

Comparison Of Islamic Law And Positive Law On Violence In The Name Of Religion In Terrorism Cases

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Abstrak

The purpose of this study is to determine the legal regulation of violence in the name of religion that contains elements of radicalism, extremism and terrorism in terms of comparative Islamic law and positive law in Indonesia. Radicalism, extremism and terrorism are like three things that go hand in hand, these three are a frightening specter for most of humanity, especially in the Unitary State of the Republic of Indonesia. This research is a type of normative research. The approach used in this study is a statutory and conceptual approach. The results of the study show that in the perspective of Islamic law, behavior that gives birth to extreme understanding by expressing it through violence in order to maintain its ideology can be considered as al-baghy (rebel). Article 43D paragraph (2) letter f of Law no. 5 of 2018 which explains that what is meant by "people or groups of people who have been exposed to radical ideas of terrorism" are people or groups of people who have a radical understanding of terrorism and have the potential to commit acts of terrorism. There are four characteristics of extremists, including making it difficult for themselves to do good, being rude and harsh, easy to disbelieve, and being fanatical about Madzhab and not wanting to follow other opinions. Extremist acts of violence in the name of religion can be punished in accordance with article 170 of the Criminal Code which contains such acts can be punished according to Indonesian law in Article 170 of the Criminal Code. MUI in its fatwa on terrorism views that carrying out acts or acts of terror is unlawful, whether carried out by individuals, groups, or the state. The crime of terrorism is regulated in Law no. 5 of 2018. The criminal threats for perpetrators of terrorism are: imprisonment between 3 to 20 years, life imprisonment or the death penalty.

Keywords: *Comparison; Islamic Law; Positive Law; Terrorism; Violence*

1. INTRODUCTION

Terrorism The phenomenon of radicalism, extremism and terrorism resurfaced after the bomb explosion on MH. Thamrin street, Central Jakarta on Thursday, January 14 2016. Indonesia reminded again about the dangers of terrorism. Radicalism, extremism and terrorism are like three things that go side by side, these three are a frightening specter for most of humanity, especially in the Unitary State of the Republic of Indonesia (NKRI).¹

The recent rise of bomb attacks and shootings that have taken place in various countries has often been labeled as a form of terrorism that is motivated by religious radicalism. From these incidents, many people accused the action carried out by hardline groups based on Islam, such as Al-Qaeda, ISIS or Daesh, Boko Haram, Abu Sayyaf, and affiliates of these groups in various countries². However, radical, extremist and terrorist acts are also carried out by groups with other religious backgrounds. For example the case of bomb explosions that occurred in Malegaon, Maharashtra, and in Modasa, Gujarat in India which killed and injured many people, the majority of whom are Muslims. According to local authorities, this action was carried out by hardline groups in India with a Hindu religious background.³

Radicalism is an understanding that wants drastic social and political changes or reforms by using violent means.⁴ In a religious context, radicalism is defined as a religious understanding that refers to a very basic religious foundation with very high religious fanaticism, so it is frequently for adherents from other sects to use violence against people from different sects to actualize the religious beliefs they hold and believe to be accepted by force. Anarchism and radicalism acts are closely related to fundamentalism. The negative excess of radicalism was born extremism⁵

President Jokowi issues Presidential Regulation (Perpres) Number 7 of 2021 concerning the National Action Plan for the Prevention and Countering of Violent Extremism that Leads to Terrorism for 2020-2024. Referring to this Presidential Regulation, extremism is a belief and/or action that uses violent ways or threats of extreme violence, with the aim of supporting or carrying out acts of terrorism. From this, it can be emphasized, extremism is a very strong understanding or belief in something that exceeds the reasonable limit, and can violate the law.⁶ Extremism is a political or religious doctrine that takes action to achieve its goals in various ways, such as anarchist and fanatical movements against something. A

¹ Muhammad Ali, 3 Fakta di Balik Teror Bom Thamrin Jakarta, 15 februari 2018. Diakses 6 februari 2023. <https://www.liputan6.com/news/read/3289482/3-fakta-di-balik-teror-bom-thamrin-jakarta>

² Rapiq And B. Permatasari, "Penanganan Anak Isis Dalam Perspektif Hukum Indonesia," *Undang: Jurnal Hukum* 3, No. 2 (2020): 289–314.

