OPTIMIZING THE APPLICATION OF THE PRESUMPTION OF INNOCENCE IN INDONESIA’S LAW ENFORCEMENT AGAINST TERRORISTS

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Abstract
In the law enforcement against perpetrators of criminal acts of terrorism, protection of human rights must be prioritized even though the act constitutes an extraordinary crime which must be condemned regardless of the reasons and motives. The principle of presumption of innocence must also be upheld because the principle of presumption of innocence is a norm or rule that contains provisions that must be implemented by law enforcement officials to treat a suspect or defendant like an innocent person even though the evidence indicates the fault of a suspect or defendant. In the application of the presumption of innocence principle, law enforcers must really be able to implement it even though sometimes in the field implementation there are pro and contra when making decisions to take action against terrorists. Therefore, it is necessary to optimize law enforcement based on the presumption of innocence, both as stated in the Criminal Procedure Code (KUHAP) and the terrorism law so that law enforcement can prioritize the presumption of innocence and can avoid abuse of authority by law enforcement.

Keywords: Presumption of innocence, legal protection, terrorism

INTRODUCTION
The Unitary State of the Republic of Indonesia is a country that makes Pancasila as the ideology of the Indonesian state. This is a gift from God Almighty (YME) which reflects the value of differences in life but can be united in diversity as stated in the motto of the Indonesian nation. The meaning of the values contained in Pancasila is in accordance with the values of the teachings of all religions and cultures in Indonesia.

As everyone knows that the Unitary State of the Republic of Indonesia is a state based on democratic law, based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Indonesia is a legal state that can determine its state equipment which can act according to statutory applicable regulations (Abdurrahman, 1979).

The strategic location of the State of Indonesia, which can be crossed by various countries in economic and trade activities, as well as the geographical and mountainous location of the fertile territory of Indonesia, can be used as military training grounds by terrorist groups (Prodjodikoro, 2003). The Republic of Indonesia is a state based on democratic law, based on Pancasila and the 1945 Constitution of the Republic of Indonesia, not based on mere strength. The state of law determines that its equipment acts according to and is bound by the rules determined in advance by the equipment it controls to enforce these regulations. The characteristics of a state of law are the recognition and protection of human rights (Prodjodikoro, 2011).

After the terrorist acts in the form of suicide bombings that occurred in Bali in 2002, where bomb explosions occurred at Paddy's Cafe and Sari Club which resulted in the death of as many as 200 people. The death toll consisted of the majority of foreign nationals from Australia who...
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were traveling to Bali. At the time of the incident, there was a legal vacuum in overcoming acts of terrorism in Indonesia because the Indonesian Criminal Code (KUHP) did not fully regulate the crime of terrorism. The government finally issued a Government Regulation in Lieu of Law (Perpu) Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism.

Law enforcement against terrorists in relation to eradicating acts of terrorism continues to prioritize human rights in accordance with the Government’s obligations as stated in Article 71 of Law Number 39 of 1999 concerning Human Rights, namely “The government is obliged and has the responsibility to respect, protect, enforce and promote human rights as regulated in this law, other laws and regulations and international law on human rights accepted by the Republic of Indonesia”. The enforcement of criminal law in Indonesia is carried out by several institutions, both government and private, which have their respective roles and functions (Prodjodikoro, 2011). Law enforcers include the police, prosecutors, lawyers, and the Courts, each of which works to bring about justice and legal certainty for every Indonesian citizen. In realizing justice and legal certainty, each of these institutions carries out their duties based on the criminal procedure law and the law on terrorism (Friedman, 1975).

In addition to prioritizing human rights for perpetrators of criminal acts of terrorism, law enforcers must work professionally in order to realize justice and legal certainty for perpetrators of criminal acts of terrorism (Gautama, 1983). A series of law enforcement processes must be carried out in accordance with the provisions of the applicable procedural law in the form of an investigation so that it can determine and prove a crime has been committed or not (Tahir, 2010). During the process of examining the perpetrators of theorists starting from the police level to the court level, the perpetrators must still receive protection as mandated in Article 50 to Article 68 of the Criminal Procedure Code (KUHAP). Therefore, KUHAP on the one hand gives authority, but on the other hand it also guarantees the rights of suspects. The provisions of the criminal procedure law are intended to protect suspects from arbitrary actions by law enforcement officers and courts (Hartono, 1991). This protection is also stated in Article 2 of Law Number 15 of 2003 which has been changed to Law Number 5 of 2018 concerning Eradication of Criminal Acts of Terrorism which emphasizes that eradicating criminal acts of terrorism is a policy and strategic steps to strengthen public order and safe society while still upholding the law and human rights, not discriminatory, whether based on ethnicity, religion, race, or between groups (Ali, 2012). Perpetrators of criminal acts of terrorism may not be found guilty until there is a court decision with permanent legal force (in kracht van gewijsde).

