interviews to determine whether or not the implementation of law enforcement in combating the financing of terrorism through penal and non-penal laws in Indonesia has made ex-convict terrorists not join the terrorist organization again. When the researcher interviewed MK who is an ex-convict terrorist funder, we were accompanied by a person who had previously conducted previous research with MK — the interview between the researcher and HF who is also an ex-convict terrorist funder, also known by Densus 88. The purpose of having third parties in the interview is to ensure the information is accurate and valid for research purposes.

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13 General Assembly Resolution 51/210, *Measures to Eliminate International Terrorism*, art. 3(f).


15 Counterterrorism Special Detachment 88 is a specialized counter-terrorism squad under Indonesian National Police.
II. INTERNATIONAL LEGAL FRAMEWORK IN COMBATTING TERRORIST FINANCING

The first reference to terrorist financing in international law was during the General Assembly Resolution 49/60. This Resolution, adopted in December 1994, was concerned with the state-sponsorship of terrorism and called upon member states of the United Nations to “refrain from organizing, instigating, facilitating, financing, encouraging or tolerating terrorist activities.” However, a substantial portion of the funds used for terrorist activities is now provided by private individuals and organizations rather than states. The financing of terrorists and terrorist organizations was recognized in General Assembly Resolution 51/210 that was adopted in December 1996. Paragraph 3(f) of this Resolution called upon member states:

“To take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organizations, whether such funding is direct or indirect, through organizations that also have or claim to have charitable, social, or cultural goals or which are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities, and in particular to consider, where appropriate, adopting regulatory measures to prevent and counteract movements of funds suspected to be intended for terrorist purposes without impeding in any way the freedom of legitimate capital movements and to intensify the exchange of information concerning international activities of such funds.”

Resolution 51/210, in addition to setting out counter-terrorism measures for member states to implement, also established an ad hoc committee to develop a legal framework of conventions responding to international terrorism. While the developing comprehensive Convention on international terrorism is ongoing, this committee’s work led to the adoption of the International Convention for the Suppression of the Financing of Terrorism (‘International Convention’) by the United Nations General Assembly in December 1999. According to Article 1 of this Convention, a fund is an asset of every kind, whether tangible or intangible, movable or immovable, however acquired, legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in such assets, including, but not limited to, bank credits, travelers’ cheques, bank cheques, money orders, shares, securities,

bonds, drafts, letters of credit.\textsuperscript{17} Article 2 establishes a distinct offense of terrorist financing. It is an offense for a person to, by any means, directly or indirectly, unlawfully and willfully, provide or collect funds with the intention that somebody should use them or in the knowledge that they are to be used, in whole or in part, to carry out a ‘terrorist act.’ This offense doesn’t need to be committed because the funds are used to carry out such an act.\textsuperscript{18} The International Convention also made it a crime to attempt to save the offense, participate as an accomplice, organize or direct others to commit the offense, or contribute, as a member of a group acting with a common purpose, to the commission of, or an attempt to save the offense. State parties were obliged by Article 4 to establish these acts as criminal offenses under their domestic law and to make them punishable by appropriate penalties that consider their grave nature.\textsuperscript{19}

To combat terrorist financing, the Financial Action Task Force (FTAF) also plays a vital role in the international community’s response. The FATF provides 40+9 recommendations as the international standards for combating money laundering (ML) and terrorist financing (TF).\textsuperscript{20} The FATF is the global money laundering and terrorist financing watchdog. The inter-governmental body sets international standards to prevent these illegal activities and the harm they pose to society. As a policy-making body, the FATF works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas. The 39-member body sets international standards to ensure federal authorities can effectively go after illicit funds linked to drug trafficking, the illegal trade in arms, cyber fraud, and other serious crimes. More than 200 countries and jurisdictions have committed to implementing the FATF’s Standards as part of a coordinated global response to preventing organized crime, corruption, and terrorism.\textsuperscript{21}

The Terrorist Financing Convention clearly states that any State countering the Financing of Terrorism measures undertaken pursuant to must be compliant with international law. Specifically, Article 21 stipulates that “[n]othing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other

\textsuperscript{17} Ibid.
\textsuperscript{18} Ibid.
\textsuperscript{21} Ibid.
relevant conventions.” Article 7 also underlines that criminal jurisdiction must be exercised “without prejudice to the norms of general international law.” Specific human rights are also explicitly protected throughout the treaty. For example, Article 17 provides that any individual subject to Countering the Financing of Terrorism measures or proceedings prevention “shall be guaranteed fair treatment . . . and applicable provisions of international law, including international human rights law.” Article 9 recognizes the right of detainees to be informed of their right to contact a consular representative.