³ Damayanti, 2018

⁴ A. R. Kurniawan, "Radikalisme Menurut Pandangan Islam dan Kristen," *Journal Of Comparative Study Of Religions* 2, No. 1 (2021).

⁵ K. Kebung, "Estetika Eksistensi Michel Foucault: Kritik dan Solusi Alternatif Atas Radikalisme Dan Ekstremisme," *Melintas* 34, No. 1 (2018): 35–59.

⁶ (Asrori, 2019)

person with an extremist attitude towards religion will not hesitate to oblige others to do something that is not required by God.⁷ He is also often rude not at the place and time, especially if what is being debated is a faith.

Thus terrorism can develop, especially in an uncomfortable environment, due to poverty, political differences, high religious fanaticism, injustice in conflict resolution, and the weakness of the state in maintaining law and order and the welfare of the people.⁸ Terrorism is not related to adherents of a particular religion because it is carried out not based on religious teachings, because terrorism is the enemy of security and peace, the enemy of all human beings, the eradication of criminal acts of terrorism must be carried out comprehensively.⁹

Previous research conducted by Kurnia (2021), a student at Gadjah Mada University, Yogyakarta. His research concluded that there was the politicization of religion by irresponsible parties who saw the great potential of religion for personal gain. They speak as "representatives" of God and use His verses to benefit specific groups. To overcome this problem, it is necessary to teach the correct understanding of religious teachings, especially the holy verses, which are often used as a basis for carrying out acts of violence in the name of religion. *Second*, research conducted by Syukron (2019), a student at IAIN Metro. His research concluded that religious sentiment (ghirah) could be ideal for achieving the intended goal.¹⁰ *Third*, research conducted by Murtadho (2021), a student at Brawijaya Law University. This research looks at it from the view of religious abuse as a criminal act, which is acts of violence in the name of religion, by looking at the views of Islamic teachings regarding violence in the name of religion because religious abuse can be seen from the teachings of religion itself.¹¹

Based on the background described above, this paper will analyze the perspective of radicalism, extremism and terrorism regarding violence in the name of religion in terms of a comparison between Islamic law and positive law in Indonesia. The aims is to be able to put the right paradigm in viewing violent acts with religious nuances. From here, the writer formulates the problem, how is violence in the name of religion analyzed from the perspective of radicalism, extremism and terrorism? How is the legal regulation of violence in the name of religion that contains elements of radicalism, extremism and terrorism in terms of the comparison of Islamic law and positive law in Indonesia?

⁷ W. Ridwan, "Policing Terrorism: Pendekatan Pencegahan Ekstremisme Agama Dan Terorisme," *Independen* 2, No. 1 (2021): 41–50.

⁸ A. Subagyo, "Implementasi Pancasila Dalam Menangkal Intoleransi, Radikalisme Dan Terorisme," *Jurnal Rontal Keilmuan Pancasila Dan Kewarganegaraan* 6, No. 1 (2020): 10–24.

⁹ M. Zulfikar And A. Aminah, "Peran Badan Nasional Penanggulangan Terorisme Dalam Pemberantasan Terorisme Di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 2, No. 1 (2020): 129–144.

¹⁰ Yuangga, "Fenomena Kekerasan Ermotif Agama di Indonesia", *Jurnal Kalimah Vol. 15, No. 2* (2019), 205

¹¹ Ahmad Murtadho,dkk. "Tindak Kekerasan Yang Mengatasnamakan Agama Ditinjau dari Tindak Pidana Penyalahgunaan Agama Pasal 156 A KUHP", *Student Journal Hukum* (2021), 1.

2. METHODS

This research uses the type of normative research. As stated Soekant,¹² one type of normative legal research is legal research as a norm. A legal research was conducted to produce legal arguments, theories, or concepts, as prescriptions to resolve the problems faced and discussed, especially in this study the problems of radicalism, extremism and terrorism regarding acts of violence in the name of religion in terms of Islamic law and positive law in Indonesia. The approach used in this research is a statute and conceptual approach.¹³ This approach will be carried out with an in-depth study of the laws and regulations and developing doctrines, especially those related to the research topic.