The principle of presumption of innocence is a norm or rule that contains provisions that must be carried out by law enforcers to treat suspects or defendants like innocent people (Arief, 2002). In other words, the principle of presumption of innocence is a guideline or working procedure for law enforcers in treating suspects or defendants to the exclusion of their presumption of guilt (Arief, 1998). The application of these principles in the criminal justice process is very important as a form of respect for human rights (Manan, 2004).

In general, the principle of presumption of innocence has also been applied by law enforcers in handling terrorism cases by seeking the rights of the suspect or defendant during the investigation process until the trial takes place (Arief, 2014). Hence, the rights of the perpetrators of the crime of terrorism must still be protected starting from acts of ambush, arrest, confiscation, detention to examination, their rights must still be protected, including the rights of their family members (Wahid, 2004).
Indonesia as a state of law has an obligation to uphold, respect, and protect human rights guaranteed by the constitution through its state apparatus, none other than and not limited to the power of law enforcement officials (Astawa & Na’a, 2009). Law enforcement should be an ideal that is an effort to protect and enforce human rights, although in practice law enforcement efforts can potentially be accompanied by human rights violations (Soetjipto, 2015).

Violations of human rights can occur in the process of eradicating criminal acts of terrorism in the field which can be caused by various characteristics of the terrorists themselves which are dangerous or related to regulatory weaknesses and the lack of knowledge and understanding of Human Rights by the government, law enforcement officers (Gayo & Muhlizi, 2016).

Based on the things mentioned above, the authors need to explore the things that are discussed in the application of the principle of presumption of innocence (Presumption of innocence) in the crime of terrorism which is applied in the Criminal Code (KUHAP) and Law no. 5 of 2018 concerning Eradication of Criminal Acts of Terrorism. The author needs to conduct a more comprehensive and in-depth research so that the application of the principles of the presumption of innocence in the eradication of criminal acts of terrorism above can be described by the author as contained in a scientific paper in the form of a dissertation entitled "Optimizing the Application of the Presumption of Innocence in Indonesia’s Law Enforcement against Terrorists."

**METHOD**

In conducting this research, the author uses a research method with a normative juridical approach, namely research that is focused on examining the application of rules or norms in positive law (Ibrahim, 2006). Normative juridical, namely an approach that uses a positivist conception of legis. This concept views law as identical with written norms made and promulgated by authorized institutions or officials. This conception views law as a normative system that is independent, closed and detached from the real life of society.

**Research Approach**

This study uses a statutory approach and a case approach. The statutory approach is used to find out about the implementation of the principle of presumption of innocence in Indonesian legislation. The case approach aims to study the application of legal norms or rules in legal practice. Especially regarding cases that have been decided as can be seen in the jurisprudence of cases that are the focus of research related to case analysis in this study.

**Types of research**

To obtain the data needed in this study, the authors use descriptive research, which is a study that is intended to provide an overview of the state of the subject and/or object of research as it is. the principle of presumption of innocence according to the Criminal Procedure Code and Law no. 5 of 2018 concerning Eradication of Criminal Acts of Terrorism.

**Data Source**

*Primary Legal Material*

1) The 1945 Constitution of the Republic of Indonesia;
2) People's Consultative Assembly Decree No. XVII/MPR/1998 on Human Rights;
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3) The Criminal Code;
4) Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP);
5) Law No. 39 of 1999 concerning Human Rights;
6) Law Number 26 of 2000 concerning Human Rights Courts;
7) Law No. 15 of 2003 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law;
8) Law No. 5 of 2018 concerning Amendments to Law No. 15 of 2003 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law; and
9) Government Regulation No. 77 of 2019 concerning Prevention of Terrorism Crimes and Protection of Investigators, Public Prosecutors, Judges, Correctional Officers

Secondary Legal Materials
In this case, the materials used provide explanations from the results of conducting literature studies related to the object of research obtained from books, papers, jurisprudence, Academic Manuscripts of Law no. 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism, the Criminal Code, the Criminal Procedure Code and other sources related to this research.

Data Collection
To collect the data used above, the authors used literature study and field study.

Data Analysis
The data analysis method in accordance with descriptive research is by using a qualitative approach, namely data analysis that reveals and takes the truth obtained from the literature and field research by combining regulations, jurisprudence, scientific books that have to do with the application of the principles presumption of innocence according to the Criminal Procedure Code and Law no. 5 of 2018 with the opinion of respondents obtained through interviews (interviews), then analyzed qualitatively so that they get a solution that can produce conclusions.

RESULTS AND DISCUSSION
The Application of the Presumption of Innocence against Terrorism

Terrorism Crime Development
Terrorism emerged at the end of the 19th century and before the onset of World War I, occurred in almost all parts of the world. In the mid-19th century, terrorism began to be widely carried out in Western Europe, Russia and America. They believe that Terrorism is the most effective way to carry out political and social revolution, by killing influential people.