On 11 September 2011, the UN Security Council acting under Chapter VII of the UN Charter adopted the seminal Resolution 1373, which requires all Member States to criminalize terrorist financing and to prevent and suppress such acts. However, Resolution 1373 does not explicitly adopt the definition of “terrorist acts” from the Terrorist Financing Convention. It causes definitional ambiguity and the potential misalignment raised concerns about the requisite clarity and legal precision under international law. In 2019, the Security Council adopted the landmark Resolution 2462 under Chapter VII of the UN Charter. Resolution 2462 calls on Member States to prevent and suppress the terrorist financing by criminalizing it and setting up effective mechanisms to prevent and freeze the funds or financial services of persons involved in or associated with terrorism, among other things. In defining the scope of terrorist financing, States must prohibit their nationals or persons in their territories from perpetrating. Resolution 2462, along with Resolution 2253, in the sanction’s context stipulates direct or indirect financing “for the benefit of terrorist organizations or individual terrorists for any purpose, including but not limited to recruitment, training, or travel, even in the absence of a link to a specific terrorist act.” Resolution 2462 “strongly urges” States to implement the Financial Action Task Force standards Resolution 2462 also calls for increased governmental financial oversight and regulatory systems, as well as information-sharing by financial institutions.

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23 Ibid., art. 7.
24 Ibid., art. 17.
25 Ibid., art. 9.
28 Ibid.
29 Ibid., 1.
Security Council Resolution 2462 reaffirms the obligation of Member States to implement Countering the Financing of Terrorism measures international law. Operative paragraph 5 requires the criminalization of terrorist financing to be done “in a manner consistent with their obligations under international law, including international humanitarian law, international human rights law and international refugee law”\(^{30}\); and paragraph 6 “demands that Member States ensure that all measures taken to counter terrorism, including measures taken to counter the financing of terrorism as provided for in this resolution, comply with their obligations under international law, including international humanitarian law, international human rights law and international refugee law.”\(^{31}\) Paragraph 23 “recognizes the vital role played by non-profit organizations in national economies and social systems, calls on Member States to periodically conduct a risk assessment of its non-profit sector or update existing ones to determine the organizations vulnerable to terrorist financing and to inform the implementation of a risk-based approach, and encourages Member States to work cooperatively with the non-profit sector in order to prevent abuse of such organizations including front organizations by and for terrorists while recalling that States must respect human rights and fundamental freedoms.”\(^{32}\) Paragraph 24 of Security Council Resolution 2462 further qualifies that any Countering the Financing of Terrorism related measures must “take into account the potential effect of those measures on exclusively humanitarian activities, including medical activities, that are carried out by impartial humanitarian actors in a manner consistent with international humanitarian law.”\(^{33}\)

The implementation of Countering the Financing of Terrorism measures inevitably raises wide-ranging international human rights law considerations. For instance, Countering the Financing of Terrorism’s related requirements for Non-Profit Organizations, including onerous financial transaction reporting requirements and restrictions on foreign funding, may directly affect the rights to freedom of association and impede on the capacity and ability to carry out legitimate human rights and humanitarian activities. Enhanced digital surveillance powers implemented for the stated purpose of combating terrorist financing are often absent from any judicial oversight. The impinging on the right to privacy and listing procedures for terrorist financing perpetrators often raises issues of fair trial and due process rights, as well as broader social and economic rights challenges for those individuals and their families. The

\(^{30}\) *Ibid.*


\(^{33}\) *Ibid.*
following is a non-exhaustive list of rights and freedoms commonly implicated by Countering the Financing of Terrorism’ measures:

a) Freedom of opinion and expression;\(^\text{34}\)

b) Freedom of peaceful assembly and association;\(^\text{35}\)

c) Freedom of religion or belief;\(^\text{36}\)

d) Right of minorities;\(^\text{37}\)

e) Right to enjoy property, including through financial access;\(^\text{38}\)

f) Rights to education and work;\(^\text{39}\)

g) Equal rights of women;\(^\text{40}\)

h) Right to freedom from interference with privacy, family, or home, or unlawful attacks on one’s honor and reputation;\(^\text{41}\)

i) Rights to freedom of movement and nationality;\(^\text{42}\)

j) Right of every citizen to take part in public affairs, and associated public consultation rights;\(^\text{43}\)

k) Due process and procedural rights, including the right to fair trial, the presumption of innocence, the right to appeal, and a right to effective protection by the courts;\(^\text{44}\) and

l) Right to an effective remedy.\(^\text{45}\)

\(^{34}\) Universal Declaration of Human Rights, adopted 10 December 1948, art. 19.