3. RESULT AND DISCUSSION

3.1 Radicalism Regarding Violence in the Name of Religion Reviewed From Islamic Law and Indonesian Positive Law

Tabel Radicalism in the name of religion is increasingly being exposed through the media in the form of terror, bombings, several acts of violence and various other religious crimes. Religion is a media that is considered appropriate to be the reason for the emergence of terrorism. Religion in this case is too sensitive to play against each other in the name of real political interests. The impact of the radicalism movement in the name of religion can be a bad record because religion should be applied to peace. The birth of the radicalism movement is all excessive acts of religion that occur in the birth of people who are rigid and extreme and do not hesitate to behave with violence in defending their ideology.

In the perspective of Islamic law, behavior that gives birth to extreme understanding by expressing it through violence in order to defend its ideology can be considered rebel (*al-baghy*). In Islamic law, rebels are included in the category of crime (*jarimah*) which can be subject to the death penalty. In addition to rebels, there are also apostates or leaving Islam (*al-riddah*), adultery, robbers, and murder (*qishash/diyat*). Islamic law divides criminal acts into three parts, namely *hudd*, *qishash/diyat*, and *ta'zir*.¹⁴ Meanwhile, in terminology, treason/*al-baghy* is the act of a group of people who have the power to oppose the government, because there are differences in understanding about state issues.

From the definition above, it can be concluded that rebel/treason (*al-baghy*) is an attempt to overthrow the legitimate government. If this understanding is drawn into the context of the discussion of religious radicalism, there will be similarities in views between the perpetrators of treason and radical actors. As explained in the previous language, the radicalism movement is a treason attempt to overthrow the legitimate government because various religious dogmas are used as justifications on the grounds of dissimilar views between radical actors and the government. In *Fiqh Jinayah*, *jarimah* regarding *jinayah*, treason or *al-*

¹² Soekanto & Mamudji (2011)

¹³ Marzuki And Peter Mahmud, *Penelitian Hukum* (Jakarta: Kencana, 2014).

¹⁴ (Audah, 2000)

baghy has been regulated in both the Qur'an and Sunnah, besides being regulated in Islamic Criminal Law, this act has also been discussed in Indonesian government regulations which are commonly referred to in the law as a crime of terrorism. The act of religious radicalism gave birth to terrorism. So in the opinion of the author, radical perpetrators can be charged with the Law on terrorism.

In Indonesia, the new radical understanding of terrorism is regulated in Law no. 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism, where the Law is the result of a revision of Law No. 15 of 2013 (the old Terrorism Law). Radicalism can mean good or bad. Good radicalism is an act of thinking substantively fundamentally to solve problems. Meanwhile, radicalism related to terrorism or bad radicalism is a form of violence that wants to change the government system. The definition of radicalism is stated in Law no. 5 of 2018 concerning the Crime of Terrorism which states that radicalism is an act against the law to change the system, not gradually but radically, by means of violence. Meanwhile, outside that are not included in acts of radicalism related to acts of terrorism. Unlike Indonesia, the United States Agency for International Development (USAID) or the American International Development Assistance Agency does not use the term radical understanding of terrorism, but uses the term Violent Extremism.¹⁵

New radical ideas emerged in Law no. 5 of 2018 which is stated in the section on preventing criminal acts of terrorism. The term arise in the implementation of the prevention of criminal acts of terrorism which is carried out through national preparedness, counter radicalization and deradicalization. Article 43C paragraph (1) states that counter-radicalization is a planned, integrated, systematic and continuous process that is carried out against people or groups who are vulnerable to being exposed to radical notions of terrorism which are intended to stop its spread. The content of the article states that the radical understanding of terrorism is the main goal of implementing counter-radicalization. Article 43D states that deradicalization is a planned, integrated, systematic, and continuous process that is carried out to eliminate or reduce and reverse the radical understanding of terrorism that has occurred.