Terrorism has developed since centuries ago. At first, terrorism was only a pure crime such as murder and threats aimed at achieving certain goals. Its development began in the form of religious fanaticism which later turned into murder, whether carried out by individuals or by a group against rulers who were considered tyrants. Systematic terrorism arose before the French Revolution, but only became prominent in the second half of the 19th century. In the dictionary
Supplement issued by the French Academy in 1978, terrorism is more defined as a system of terror regimes. Terrorism emerged at the end of the 19th century and before the onset of World War I, occurred in almost all parts of the world. In the mid-19th century, terrorism began to be widely carried out in Western Europe, Russia and America.

The first forms of Terrorism occurred before World War II. Terrorism is carried out by means of political assassinations of government officials. The second form of Terrorism began in Algeria in the 1950s, carried out by the FLN which popularized "random attacks" against innocent civilians. This is done to counter what Algerian Nationalists call state terrorism. Murder is done with the aim of getting justice. A third form of terrorism emerged in the 60s and is known as "Media Terrorism" in the form of random attacks on anyone for publicity purposes.

Terrorists are people who use violence and all means to get political goals, this can be done by bombing, hijacking, taking hostage, and so on. This action resulted in civilians becoming victims. These actions usually have political motives and are not ordinary criminals. Every act of terrorism is not carried out spontaneously, but is designed to have a certain effect or impact.

The appearance of Osama Bin Laden changed the face of terrorism where Osama Bin Laden became a terror icon in the 90s era, by forming a group called Al Qaeda and its members consisted of multi-nationals, knowing no national borders. Beginning with the liberation of Afghanistan from Soviet occupation, it developed into an anti-Western domination.

When dealing with the Soviets, Osama Bin Laden made friends with America. However, after the Taliban regime came to power in Afghanistan, Osama Bin Laden became America's eternal enemy. Osama Bin Laden's ideology is influenced by extreme religious understanding, hatred of Arab regimes, and anti-Western domination. He introduced terrorism based on a network, not a state basis. As a result, the American Embassy in East Africa was destroyed and the WTC tragedy that killed thousands of people became a symbol of terrorist attacks against American domination.

Elements of the Crime of Terrorism

Article 1 of Law 15 of 2003 states that criminal acts of terrorism are all acts that meet the elements of a criminal act in accordance with the provisions of a government regulation in lieu of this law. With regard to these elements, Dr. Simons stated that the objective and subjective elements in a crime (Strafbaar feit) are as follows:

1) The objective elements of a criminal act (Strafbaar feit) are people's actions, the visible consequences of that action, and that particular situation that accompanies the act; and
2) The subjective elements of a crime (Strafbaar feit) are responsible person, presence of an error (Dolus or culpa).

The elements of criminal acts of terrorism contained in Law No. 15 of 2003 will be discussed in two parts, namely: first, elements of criminal acts of terrorism and second, crimes related to criminal acts of terrorism.

Article 6 states that "any person who intentionally uses violence or threats of violence creates an atmosphere of terror or fear of people widely or causes mass casualties, by depriving other people of their freedom or loss of life and property, or causing damage or destruction, against strategic vital objects or the environment or public facilities or international facilities,
shall be punished with capital punishment or life imprisonment or imprisonment for a minimum of 4 years and a maximum of 20 years”.

The elements of Article 6 are purposely, using force or threats of violence, creating an atmosphere of terror or fear of people widely or cause mass casualties by depriving freedom or loss of life and property of others, or cause damage or destruction to strategic vital objects or the environment or public facilities or international facilities.

From the formulation of Article 6 which reads: "... intentionally using violence or the threat of violence creates an atmosphere of terror or fear of people widely or causes mass victims...", at a glance it shows that the article is formulated "materially". So, what is prohibited is "consequences" namely the emergence of an atmosphere of terror or fear or the emergence of mass victims.

From the consequences of these consequences there are those who intentionally use violence or threats of violence, in the theory of criminal law to determine a causal relationship there are 3 (three) streams, namely:

1) Equivalence theory. This theory says that every condition is a cause, and all conditions are the same value, because if one condition does not exist, then the effect will be different. Every condition, whether positive or negative, for an effect to occur is a cause, and has the same value. If one condition is omitted, then there will be no concrete consequences, as in fact according to the time and place of the situation.

2) Individualization theory. This theory chooses post factum (in concreto), meaning that after a concrete event occurs, from a series of active and passive factors, the most decisive cause of the event is chosen, while other factors are only conditions. This theory reviews concretely about certain cases only and from a series of causes that have given rise to effects, looking for the causes that under certain circumstances are the most decisive for the occurrence of effects.

3) Generalization Theory. This theory looks at Ante Factum (before the incident / in abstracto) whether among the series of conditions there are human actions which in general can cause such consequences, meaning that according to ordinary life experience, or according to a proper calculation, has a chance for it. In this theory, an adequate cause is sought for the occurrence of the effect in question (Ad-acquare means made equal). Therefore, this theory is referred to as adaequat (adequate theory, adaquanztheorie).

After understanding the method of proof of a formulation of an offense, then in the context of applying legal facts to elements of a crime, it is necessary to understand the meaning of the elements of the formulation of a crime. This is done by using legal interpretation methods, including grammatical interpretation, language interpretation, systematic interpretation, historical interpretation, theological interpretation, sociological interpretation and so on.