\(^{35}\) Ibid., art. 20.

\(^{36}\) Ibid., art. 18.

\(^{37}\) International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art. 27.

\(^{38}\) Universal Declaration of Human Rights, art. 17.

\(^{39}\) Ibid., art. 23, art. 26.

\(^{40}\) Ibid., preamble.

\(^{41}\) Ibid., art. 12.

\(^{42}\) Ibid., art. 13.

\(^{43}\) International Covenant on Civil and Political Rights, art. 25.

\(^{44}\) Universal Declaration of Human Rights, art. 10, art. 11.

\(^{45}\) Ibid., art. 8.
These rights and freedoms are protected under customary and treaty law, including pursuant to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as regional human rights treaties. The UN Charter recognizes that in the event of a conflict between international agreements, the obligations under the UN Charter including the “universal respect for, and observance of, human rights and fundamental freedoms” prevails. Further, pursuant to Article 2 of the ICCPR and ICESCR, States parties are under a duty to give domestic legal effect and to take deliberate, concrete, and targeted steps to respect and ensure the Covenants’ rights to all individuals within their territory or subject to their jurisdiction, regardless of nationality or statelessness. The Covenants thus establish obligations to respect, protect, and fulfill. It is well-settled under international law that certain rights and freedoms, including the right to life, the right to be free from torture and other cruel, inhumane, or degrading treatment, the right to be free from slavery or servitude, the right to freedom of thought, conscience and religion, and the right to be free from retroactive application of penal laws, are absolute and thus non-derogable. While other rights and freedoms, including the rights to freedom of expression, association and peaceful assembly, and privacy, may be subject to derogation in times of public emergency, including for specific, empirically based national security aims, such rights limitations must meet the objective criteria of proportionality, necessity, legality, and non-discrimination, as required under international law.46

III. NATIONAL LAW IN COMBATING THE FINANCING OF TERRORISM

Special Recommendation II recommends that each country criminalize the financing of terrorism, terrorist acts, and terrorist organizations. Countries should ensure that such offenses are designated as money laundering predicate offenses; Indonesia is obliged to make or harmonize laws and regulations related to the financing of terrorism by the provisions stipulated in the Convention.47 In Indonesia, before we have the legislation rules specifically on combating financing terrorism, Indonesia has set the rules on the Anti-Terrorism Law. The law begun with the issuance of Government Regulation in lieu of Law

46 The International Covenant on Civil and Political Rights, art. 4(2).
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(GRL) 16 Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism on 18 October 2002.\(^{48}\) On the same day, the government issued GRL Number 2 of 2002, which made GRL Number 1 retroactively applicable to the Bali Bombings. In 2003, the Anti-Terrorism Law and GRL Number 2 became law after being confirmed by the legislature.

Indonesia has set rules concerning on combating financing terrorism which is Law No. 9 of 2013 on the Prevention and Eradication of Terrorism Financing Crime (UU PPTPPT). The scope of terrorism financing involves acts committed directly or indirectly to provide, collect, give, or lend the fund to any party it knows will be used to commit a criminal act of terrorism.\(^{49}\) The purpose of criminal acts of terrorism financing is to assist terrorism activities, whether by property gained from criminal activity or those acquired legally.