The term radical terrorism understanding is not clearly explained in Law no. 5 of 2018 so that it is feared that it will become an obstacle to the implementation of prevention efforts and even the occurrence of irregularities carried out by law enforcement officials in determining people exposed to radical understanding of terrorism. This understanding is based on Article 43D paragraph (2) letter f which explains that what is meant by "people or groups of people who have been exposed to radical ideas of terrorism" are people or groups of people who have a

¹⁵ Ahmad Asrori, "Radikalisme Di Indonesia: Antara Historis dan Antropisitas," *Kalam: Jurnal Studi Agama Dan Pemikiran Islam* 9, No. 2 (2015): 253.

radical understanding of terrorism and have the potential to commit criminal acts of terrorism.¹⁶

3.2 Extremism Regarding Violence in the Name of Religion Reviewed From Islamic Law and Indonesian Positive Law

Violence is not a good offer to address the world's polarization due to the great slap of modernity. Islam has many frameworks of thought to bring about peace on earth. Extremism in arabic called *al-tatharruf* means: standing on the edge, away from the middle. At first, that word was used for material things, such as far away from sitting, standing, or walking. Then it is also used for abstract things, such as stepping aside (beyond the middle limit) in religion, literal, narrow and rigid thoughts or behavior.¹⁷ Al-Qur'an does not command a firm and strict attitude except in two places, namely first in the middle of the battlefield, when dealing with the enemy, it is a proper military strategy to require a firm and hard attitude and set aside soft feelings until the end of the war. Second, in carrying out legal sanctions, those who are entitled to receive it.

Extremities in the Qur'an are called *al-ghuluw* (excessive attitude in religion). In terms of hadith, it is called *tamattu'* (exaggeration in religion) and *tasdid* (complicates). This attitude is an act that is strictly prohibited. Because this attitude is so dangerous, there is a lot of information from both the Qur'an and the hadith of the Prophet which indicates the prohibition and necessity of avoiding this act.¹⁸ And here are some verses and hadiths of the Prophet SAW related to this issue as quoted by this dangerous attitude, there are a lot of information from both the Qur'an and the hadith of the Prophet which indicate the prohibition and the necessity to avoid this act. As stated in the word of Allah swt in QS. al-Maidah (5): 77

قُلْ يَا أَهْلَ الْكِتَابِ لَا تَغْلُوا فِي دِينِكُمْ غَيْرَ الْحَقِّ وَلَا تَتَّبِعُوا أَهْوَاءَ قَوْمٍ قَدْ ضَلُّوا مِنْ قَبْلُ وَأَضَلُّوا كَثِيرًا وَضَلُّوا عَنْ سَوَاءِ السَّبِيلِ

Mean: "All of scribes, do not be exaggerating (exceeding the limit) in a way that is not true in your religion. And do not follow the desires of those who have gone astray before (before the arrival of Muhammad) and they have led astray most (people), and they have strayed from the straight path"

Imam Muslim in his Sahih narrates, from Abdullah bin Mas'ud he said that Rasulullah SAW said, "Perish the *mutamatti'un*", and he repeated it three times. Imam An-Nawawi said that *al-Mutamatti'un* were deep-seated people who when discussing their words and actions went beyond the limits and went deep when discussing, the result was that they fell into destruction? Let this suffice as a

¹⁶ Abu Rokhmad, "Pandangan Kiai Tentang Deradikalisasi Paham Islam Radikal di Kota Semarang," *Journal Of Social Science And Religion, Ministry Of Religious Affairs* 21, No. 1 (2014): 27.

¹⁷ Yusuf Al-Qardhawi, *Membedah Islam Ekstrim* (Bandung: Mizan, 2001).

¹⁸ Yusuf Al-Qardhawi, *Membedah Islam Ekstrim*. 32.

warning¹⁹ Therefore, the Prophet SAW strongly opposes any excessive acts in religion, and forbids anyone who behaves excessively in worship to go beyond the limits of truth that has been taught by Islam. On that basis, Islam does not justify living far from the life of the world because Islam alone commands a balanced life.

There are four characteristics of extremists as described by Yusuf al-Qardhawi: *First*, Difficult for self to do good things. Other signs of religious extremism are always choosing something difficult over things that actually have convenience and obliging others to do the difficult thing, even though Allah does not oblige it. Indeed, there is no prohibition against holding on to something that is difficult or heavier, but it is not good to continue like that, so that when you need convenience, you are reluctant to do it.²⁰ Allah swt does not make it difficult for His servants to do good or worship. As His word:

يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ

Mean: “Allah wants ease for you and does not want difficulty for you”

The meaning of the verse above according to Ibn Katsir is to give relief for those of you who are sick or on a journey so that they do not fast.²¹