The formulation of this article is different from article 6, where in article 7 the formulation of the words "intends" is added, so that only the element of mental attitude, namely "meaning" does not have to actually have an effect, the act is already prohibited and is subject to criminal sanctions. Thus, Article 7 is a formal offense, because what is formulated in this crime is the behavior, in this case the intent of the perpetrator.

In this connection what needs to be understood is the definition of the word "meaning". Doctrine or theory calls this element an inner attitude of the actor. The problem that arises is
to prove the element, whether it must be proven based on the defendant's intention, namely the goal for the purpose to be achieved by the perpetrator or from an objective situation, namely what actually happened as a result of the perpetrator's actions. In the event that the effect has not yet occurred, then the element in question must be interpreted narrowly, that is, it is proven based on the purpose or intent to be achieved by the perpetrator. In the event that the result has arisen, the element of intent is defined broadly, namely what has happened as the realization of the intent or intention of the perpetrator.

In addition to these articles, elements of criminal acts of terrorism can also be found in article 9 regarding firearms, ammunition, or any explosives and hazardous materials with the aim of committing a criminal act of terrorism. Article 10 concerning the use of chemical weapons, biological weapons, radiology, micro-organisms, radioactivity or its components, Article 11 concerning the provision of fundraising with the aim of being used or it is well known that it will be used partially or wholly to commit criminal acts of terrorism, Article 12 concerning acts of providing or collecting assets with the aim of being used or knowingly to be used for terrorism, Article 13 concerning acts of providing assistance or facilities to perpetrators of criminal acts of terrorism, Article 14 concerning acts of planning and or mobilizing other people to commit criminal acts of terrorism, Article 15 concerning acts of conspiracy, trial or assistance to commit criminal acts of terrorism, Article 16 concerning any person outside the territory of the Republic of Indonesia who provides assistance, facilities, or information for the occurrence of a criminal act of terrorism. Article 17 and Article 18 regarding criminal acts of terrorism committed by or on behalf of a corporation; and Article 19 regarding perpetrators of criminal acts of terrorism who are under 18 years of age. Article 16 concerning any person outside the territory of the Republic of Indonesia who provides assistance, facilities, or information for the occurrence of criminal acts of terrorism. Article 17 and Article 18 regarding criminal acts of terrorism committed by or on behalf of a corporation; and Article 19 regarding perpetrators of criminal acts of terrorism who are under 18 years of age. Article 16 concerning any person outside the territory of the Republic of Indonesia who provides assistance, facilities, or information for the occurrence of criminal acts of terrorism. Article 17 and Article 18 regarding criminal acts of terrorism committed by or on behalf of a corporation; and Article 19 concerning perpetrators of criminal acts of terrorism who are under 18 years of age.

So there are important elements in acts that are categorized as terrorism, what is called "crimes against the state" as a manifestation of changes in the political system (of a country) in the way it applies, and the expansion of its meaning so that there is a new paradigm on the issue of terrorism, namely crimes against humanity, which is manifested in the form of creating an atmosphere of terror or fear and intimidation in the general public at large and causing anxiety about what is called public by Innocence, and all of this is reflected in Article 6 and Article 7 of Law No. 15 of 2003 concerning the eradication of criminal acts of terrorism, with primary elements including act of violence and threat of violence as a condition for the initiation of implementation, which element resembles the serious offense against the security of the state net strafrecht as mentioned above.
Terrorism as an Extraordinary Crime and Crime against Humanity

No agreement has been reached on what the definition of terrorism is, does not mean that terrorism is allowed to escape the reach of the law. Efforts to eradicate terrorism have been carried out since the middle of the 20th century. In 1937 the Convention for the Prevention and Suppression of Terrorism was born, where this convention defines terrorism as a crime against the state (Crimes Against State). Through the European Convention on counter-terrorism (European Convention on The Suppression of Terrorism) in 1977 in Europe, the meaning of terrorism underwent a paradigm shift and expansion, namely as an act that was originally categorized as crimes against the state (Crimes against the state) into crimes against humanity (Crimes against humanity), where the victims are civilians. Crimes against humanity are included in the category of gross violations of Human Rights which are carried out as widespread and systematic actions and it is known that these attacks are directed directly against the civilian population and are more directed on the souls of the innocent.

Terrorism is the enemy of modern civilization. The nature of actions, actors, strategic goals, motivations, expected and achieved results, targets and methods of terrorism are now increasingly widespread and varied, so that it is increasingly clear that terror is not an ordinary form of destructive crime, but is already a crime against peace and security of mankind. Terrorism is a crime against humanity and human civilization and is a serious threat to humanity and human civilization and is a serious threat to the integrity and sovereignty of a country. Terrorism today is not only a local or national crime, but has become a transnational and even international crime.