Indonesian law enforcement agencies have changed their approach to pursuing terrorist financing offenders from “following the suspect” to “follow the money.”\(^{50}\) Following the money trail has dramatically enhanced law enforcement and intelligence operations against terror networks. How, when, where, and from/to whom money has been transferred are reliable data points counterterrorism uses to map out and identify terrorist groups, their facilitators, and their activities. In many cases, financial intelligence and forensics are determining factors in developing and prosecuting cases of terrorism and material support of terrorism. Unlike confidential informants and witnesses for the prosecution, the money trail presents clear evidence of a financial connection or link between two or more parties.\(^{51}\)


IV. THE IMPLEMENTATION OF LAW ENFORCEMENT IN COMBATING TERRORIST FINANCING IN INDONESIA

A. CASE STUDY: HOW MK BECAME A TERRORIST FUNDER

MK and his friend BN evaluated that obtaining funds this way could be easily tracked by breaking into online gambling accounts and the funds received could be significant. MK suggested to BN that the method they could use to find or collect funds was to break into their customers. MK did not break into the PayPal’s system, but stole other people’s accounts by skimming. After successfully obtaining customer data, MK gradually began stealing funds from PayPal’s users. According to MK, the data stolen was not just one or two people, but thousands. An example MK gave was this: if he stole as little as 5 dollars from one of the user’s accounts and multiply it with 5,000 other accounts, he would be raking in a lot of money. He added that he skimmed PayPal accounts from many countries, not just Indonesia. MK stated that he chose to steal PayPal user funds because PayPal was not very well known in Indonesia.

MK managed the stolen funds together with BN. Some of these funds were used for terrorist acts in Indonesia and the rest were used to send people to Syria. MK’s way of transferring funds to those going to Syria was by buying fake accounts. MK buys bogus accounts from networks selling fake bank accounts, such as BCA, Mandiri, BRI accounts, among others. According to MK, whenever someone does not immediately liquidate their funds from PayPal, he takes the money (usually when it’s still in dollars) and puts it into cryptocurrency like Bitcoin. To his knowledge, if somebody immediately transferred the money in rupiah, the user or law enforcement can easily trace his movements. MK specifically chose cryptocurrency because it is difficult to track.

B. CASE STUDY: HOW HF BECAME A TERRORIST FUNDER

HF shifted funds amounting to 1.3 billion rupiah from Syria to Türkiye and Türkiye to Indonesia. Other funds that HF received from Iraq and Jordan were around 200 million rupiah, but the most significant funds came from Syria. The funds from Syria were sent to Indonesia through Western Union. According to HF, sending money through Western Union was very easy. Western Union

is widely available in many countries and has a maximum remittance of 100 million rupiah. The sender only needs a passport and national identification card. The sender will provide the NTCM code to the recipient. This code is then taken to Western Union offices, such as the Indonesian Post Office, BRI, and BTN. The recipient relays the code to the sender as confirmation for the payment to follow through, after which the money is disbursed. The time to withdraw the funds takes only 10-15 minutes, and just like that the recipient gets their money. It took HF only a week to shift the 1.3 billion rupiah.

HF said that June 2014 was the declaration of ISIS’s oversight. When HF joined the exclusive group, it had a program on reviving friends in the Poso Regency, namely the East Indonesian Mujahidin (MIT), and connected with friends from the Philippines in South Mindanao. HF and his group felt that buying weapons in the Philippines was easier as compared to getting them in Indonesia. Funds to purchase weapons in the Philippines came from ISIS in Syria. HF directly contacted his amir⁵⁴, B, in Syria, and then funds were sent to HF. HF used the funds to send his people to Türkiye. The people sent by HF met with the people sent by ISIS at a hotel in Türkiye. The ISIS representatives then gave a bag of money (in dollars) to HF’s people. HF directed his people to send money through Western Union from Türkiye. According to HF, sending the funds only takes 13 days when using Western Union.

HF admitted that there was actually a faster way to send funds, which was by using a third person and borrowing the passport from one of HF’s acquaintances. This acquaintance would be paid 1 million rupiah (out of 100 million rupiah) and they would take the rest of the money to Western Union. HF collected the data of his acquaintances that were used as a ‘ride’ for transfers. Western Union were unaware of how beneficial their fund transfer process was to people like HF, because senders were only asked for the purpose of their transfer, to which HF directed the senders to mark it as “online business”, namely buying and selling online. According to HF, the funds were expected to shift 1.3 billion rupiah in one week. He then gets a list of items he must buy from Poso, such as weapons and mountaineering equipment like jackets, shoes, camouflage shirts, and military equipment. HF also bought Goal Zero, a power generator, from America because it was not available in Indonesia, with the estimated delivery time being a month. HF then sent this Goal Zero to Poso, Central Sulawesi. To communicate with fundraisers from the Middle East, HF uses the texting application Telegram and the AMN Mujahid application⁵⁵, which is an encryption software. It is not

⁵⁴ Amir is someone who works for ISIS and he was obliged to contact with HF who was a terrorist funder from Indonesia.
⁵⁵ An encryption software program developed by Al-Fajr Technical Committee which is a
available on the Apple App Store or Google PlayStore, but it is a mandatory application for terrorists to communicate with each other.