Secound, being tough and rude. Among other signs of an extreme attitude is being rude, tough, and not humane in communication and preaching. Whereas Allah and His Messenger have ordered to preach with wisdom not with ignorance, with good teaching, not with words that are not good or rude; and argue in the best way. Thus, it is not necessary in preaching to be harsh and harsh. In the authentic hasits of Aisyah ra. It is said, “Verily Allah loves humane in all things.”²²

Third, easy to disbelieve. The highest extreme attitude is perhaps the attitude of being easy to disbelieve. This attitude is very forbidden, because people who are disbelievers will have implications for the abortion of the honorary rights of others, and justify their lives and property, and no longer see their right not to be disturbed and the right to be treated fairly. This will happen when people have been overcome by confusion of mind and accuse most people of leaving Islam²³ This attitude was carried out by the khawarij in the early days of Islam. They are very harsh and strict in carrying out various rituals of worship such as fasting, praying, and reading the Qur'an. But actually they are falling into destruction because of bad thoughts, not because of bad hearts.

¹⁹ Yusuf Al-Qardhawi, *Membedah Islam Ekstrim*. 33

²⁰ Yusuf Al-Qardhawi, *Membedah Islam Ekstrim*. 33

²¹ Ad-Dimasyqi and Al-Imam Abu Fida Ismail Ibn Katsir, *Tafsir Al-Qur'an Al-'Azhim*, Ed. Sinar Baru Algesindo, Bandung: Sinar Baru Algesindo, 2000 (Bandung, 2000).

²² A. Rouf, “Islam Pluralis dan Multikulturalisme: Memperkokoh Kesatuan Bangsa,” *Jurnal Bimas Islam* 11, No. 4 (2018): 783–831.

²³ Wahba Zuhaili, *Al-Wajiz Fi Ushul Al-Fiqh* (Beirut: Dar Al-Fikr Al-Mu'ashir, 1995).

Fourth, fanatic of madzhab and doesn't want to follow other opinions. School fanatics are among the extremist attitudes that stand out. The attitude of insisting on an understanding that is excessive and unnatural, does not want to see the opinions of others. Not giving the opportunity to discuss with others is an attitude that is very hated by Allah. According to Yusuf Qardhawi, in responding to differences, you must agree on things that are *qat'i* and are ready to be different on things that are *zhanni*. This means that each Muslim group must agree on final worship, such as obligatory five daily prayers, fasting, zakat, hajj for those who can afford it as well as the pillars of faith, and have mercy on worship that is *furu'*, such as qunut, reading basamalah in prayer.²⁴

Therefore, in order not to be fanatical about one opinion, you must first look at the *qat'i* texts or the *zhanni* ones? In Islam it is known as the absolute teaching term, the text of the Qur'an or hadith which contains one meaning which in terms of ushul fiqh is called *qat'i al-dhalalah* and there are also relative teachings which have more than one meaning which in terms of ushul fiqh *zhanni al-dhalalah*.²⁵

In several cases conducted by Islamic organizations in Indonesia regarding violent extremism in the name of religion, perhaps their behavior or actions are not entirely wrong, because they must have good intentions, only the realization process uses excessive means, such as violence, persecution, etc. and anarchic action. An example of this is the destruction of a Coto Makassar stall on Jalan A.P. Pertarani, Makassar, South Sulawesi by one of the Islamic organizations on the grounds that the shop is still open during the day in the month of Ramadan, as well as the attack and destruction of the Playboy magazine office by one of the Islamic organizations with the excuse of rejecting the magazine which smells of pornography.

These actions can be punished according to Indonesian law in Article 170 of the Criminal Code which states, "Whoever openly and with collective force uses violence against people or goods, is threatened with a maximum imprisonment of 5 years and 6 months". In jinayah fiqh, a case like the one above can be punished as a criminal, because it fulfills 3 elements of a crime, that are formal elements, material elements and moral elements. As a formal element there is a law that regulates. The material element is clear that one of the Islamic organizations committed a violent crime. The moral element of a perpetrator can really be blamed, not the insane or the children. The punishment is adjusted according to their respective roles.

Law enforcement in criminal acts in Indonesia is regulated in the Criminal Code. Whereas in Islamic Criminal Law (Jinayah), law enforcement imposed is in the form of qishas, diyat or ta'zir in accordance with the actions taken.²⁶

²⁴ Rouf, "Islam Pluralis Dan Multikulturalisme: Memperkokoh Kesatuan Bangsa."