An act of terrorism is an action that is planned, organized and applies anywhere and to anyone. Terror acts can be carried out in various ways according to the will of the performer, namely terror which results in physical and or non-physical (Psychic). Physical terror acts usually result in a person's physical and even death, such as beatings/beatings, murders, bombings and others, and non-physical (Psychological) can be done by spreading issues, threats, taking hostages, scaring and so on. as a result of acts of terror, the condition of the victims of terror causes people or groups of people to feel insecure and in a state of fear (traumatic). In addition to having an impact on a person or group of people, it can even have a broad impact/impact on the economic, political and sovereign life of a country.

In the Indonesian context, awareness about the existence of terrorism as a crime against humanity has also emerged since the issuance of Government Regulation in Lieu of Law (Perpu) Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism. The explanation of the Perpu states that terrorism is a crime against humanity and civilization and is a serious threat to the sovereignty of each country because terrorism is an international crime that poses a danger to security, world peace and harms people's welfare, so it is necessary to carry out a planned and sustainable eradication so that the human rights of many people can be protected and upheld.

However, even though terrorism is considered an Extra Ordinary Crime and Crimes Against Humanity, terrorism is not a crime within the jurisdiction of the International Criminal Court (ICC). The United States firmly rejects the proposals of several countries that require criminal acts of terrorism as a crime that is within the jurisdiction of the ICC. With the exclusion of terrorism, according to article 5 of the Rome Statute of the International Criminal Court, only
4 (four) crimes are considered the most serious crimes, namely: genocide, crimes against humanity, war crimes, and aggression.

Considering the impact of the crime of terrorism causing mass and widespread human casualties and causing material and immaterial losses in the form of public fear, the crime of terrorism is included in the category of extraordinary crimes or often referred to as serious crimes. The perpetrators of terrorism crimes have the belief that the actions taken are the right actions to achieve the desired goals.

**Law Enforcement for Criminal Acts of Terrorism in Indonesia**

*Terrorism After the enactment of Perpu number 1 of 2002*

Prior to the issuance of a government regulation in lieu of Perpu Law No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism, terrorism crimes in Indonesia were still categorized as general crimes regulated in the Criminal Code (KUHP). Book II Chapter 1 of the Criminal Code (KUHP) regulates crimes against state security or *Misdrijven Tegen de Veiligheid van den staat*. Several articles in it are regulated on safeguarding against threats to the life of the state, such as threats against the dysfunctional president and vice president and overthrowing the legitimate government, and others. Some experts have termed the crime as a “crime against the preservation of state life.”

Crimes against state security are crimes that attack the legal interests of the state. As the name implies, this crime has the object of state security. As mentioned above, it is more appropriate to call it a crime against the preservation of state life, because what is being guarded here is the continuation of state life, ways or crimes of state administration. The establishment of this crime is intended to protect the legal interests of the safety and security of the state from acts that threaten, disrupt and damage the legal interests of the state.

From the above, it can be seen that there is a legal order that must be protected in the rules regarding crimes against the security of the country. The legal order includes the security of the head of state, the security of the state's territory, and the security of the form of government. Crimes against state security are sociologically called political crimes. The word politics comes from the Greek "politia" which means "everything related to the state or all actions, policies, tactics regarding the government of a country".

Theoretically, crimes against state security can have a national dimension which can be in the form of betrayal (Breach of duty of loyalty), incitement (Provocateur / advocate), treason against the head of state, join the enemy, rebellion, kidnapping, attack, spy activity, riots (Violent disturbance/threat of violence), hostility between races/tribes/religious adherents, destruction of goods for public interest, and slander against government officials.

The crimes against state security with an international dimension can be in the form of piracy (Piracy of ships), hijacking (Hijacking an airplane), terrorism (Use of violence for political purposes), sabotage (Acts that cause damage or disturbance), genocide (Extermination of all or part of a nation, ethnic, racial or religious group), hostages, misuse of drugs, contempt of court, and apartheid (Acts of violence on the basis of differences in race, color or national origin). In the Indonesian context, it is regulated in the Criminal Code Book II concerning crimes in Chapter 1. Crimes against state security are mentioned in articles 104 to 129.

Based on the provisions regarding crimes against state security in the Criminal Code, it is possible to classify the types of crimes against state security, namely:
1) The treason against the president or vice president (article 104 of the Criminal Code) which can be separated into 3 groups, namely treason committed with the aim of killing the president or vice president, treason committed with the aim of eliminating the independence of the president or vice president, and makar is carried out with the aim of nullifying the ability of the president or vice president to govern.

2) To include Indonesia under foreign control (Article 106 of the Criminal Code) which can be separated into two groups, namely it just causes all or part of the territory of Indonesia to become a colony or fall into the hands of the enemy and trying to cause part of the territory of Indonesia to become a state or to separate itself from the territory of the sovereignty of the Indonesian state.

3) Makar to overthrow the government (Article 107 of the Criminal Code). According to Wirjono Prodjodikoro, there are two kinds of criminal acts to overthrow the government, namely destroying the form of government according to the Constitution, such as abolishing the form of government according to the Constitution and replacing it with a completely new form and illegally changing the form of government according to the Constitution (Prodjodikoro, 2003).