In interviews with MK and HF, ex-convicted terrorist financiers in Indonesia used top-rated fund transfer companies, such as PayPal and Western Union. These funds are divided into nearly ten beneficiaries. In terminology, a method like this is called smurfing: breaking up transactions using several parties or actors. One of the explicit goals is to avoid customer identification by financial service providers. Apart from these methods, HF also adopted other methods. This method is known as hawala, which means “to transfer”. Hawala is an informal money transfer system based on the principle of trust and is carried out by a vast network of money traders, usually in the Middle East, North Africa, Northeast Asia, and Southeast Asia. In a hawala transaction, if Person A in Syria wants to send money to Person B in Indonesia, Person A only has to deposit cash at the hawala dealer in Syria. Then, Person B will disburse the funds through partner dealers in Indonesia.

HF’s story on his efforts to transfer terrorism funds through remittances and hawala may only be a small part of the many modes used by terrorist actors to smooth over their actions in transferring these funds without being detected by financial service providers or law enforcement officials. Terrorist financing undergoes metamorphosis on a day-to-day basis. From direct and traditional funding, such as circulating donation boxes in public places, using violent means such as theft, robbery, and kidnapping for ransom, to the latest methods, such as hacking online investment sites and fundraising with an open-a-crypto wallet or using virtual currency to receive donations, which are increasingly challenging to trace.

According to the authors, the supporting factors for someone to become a terrorist funder are psychological, social, cultural, political, and domestic factors in the family. These factors allow someone to be recruited by terrorist organizations, especially as a terrorist funder. Furthermore, there is a feeling of being accepted and appreciated for being in a group of terrorist recruiters where the way of recruitment is by establishing close friendships. The recruitment makes the would-be terrorist funder feel they belong to a community, taking advantage of their dissatisfaction with the social, economic, and cultural situation and behavior they experience from their family and society. This turns into anger towards a country that is considered an infidel and acts unjustly, and leads into them wanting to establish an Islamic state or Khilafah. This anger triggers someone to become a terrorist funder to support terrorist activities in mainstream Al-Qaeda organization and released in December 2013. See at https://www.cyberdefensemagazine.com/al-qaeda-usage-of-encryption-after-snowden-leaks-part-2/.
Indonesia, such as buying weapons and sending Indonesians to Türkiye.

V. LEGAL SUBSTANCE AND LEGAL STRUCTURE IN COMBATING TERRORIST FINANCING

In Indonesia, the law for terrorism and terrorist financing are different. This is because the actions carried out differently: one is committing an act of terrorism and the other is an act of funding terrorism. Terrorist funding is the lifeblood of terrorist activities. According to the Public Prosecutor for Terrorism Financing Crimes at the Attorney General’s Office of the Republic of Indonesia, the law imposed on terrorists is very dependent on research case files. If there are indications that the person concerned is supporting funds to carry out terrorist activities, they will be given instructions to look for evidence that supports terrorist financing activities. According to Public Prosecutor, JK, up until now, the law enforcement used in prosecuting terrorists comes from two statutory products, namely Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Establishment of Government Regulations in Lieu of Law Number 1 2002 concerning Eradication of Criminal Acts of Terrorism and Law, and Law Number 9 of 2013 concerning Prevention and Eradication of Criminal Acts of Terrorism Financing. The main articles used by the prosecutor in the criminal act of terrorist financing from Law Number 9 of 2013 are Article 4, 5, and 6, which consecutively reads:

“Any person who intentionally provides, collects, gives, or lends funds, either directly or indirectly, with the intention of using them in whole or in part to commit a crime of terrorism, a terrorist organization, or a terrorist shall be punished for committing the crime of financing terrorism with a maximum prison sentence of 15 (fifteen) years and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).”

“Every person who carries out a criminal conspiracy, attempt, or assistance to commit a criminal act of financing terrorism shall be punished for committing a criminal act of financing terrorism with the same punishment as intended in Article 4.”