²⁵ Zuhaili, *Al-Wajiz Fi Ushul Al-Fiqh*.

²⁶ Audah, *Al-Tasyri' Al-Jima'i Al-Islami*.

3.3 Terrorism Regarding Violence in the Name of Religion Reviewed From Islamic Law and Indonesian Positive Law

In the dictum (decision) of the MUI fatwa No. 3 of 2004 concerning Terrorism defines that terrorism is an act of crime against humanity and civilization that poses a serious threat to state sovereignty, is a danger for security, world peace and is detrimental to the welfare of the community. Terrorism is a form of crime that is well organized, transnational in nature and classified as an extraordinary crime that does not discriminate between its targets (indiscriminatory). There are 3 elements or characteristics contained in acts of terrorism, that are. *First*, destructive (*ifsad*) and anarchy. *Second*, the goal is to create fear and/or destroy the other party. *Third*, carried out without rules and targets without limits.

In jinayah fiqh there is actually no terrorism because this problem is a contemporary problem that did not arise in the past century. Likewise in the Qur'an, the term terrorism is not found either. However, if traced from the origin of the word language, terrorism or *al-Irhabiyyah* in another sense is intimidation or threat, which in Arabic is *الارهاب* or *رهبة* which means to frighten or to intimidate. If this is related to the jarimah in fiqh jinayah, it is included in the jarimah hirabah, which means the release of an armed group in an Islamic area and carrying out chaos, bloodshed, confiscation of property, destroying honor, destroying crops, livestock, religious image, morals, and public order, both from among Muslims and infidels (*dzimmi* or *harbi*).²⁷

From this information, it can be *qiyas* between Jarimah Hirabah and acts of terrorism based on the similarity of definitions and purposes of the two. By *qiyas*, it means that returned the legal provisions of something to its source, the Qur'an and hadith, because not all Islamic law is clearly stated in the Qur'an and hadith, but some are implied and are implicit-analogical.²⁸ So with an analogical approach between terrorism or *al-irhabiyyah* with hirabah, it will find a point of similarity between the causes and nature of the two crimes.

It was narrated from Ibn Umar that Rasulullah said:

مَنْ حَمَلَ عَلَيْنَا السِّبْلَاحَ فَلَيْسَ مِنَّا (متفق عليه)

Mean: "Whoever brings a weapon to disrupt, then it is not from our group"

The fuqaha define al-muarib (perpetrator of hirabah) as a person who takes up weapon against the crowd and frightens them (causing fear among the people). According to Abdul Qadir Audah, the main element in jarimah hirabah is acts of violence that disrupt public security, whether using weapons or not, whether carried out in villages or in cities, or on public roads and community facilities.²⁹

²⁷ Sayid Sabiq, *Fiqh Sunnah*, Jilid 9. (Bandung: al-Ma'arif, 1987).

²⁸ Sulaiman Abdullah, *Dinamika Qiyas Dalam Pembaharuan Hukum Islam*, Cet. V. (Pedoman Ilmu Jaya, 1996).

²⁹ Audah, *Al-Tasyri' Al-Jima'i Al-Islami*.

Regarding the place of hirabah, there are differences of opinion among the fuqaha. According to Imam Malik, doing hirabah inside or outside the city is the same. In this case, Imam Syafi'i requires the existence of strength, although he does not require the number and magnitude of the power (*syaukah*). The power in question is the power to defeat, therefore it does not require that the hirabah carried out in a place far from the crowd. According to Imam Abu Hanifa, hirabah does not exist in cities.³⁰ As for the argument of this Jarimah hirabah in the Qur'an surah al-Maidah (5): 33

أَنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا
أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ۚ ذَلِكَ
لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ

Mean: "Verily, the recompense for those who fight against Allah and His Messenger and cause mischief in the earth is only that they are killed or crucified, or cut off their hands and feet exchange for reciprocity, or are banished from the land (where they live). That is (as) an insult to them in this world, and in the Hereafter they will have a great torment"