4) Rebellion or opstand (article 108 of the Criminal Code).

5) Consensus or samenspanning and special participation or bijzondere deelneming (article 110 of the Criminal Code). This evil conspiracy or special participation refers to the crimes mentioned in articles 104, 106, 107, and 108 of the Criminal Code.

6) Establish relations with foreign countries that may be hostile to Indonesia (Article 111 of the Criminal Code). The forms of this crime are establishing relations with foreign countries with the aim of moving it to commit acts of hostility or war against the state, strengthen the intentions of the foreign country, promising assistance to the foreign country, and helping prepare the foreign country to commit acts of hostility or war against the country.

7) Establish relations with foreign countries with the aim that foreign countries assist an overthrow of the government in Indonesia (article 111 bis of the Criminal Code);

8) Broadcasting secret letters (articles 112-116 of the Criminal Code);

9) Crimes regarding state defense buildings (articles 117-120 of the Criminal Code);

10) Harming the country in diplomatic negotiations (article 121 of the Criminal Code)

11) Crimes usually committed by enemy spies (articles 122-125 of the Criminal Code);

12) Hiding enemy spies (article 126 of the Criminal Code);

13) Cheating in terms of selling goods needed for the army (Article 127 of the Criminal Code)

In its development, crimes against state security have shifted along with the paradigm shift in viewing the pattern of relations between the state and the people after the 1998 reform. Article 134 of the Criminal Code states: "Intentional insult to the president or vice president is punishable by a maximum imprisonment of 6 months, or a maximum fine of four thousand five hundred Rupiah."

The article can be emphasized by Article 136 of the Criminal Code which states: "The definition of humiliation as referred to in article 134 also includes the formulation of the act in article 135, if it is carried out outside the presence of the insulted, either by behavior in
public, or not in public, either verbally or in writing, but in the presence of more than 4 people or in the presence of a third person against his will and therefore feel offended.”

Makar is a crime against state security and is a political offense. Crimes against the state or treason have the same elements as trial offenses, namely starting with the intention and the beginning of the implementation. However, in treason there is no reason for the abolition of the prosecution, while in the experiment, if the perpetrator of the crime cancels his evil intention by himself, then the criminal prosecution of the act is abolished. Another difference that exists between treason and experiment is that treason has a specificity in its object, because the object in the act of treason is only for the following things, among others:

1) Against the president and vice president;
2) Against state sovereignty; and
3) Against the government.

Terrorism After the Enactment of PERPU No. 1 Year 2002

On October 18, 2002, President Megawati Soekarnoputri enacted Government Regulation in Lieu of Law (Perpu) Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism. The preamble of the Perpu states as follows:

1) Whereas in realizing the national goal as referred to in the Preamble to the 1945 Constitution, namely to protect the entire Indonesian nation and the entire homeland of Indonesia, and to promote public welfare, educate the nation's life and participate in implementing world order based on independence, eternal peace and social justice, absolute enforcement of law and order consistently and continuously;
2) That terrorism has taken lives without regard to victims and has caused widespread public fear, or loss of independence, as well as loss of property. Therefore, it is necessary to implement eradication measures;
3) Whereas terrorism has a wide network so that it is a threat to national and international peace and security;
4) Whereas the eradication of terrorism is based on national and international commitments by establishing national laws and regulations that refer to international conventions and laws and regulations relating to terrorism;
5) Whereas the prevailing laws and regulations so far have not been comprehensive and adequate to eradicate criminal acts of terrorism;
6) Whereas based on the considerations in letter a, letter b, letter c, letter, d and letter e, and there is a very urgent need, it is necessary to regulate the eradication of criminal acts of terrorism with a Government Regulation in Lieu of Law.

There are several philosophical, sociological, and juridical foundations in the formation of the Perpu, so that it comes to a conclusion that the crime of terrorism needs to be specifically and separately regulated in a law. The general explanation of the Perpu emphasizes that in line with the Preamble to the 1945 Constitution, the Republic of Indonesia is a unitary state based on law and has duties and responsibilities to maintain a safe, peaceful and prosperous life and actively participates in maintaining world peace.
To achieve the above objectives, the government is obliged to maintain and enforce sovereignty and protect every citizen from any threats or destructive actions both from within the country and from abroad.

Terrorism is a crime against humanity and civilization and is a serious threat to the sovereignty of every country because terrorism is an international crime that poses a danger to security, world peace and is detrimental to the welfare of the community, so it is necessary to carry out a planned and sustainable eradication so that the human rights of many people need to be carried out, can be protected and respected.

The commitment of the international community in preventing and eradicating terrorism has been manifested in various international conventions which emphasize that terrorism is a crime that threatens the peace and security of mankind so that all members of the United Nations including Indonesia are obliged to support and implement United Nations Security Council resolutions condemning and calls on all members of the United Nations to prevent and eradicate terrorism through the establishment of national laws and regulations in their countries.