57 Explanation from Public Prosecutor for Terrorism Financing Crimes at the Attorney General’s Office of the Republic of Indonesia when she was interviewed.
“Every person who deliberately plans, organizes or mobilizes other people to commit a criminal act as intended in Article 4 shall be punished for committing the crime of financing terrorism with life imprisonment or a maximum imprisonment of 20 (twenty) years.”

In the case of HF, he was charged with multiple articles where HF committed a crime of terrorism and a crime of terrorist financing and the charges were cumulative. He was processed in 2017 in a terrorist case and a terrorist financing case, because HF was proven to have received a certain amount of funds to then buy equipment and HF was arrested because at the time he was previously arrested, the terrorist suspect W alias I, then during his arrest an ATM was found which he admitted was the ATM belongs to HF. Then, HF was processed and arrested. In HF’s case, there was indeed a flow of funds. Therefore, the prosecutor requested an analysis results report from PPATK and then PPATK submitted the analysis results report. Next, it is processed based on the the analysis results report from PPATK. In MK’s case, cumulative charges were also charged, where MK was entrusted with a number of ATMs containing money, which MK used to buy tickets for several Indonesian citizens to go to Syria to join ISIS in Syria.

The development of terrorism in Indonesia began in 2002 with the first Bali Bombing, bringing the issuance of a Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism. Law 15 of 2003 was passed and used until it was revised in 2018. From 2002 to 2015, the terrorists’ targets were foreigners, foreign companies, and embassies. This is because they considered many of the foreigners to be thagut. The terrorists’ targets expanded to police, soldiers, and prosecutors, as they were also considered to be thagut as well. Currently, the targets are randomized, namely civilians who cannot see the assailant, as the most important thing for the terrorist to achieve is carrying out amaliyah.

58 *Thaghut* is an Arabic term, variously interpreted to refer to idols, a specific tyrant, an oracle, or an opponent of the Prophet. “The believers fight for God’s cause, while those who reject faith fight for an unjust cause.

59 *Amaliyah* is a term in Arabic that refers to practices or deeds carried out as part of the teachings of a particular religion or belief. This term is often used in religious contexts, especially in Islam, to describe various types of activities or acts of worship carried out by Muslims. *Amaliyah* includes a variety of practices, such as ritual worship such as salat (prayers), fasting, zakat (charitable donations), and the pilgrimage. Apart from that, *amaliyah* can also refer to good deeds, such as giving alms, helping other people, or doing deeds that are considered good and useful for society. See at See [https://glosarium.org/arti-amaliyah/](https://glosarium.org/arti-amaliyah/)
The development of terrorism also influences the development of terrorist financing. In the beginning, terrorism funding used small amounts of money, and terrorists usually went hand to hand or cash on carry. However, in recent years, terrorists formed foundations that are non-profit organizations (NPOs), some registered and unregistered, which are then used to raise funds for terrorist activities. A significant change in typology apart from the method of collecting funds is that terrorists change patterns when transferring funds. When using banking, **hawala** systems, and online loans, the use of funds also changes. These changes must be taken into account when handling cases. In this context, the use of jurisprudence seems inappropriate because these terrorists are dynamic and developing. The actions of terrorists in the past and present cannot be the same, as the handling of cases have changed quite markedly.

Law Number 5 of 2018 states that the characteristics of terrorism are that TPT is a serious crime that requires special handling that is organized and of transnational crime in nature. In reality, the nature of terrorism is clandestine, secretly known only to the terrorist group itself, and its cells are disconnected. Terrorist organizations in Indonesia, especially those that have been declared terrorist organizations by the court, namely **Jemaah Islamiyah** and **Jamaah Ansharut Daulah**, these organizations mostly invest among their own groups to finance their activities. **Infaq** is given in small amounts starting from 50,000 Indonesian Rupiah to 100,000 Indonesian Rupiahs per person. This money is used to conduct studies, or **tahlim**, once a week, as well as to conduct training or finance family members of arrested terrorists. Apart from that, it turned out that they had established a foundation registered with the Ministry of Law and Human Rights, where this foundation then collected funds. This is what is called a terrorist organization utilizing a non-profit organization. However, it turned out that their foundation was used to raise funds, and it was even suspected that the funds coming in through the foundations formed by the JI terrorist group were quite large. Not only were multiple foundations built, but they also opened branches in the regions and sent the proceeds from the funds collected to their headquarters. Additionally, terrorist organizations provide charity boxes in mosques, prayer rooms, in convenience stores such as Indomaret and Alfamart, bookstores, stalls, and many more. Some take charity boxes once a month, while others collected once every two weeks. Apart from that, there are causes like the Movement for a Thousand Days (GASHIBU), which is one of the ways terrorist organizations collect funds from the public.
We need to be aware of these changes in terrorist financing patterns. The use of NPOs is quite high risk, as Indonesians tend to make donations frequently and without second thought, especially if they are for a religious cause. This is a weakness because most Indonesians are unaware of the charities they are donating to. Furthermore, Article 4 of Law Number 9 of 2013 concerning the Prevention and Eradication of Financial Crimes only regulates three prohibited acts, which are provides, collects, gives or lend funds. The weakness of the provisions of Article 4 is how law enforcement reaches the people who receive the funds. If the provisions of Article 4 are active acts, where a person commits the four acts above either directly or indirectly, with the intention of using them in whole or in part to commit a criminal act of terrorism, for a terrorist organization or for the terrorists themselves. This active action must be proven by law enforcers in court.