Imam Jalalain interprets the verse above as immoral acts, theft, robbery and murder of the Prophet and Muslims.³¹ The verse specifically discusses the punishment for those who do mischief on earth (which is interpreted by scholars as robbery, *qat'u al-tariq*) in response to the robbery carried out by the 'Ukail and 'Urainah tribes. This verse came down to criticize the actions of the Muslims who were outrageous in punishing the two tribes.³² Al-Bukhari and Muslim narrated from Anas bin Malik, that there were eight people in tribe of 'Ukail who came to the Messenger of Allah, they did to practice the religion of Allah swt. They felt that the climate of Medina was not suitable so that their bodies were sick and complained to the Messenger of Allah, then he said, "Why don't you just go with the camel herders so that you can get water from their bags and milk?" They said yes, then went and drank the water from the bag and the milk until they were healed. But they killed the shepherd and brought his camel. The news reached the Prophet, so he sent troops to follow him and finally they were caught, then brought before the Prophet, he decided that they should be punished.³³ It can be understood from this statement that acts of terrorism are not justified in Islam, they are equated with fighting Allah and His Messenger and killing all humans.

According to Moeljatno, a criminal act in positive law is an act which is prohibited by the rules of criminal law and is threatened with punishment, whoever violates the prohibition, he further explains about this criminal act according to its form and nature, this criminal act is an act that is against the law,

³⁰ Ibnu Rusyd and Bidayatul Mujtahid, *Penerjemah Imam Ghazali Dan Ahmad Zaidun* (Jakarta: Pustaka Amani, 2007).

³¹ (Al-Mahalli & Al-Suyuthi, 2010)

³² Muhammad Quraish Shihab, *Tafsir Al-Misbah*, Vol. 3. (Jakarta: Lentera Hati, 2000).

³³ Muhammad Ali al-Shabuni, *Mukhtashar Tafsir Ibnu Katsir, Juz I* (Beirut: Dar al-Qur'an al-Karim, 1402 H, 1972).

an act that violates the law, detrimental to the community, in the sense of contradicting and hindering the implementation of the social order that is considered good and fair.³⁴ The formulation of the terrorism crime in positive criminal law, as formulated in Law no. 5 of 2018 states that “A criminal act of terrorism is any act that fulfills the elements of a criminal act in accordance with the provisions of this law” (Article 1 paragraph 1 of Law No. 5 of 2018).

Meanwhile, what is meant by elements of terrorism in Article 1 paragraph (2) of Law no. 5 of 2018 concerning Eradication of Criminal Acts of Terrorism above are acts that use violence or take the form of threats that create an atmosphere of terror or fear, and cause massive and widespread victims. Something can be said to be a criminal act of terrorism if the object of the attack is vital and strategic places, the environment, public facilities. In this law, it is stated that the element of violence can only be said to be a criminal act of terrorism if it is carried out with ideological, political or security reasons.

The criminal provisions for perpetrators of terrorism as contained in Article 6 of Law no. 5 of 2018 confirms that the criminal threat for perpetrators of terrorism is imprisonment from 5 to 20 years, life imprisonment, to the death penalty. Meanwhile, Article 10A regulates in more detail about crimes related to acts of terrorism, such as punishments for people who carry, store, transport, trade weapons that will be used to carry out acts of terrorism. The sentences vary, ranging from 2 years, 3 years, 7 years, to the death penalty. Everything depends on the level of involvement of the person in the criminal act of terrorism.

4. CONCLUSION

The term appears in the implementation of the prevention of criminal acts of terrorism which is carried out through national preparedness, counter radicalization and deradicalization. Article 43D paragraph (2) letter f which explains that what is meant by “people or groups of people who have been exposed to radical ideas of terrorism” are people or groups of people who have a radical understanding of terrorism and have the potential to commit acts of terrorism. There are four characteristics of extremists, including making it difficult for self to do good, being rude and harsh, being easy to disbelieve, and being fanatical about madzhab and not wanting to follow other opinions. Extremist acts regarding violence in the name of religion can be punished in accordance with article 170 of the Criminal Code which contains such acts can be punished according to Indonesian law in Article 170 of the Criminal Code. In jinayah fiqh, a case like the one above can be punished as a criminal, because it fulfills 3 elements of a crime, namely formal elements, material elements and moral elements. As a formal element there is a law that regulates. For law enforcers to be more courageous in responding to something as assertiveness in

³⁴ Martiman Projo Hamidjo, *Memahami Dasar-Dasar Hukum Pidana 2* (Jakarta: Pradiya Pramita, 1997).

upholding the truth in order to create an obedient, lawful, peaceful, and prosperous society within the Republic of Indonesia.

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