The eradication of criminal acts of terrorism in Indonesia is a proactive policy and anticipatory step that is based on prudence and is long-term in nature because of the following:

First, the Indonesian people are multi-ethnic people with diverse and inhabit hundreds of thousands of islands scattered throughout the archipelago and some are located bordering other countries;

Second, with the characteristics of the Indonesian people, all components of the Indonesian nation are obliged to maintain and increase vigilance in the face of all forms of activities that constitute international criminal acts of terrorism;

Third, the conflicts that have occurred recently are very detrimental to the life of the nation and state as well as a decline in civilization and can be used as a fertile place for the development of criminal acts of terrorism of an international nature, whether committed by Indonesian citizens or by foreigners.

International terrorism is an organized crime, so the government and the Indonesian people are obliged to increase vigilance and work together to maintain the integrity of the Unitary State of the Republic of Indonesia.

Eradication of criminal acts of terrorism in Indonesia is not merely a matter of law and law enforcement but is a social, cultural, and economic problem related to the problem of national resilience so that policies and measures to prevent and eradicate them are also aimed at maintaining a balance in the obligation to protect state sovereignty, rights and freedoms, victims and witnesses, as well as the rights of the suspect/defendant.

The eradication of criminal acts of terrorism with the three objectives above shows that the Indonesian nation is a nation that upholds human civilization and has the ideals of peace and longs for prosperity and has a strong commitment to maintaining the territorial integrity of the sovereign Unitary State of the Republic of Indonesia in the midst of a tidal wave world peace and security subsiding.

Government Regulation in Lieu of Law concerning the Eradication of Criminal Acts of Terrorism is a special and specific provision because it contains new provisions that are not contained in the existing laws and regulations, and deviates from the general provisions as contained in the Criminal Code and the Law.
This Government Regulation in lieu of law also specifically contains provisions concerning the scope of jurisdictions that are transnational and international in nature and contains special provisions for terrorism crimes related to international terrorism activities. This special provision is not a form of discriminatory treatment but is a government commitment to realize the provisions of Article 3 of the Convention Against Terrorist Bombing (1997) and the Convention on the Suppression of Financing Terrorism (1999).

Other specificities of this Government Regulation in Lieu of Law include the following:

1) This Government Regulation in Lieu of Law is an umbrella provision for other laws and regulations relating to the eradication of criminal acts of theorists;
2) This Government Regulation in Lieu of Law is a special provision that is reinforced by criminal sanctions and is at the same time a Coordinating Act of Government Regulation (coordinating act) and serves to strengthen the provisions in other laws and regulations relating to the eradication of criminal acts of terrorism;
3) This Government Regulation in Lieu of Law contains special provisions regarding the protection of the human rights of suspects/defendant which are referred to as “safe guarding rules”. These provisions include, among others, introducing a new legal institution in criminal procedural law called "hearing” and functioning as an institution that conducts "legal audits” of all documents or intelligence reports submitted by investigators to determine whether or not an investigation into alleged acts of terrorism will be continued;
4) In this Government Regulation in Lieu of Law it is emphasized that criminal acts of terrorism are excluded from plot crimes or crimes with political motives or criminal acts with political aims so that their eradication in bilateral and multilateral cooperation can be carried out more effectively;
5) The Government Regulation in Lieu of Law contains provisions that allow the President to establish an anti-terror task force. The existence of the unit is based on the principles of transparency and public accountability (sunshine principle) and/or the principle of limiting the effective time (sunset principle) so that the possibility of abuse of authority possessed by the unit can be avoided immediately;
6) This Government Regulation in Lieu of Law contains provisions concerning jurisdiction based on territorial principles, extraterritorial principles, and active national principles so that it is expected to effectively have coverage against terrorism crimes as referred to in this Government Regulation in Lieu of Law which exceeds the limits the territorial boundaries of the Republic of Indonesia. To strengthen this jurisdiction, this Government Regulation in Lieu of Law contains provisions on international cooperation;
7) This Government Regulation in Lieu of Law contains provisions concerning financing for terrorist activities as a criminal act, thereby at the same time strengthening Law Number 15 of 2002 concerning the Crime of Money Laundering;
8) The provisions in this Government Regulation in Lieu of Law do not apply to the freedom to express opinions in public, either through demonstrations, protests or advocacy activities. If in freedom of expression there is an action that contains a criminal element, the Criminal Code and the provisions of laws and regulations outside the Criminal Code shall be applied;
In this Government Regulation in Lieu of Law, the threat of criminal sanctions with a special minimum is maintained to strengthen the function of deterrence against perpetrators of criminal acts of terrorism.

The use of Government Regulations in Lieu of Laws to regulate the Eradication of Criminal Acts of Terrorism is based on the consideration that the occurrence of terrorism in various places has caused material and immaterial losses and caused insecurity for the community, so it is urgent to issue Government Regulations in Lieu of Laws in order to immediately create a conducive atmosphere, conducive to the maintenance of order and security without abandoning the principles of law.