The problem here is what to do about the people who receive the funds as the provisions of Law Number 9 of 2013 do not regulate this. There is no provision that outlines the consequences for those that act as intermediary. Furthermore, these funds are used for criminal acts of terrorism, terrorist organizations, or for the terrorists themselves. This has not been covered by Law Number 9 of 2013. It is true that not all laws are perfect, but with the existence of Law Number 9 of 2013, law enforcers have sufficient legal instruments to reach people who provide funds and support acts of terrorists, terrorist organizations, or terrorists themselves. Acts of terrorism cannot be carried out if the terrorists do not receive financial support.

What is currently a potential threat for investigators in handling criminal acts of terrorist financing are terrorist funders who use Fintech. Experienced investigators state that they have handled a case (mens rea) where terrorist financiers want to commit fa’i, which means to rob the infidels’ property or halal loot. These terrorist funders use online loans and use it to buy tools that will be used to carry out charity activities. However, this has only reached the ideation stage and has yet to be executed.

So far, according to investigators\(^6\)\(^{6}\)\(^{6}\)\(^{6}\)\(^{6}\), the most dominant thing carried out by terrorist funders is cash on carry. Because from the terrorist financiers’ point of view, cash on carry is not easily traceable. Because these terrorist funders rely on a network, they use a recruitment system that creates seniors and juniors in their organization. So far, seniors think that cash on carry is the safest because the flow or destination of the funds cannot be tracked.

Investigators also believe that the biggest obstacle faced in carrying out investigations into suspected terrorist funders is the evidence. The question lies in whether investigators can prove it or not. Proving becomes difficult when investigators try to trap a terrorist suspect by getting them to admit they get their money from a terrorist funder. For example, the terrorist suspect says that his friend only transferred money to for household needs.

Investigators emphasize that they are currently experiencing difficulties in terms of proof, especially in dealing with terrorist financing using cash on carry, proof in finances related to Fintech, using cryptocurrency assets, and also funding from charity boxes. Investigators feel that it is very difficult to trace funding from charity boxes, because it is possible that the financial report from the NPO may not match the real income of the NPO obtained. This is what makes it difficult for investigators to trace down how much money is obtained from the NPO and what the remaining money not recorded in the NPO’s financial report is used for.

Based on the explanation above, the implementation of law enforcement in combating the financing of terrorism must be followed by a strong legal and sanctions framework. This means to ensure a comprehensive legal framework to enable law enforcement authorities to take swift and effective action against terrorists, terrorist organizations, and their supporters, including financiers of terrorism. Lawmakers must ensure that our financial sanctions framework remains in line with international standards and conventions and is supported by a clear policy framework to identify and designate terrorists. Next, Indonesia must strengthen a Coordinated and Comprehensive Risk Identification. Agencies should coordinate tightly, such as reviewing the Terrorist Financing landscape regularly by well-established cooperation committees and networks, as well as taking into account current and emerging typologies, international standards and requirements, and inputs from the private sector and academia. It is vital to strengthen inter-agency collaboration to ensure all instances of terrorist financing are promptly detected and investigated. Expanding collaboration with the private sector to better detect and disrupt terrorist financing activities and ensure that investigative efforts translate into successful prosecutions through an effective legal operational framework. Finally, we must continue to rigorously implement and contribute to the development of international standards on combating money laundering/terrorist financing/proliferation financing set by the Financial Action Task Force and relevant United Nations Security Council Resolutions, via participation in the relevant platforms. Increasing efforts to provide and seek legal assistance from other jurisdictions, as well as leverage informal channels of cooperation, is another way to proactively tackle terrorist financing flows.
VI. PROGRESSIVE LAW ON COMBATING TERRORIST FINANCING IN INDONESIA