In its development, the Perpu has been ratified as law with Law Number 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism into law.

CONCLUSION
Protection of the Rights of Terrorism Suspects in the Criminal Justice System the Criminal Procedure Code (KUHAP) has formulated a number of rights for suspects that protect them from various possible human rights violations, although normatively, the protection of suspects' rights has been clearly regulated in the Criminal Procedure Code, however, in the case of criminal acts of terrorism, these normative rules are often easily ignored by law enforcement officials. In relation to the phenomenon of law enforcement and the protection of the rights of suspects as stated above, an understanding of the criminal law formulation policies regarding the rights of terrorism suspects is guaranteed by the Criminal Procedure Code. In Article 50 of the Criminal Procedure Code which gives legal rights according to law and legislation to suspects of criminal acts of terrorism, including:

1) The suspect has the right to immediately get an examination by the investigator and can then be submitted to the Public Prosecutor (Article 50 paragraph (1), the suspect has the right to have his case immediately brought to the Court by the Public Prosecutor (Article 50 paragraph (2)), the defendant has the right to be immediately tried by the Court (Article 50 paragraph (2).

2) The right to defend, namely regarding the rights of suspects of criminal acts of terrorism in terms of defending, among others: the right to get an explanation in an understandable language, the right to give information freely, the right to get an interpreter, the right to get legal assistance, the right to choose one's own legal advisor, the right to get an interpreter, free legal aid.

The principle of presumption of innocence is that every person who is suspected, arrested, detained, prosecuted and/or brought before a court, must be considered innocent until there is a court decision that declares his guilt and obtains permanent legal force. Indonesia is a constitutional state based on Pancasila and the 1945 Constitution which upholds Human Rights and guarantees all rights of citizens along with their position in law and government. The purpose and formation of the Law on the Eradication of Criminal Acts of Terrorism is the community, while the paradigm of the formation of the Law on the Eradication of Criminal Acts of Terrorism which is a trinity, namely protecting the territory of the Unitary State of the Republic of Indonesia, Human Rights and Protection of the Rights of Suspects.
The process of establishing the Criminal Procedure Code that we want to fight for is an understanding to see that the criminal justice process is based on a fair legal process (due process of law), where the rights of the suspect/defendant are protected and considered part of the rights of citizens because it is part of the rights of citizens of human rights. Human rights are inherent in each person individually, regardless of whether or not terrorism is eradicated, but these rights are absolutes that must be fulfilled by every law enforcer who handles terrorism cases. This can be seen from the arrests that often cause fatalities from terrorist suspects, arrests that are not accompanied by an arrest warrant and a copy of the suspect's arrest warrant to the family, the suspect is not permitted to be accompanied by legal counsel during the 7 x 24 hours arrest period. The crime of terrorism is an extraordinary crime which requires different ways to deal with ordinary criminal acts, because these acts of terrorism generally involve networks in their implementation so that it is not easy for law enforcers, especially investigators to uncover the crime. This is done to ensure that the examination process continues to be fair and to avoid facts that have just been revealed at trial, because sometimes investigators do not ask about mitigating witness issues during an investigative examination. The crime of terrorism is an extraordinary crime which requires different methods from ordinary criminal acts, because these acts of terrorism generally involve networks in their implementation so that it is not easy for law enforcers, especially investigators to uncover the crime. This is done to ensure that the examination process continues to be fair and to avoid facts that have just been revealed at trial, because sometimes investigators do not ask about mitigating witness issues during an investigative examination. The crime of terrorism is an extraordinary crime which requires different methods from ordinary criminal acts, because these acts of terrorism generally involve networks in their implementation so that it is not easy for law enforcers, especially investigators to uncover the crime. This is done to ensure that the examination process continues to be fair and to avoid facts that have just been revealed at trial, because sometimes investigators do not ask about mitigating witnesses during an investigative examination.

If the suspect is a foreign national, then at the time of handing over the suspect from the investigator to the public prosecutor, or during examination at trial, the suspect is accompanied by an interpreter.

In the context of preventing, tackling and eradicating criminal acts of terrorism, the Government of the Republic of Indonesia has enacted Law Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism into Law as well as Law Number 15 2002 concerning the Crime of Money Laundering as amended by Law Number 25 of 2003 concerning Amendments to Law Number 15 of 2002 concerning the Crime of Money Laundering and in connection with a free and active foreign policy, the Government of the Republic of Indonesia has enacted Law Law Number 37 of 1999 concerning Foreign Relations and Law Number 24 of 2000 concerning International Treaties. In this regard and in accordance with the commitment of the government and the people of Indonesia to always actively take part in every effort to eradicate all forms of criminal acts, both national and transnational, especially the crime of terrorism, the Indonesian people are determined to eradicate the crime of financing terrorism through cooperation, bilaterally, regionally and internationally.
Optimizing the Application of the Presumption of Innocence in Indonesia’s Law Enforcement Against Terrorists

REFERENCES