Progressive Law theory, introduced by Professor Satjipto Rahardjo, confirms that the law is for man and not the other way around. Progressive law enforcement not only applied the law as in the black-and-white text of the regulation (according to the letter), but also according to the spirit and more profound meaning (to the very essence) of the statute or the law. As emphasized by Satjipto Rahardjo, Progressive Law also contradicts the law of two components, namely the rules and behavior.\(^{61}\) In this context, law enforcement is not only an intellectual logic, but it must also be based on spiritual intelligence.\(^{62}\)

VII. A NEW APPROACH IN COMBATTING THE FINANCING OF TERRORISM

Indonesia recently has a new approach to combat terrorist financing. Article 622 paragraph 1 Letter BB of the new Criminal Code states Article 4 of Law no. 9 of 2013 concerning Prevention and Eradication of Terrorism Financing Crimes (TPPT) is revoked and declared invalid. This means that the criminalization of acts of financing terrorism now refers to Article 602 of the New Criminal Code. Terrorism funding is indeed somewhat unique, because what is problematic is the use or exploitation of these funds, as it comes from illegal activities. Terrorism policy reform is carried out by changing from repressive measures in the form of maximum criminal threats, the death penalty or life imprisonment into preventive measures. Efforts to prevent acts of terrorism as a global issue in Indonesia were also responded to by Law no. 9 of 2013 concerning preventing terrorism financing.\(^{63}\)

\(61\) Satjipto Rahardjo, “Menuju Produk Hukum Progresif [Towards Progressive Law],” Paper on Leaderless Group Discussion at Faculty of Law UNDIP, Semarang, Indonesia, 24 June 2004


VII. THE INDONESIAN GOVERNMENT’S MEASURES TO COMBAT TERRORIST FINANCING

The legal framework for combating terrorist financing in Indonesia is strong and partly effective in some areas. Indonesia has significantly achieved and understood the terrorist financing risks that the country is facing, namely the use of financial intelligence to investigate terrorist financing and associated predicate offenses, investigation and prosecution of terrorist financing offenses, and domestic and international cooperation to facilitate action against criminals and their assets.

However, the Indonesian government needs to increase its focus in several other areas, including improving supervision, effective implementation of preventive measures and targeted financial sanctions, preventing the misuse of legal persons and arrangements for terrorist financing, and investigating and prosecuting different types of financing terrorism activities as well as confiscation of criminal proceeds, mainly proceeds that have been moved offshore. Indonesia must know the terrorist financing risks from terrorist organizations and their supporters. Terrorist financing risks primarily stem from domestic crimes. Indonesia has three central financial supervisory authorities that proactively combat financing terrorism in Indonesia. However, Indonesia still needs to improve risk-based supervision, particularly of money changers, money or value transfer services, and non-financial sectors, and impose effective and dissuasive sanctions in all sectors. Indonesia should also ensure that accurate information on the ultimate owners of all companies is available to law enforcement. Another recommendation is to improve the investigation and prosecution of different types of financing terrorism activities and ensure that it permanently deprives criminals of the proceeds of their crimes. Finally, Indonesia should improve its understanding of the risk of abuse of its non-profit sector for terrorism financing and take proportionate measures without discouraging or disrupting legitimate charitable activities.

IX. CONCLUSION

The implementation of law enforcement in combating terrorist financing must be followed by engagement with civil society and affected communities as partners. Society participation should include in formal decision-making spaces, formal acknowledgment of their leadership role, and engagement in monitoring, evaluation, and accountability mechanism. Next, incorporate human rights benchmarking in Combating Financing Terrorism policies and programs, which are developed together with human rights and international
law experts, including to ensure compliance with the proportionality and necessity requirements under international law. Lastly, enhance coordination among government entities, including with national human rights institutions, in the investigation and prosecution of terrorist financing suspects, as well as the development and implementation of human rights-based guidance for Combating Financing Terrorist efforts, including among counter-terrorism agencies, financial intelligence units, treasury officials, and regulators.
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