

P-ISSN : 2337-9251  
E-ISSN : 2957-9094

# JHR

## *Jurnal Hukum Replik*

Volume 12 No. 1 Maret 2024



Published by:  
**FACULTY OF LAW**  
**UNIVERSITAS MUHAMMADIYAH TANGERANG**

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## **Enforcement of Reduced Punishment for Perpetrators of Terrorism Crimes against Death Penalty Punishment**

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### Abstract

Terrorism is one of the crimes that fall under the death penalty category. The threat of the death penalty for perpetrators of criminal acts of terrorism as a tool to enforce the law. However, there are conflicting rules between the death penalty and human rights. So, can the death penalty be changed to life imprisonment? This research aimed to analyse whether reducing punishment for those convicted of terrorism could be enforced. This research uses a normative research method with a statutory, conceptual, and case approach through judge decisions relating to terrorism cases. The implementation of Law Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism considers acts of terrorism to be a threat to ideology and national security. The death penalty is imposed as a last resort to protect society and can be carried out after a prisoner's request for pardon is rejected by the President. Legal efforts that can be taken to reduce terrorism punishment range from filing an appeal, cassation, and judicial review to the final application to ask for forgiveness from the President, who is the convict's only hope of reducing the sentence to obtain human rights protection and legal relief.

**Keywords:** Terrorism, Death penalty, Decreasing Crime.

### INTRODUCTION

Indonesia is a country of law. This is contained in Article 1, paragraph 3 of the 1945 Constitution of the Republic of Indonesia (from now on, abbreviated to the 1945 Constitution of the Republic of Indonesia). Law coordinates various interests between individuals, nations and countries themselves so that they can be guaranteed and realised without harming others. The implementation of the death penalty in Indonesia continues to this day. Convicts sentenced to death are a group of convicts who have committed serious crimes, such as premeditated murder, drugs and terrorism(Chandrawati, 2020).

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## Universitas Muhammadiyah Tangerang

P-ISSN: 2337-9251 E-ISSN: 2597-9094

Vol. 12 No. 1 Maret 2024

Submit: 16 Dec 2023

Revised: 03 March 2024

Published: 25 March 2024

Terrorism is one of several types of crimes that fall under the death penalty category. Terror is likened to “throwing stones and hiding your hands”(Rizkiansyah, 2013). This terror makes people wary of the people around them. The increasingly widespread connection to terrorism in Indonesia is a severe threat to the Republic of Indonesia. Perpetrators of criminal acts of terrorism now not only spread threats to various directions but can also carry out their actions in crowded places, causing many victims to fall, destroying key objects and causing damage to public facilities.

From a legal (juridical) perspective, this form of crime, such as terrorism, has been regulated in the Law of the Republic of Indonesia Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism into Law. Law of the Republic of Indonesia Number 5 of 2018, which was created to provide a deterrent effect on those convicted of terrorism and to make other people who have the potential to become terrorists afraid, the application of the death penalty is seen as a strict sanction against terrorists and class criminals heavy(Tambajong, Sondakh, & Lengkong, 2021). The losses caused by this act of terrorism were huge and had an impact on Indonesia at the time of the Bali Bombing tragedy. The government must immediately conduct investigations by thoroughly prosecuting perpetrators of terrorism.

Article 6 and 10 in Law No. 5 of 2018 contains the threat of the death penalty, which is currently in effect in Indonesia as a tool to enforce the law within the scope of criminal acts of terrorism. The death penalty, being a policy and regulation, has a basic idea, which means that it will later experience many obstacles and competing arguments regarding the validity and evidence of its opinions, so before that happens, a prior understanding is needed regarding the meaning of the death penalty. The death penalty is a punishment given to the perpetrator by taking his or her life based on a court decision(Puro, Sudarmanto, & Arifin, 2023). The death

penalty for perpetrators of terrorism is faced with various debates, such as human rights. There are conflicting rules between the death penalty and human rights. So, can the death sentence be changed to life imprisonment?

One of the cases of terrorism that occurred in Indonesia was on September 9 2004(Mareta, 2018): a bombing with a colossal explosion happened at the Australian Embassy in Jakarta at 10.20 WIB. The target was the Australian Embassy office located at Jalan Rasuna Said; at that time, many vehicles were passing by people working in offices around the Australian Embassy. The bombing incident that occurred caused Jakarta to mourn because of the large number of victims in the incident, and most of the victims were Indonesian citizens. The bombing at the Australian Embassy killed five people at the scene, and hundreds of other people were injured. Judging from the explanatory description and examples of cases in the sentencing of terrorist perpetrators, we will examine this problem in more depth regarding the implementation of reduced death punishment for those convicted of terrorism.

## **RESEARCH METHODS**

The research method used in this research, namely the normative research method, is a scientific research procedure to find the truth based on scientific logic from the normative side. Peter Mahmud states, "Normative legal research is a method or method used in legal research carried out by examining existing library materials"(Marzuki, 2010). In normative legal research, only secondary data sources are usually used, namely books, diaries, statutory regulations, court decisions, legal theories and the opinions of leading legal scholars. The approach method in this research is a statutory approach, carried out by examining all laws and regulations related to the discussed legal issue (Marzuki, 2010). In this research, the legislative process includes the 1945 Constitution of the Republic of Indonesia and Law

Number 5 of 2018 concerning the Eradication of Criminal Acts of Terrorism. Conceptual approach: this approach departs from the views and doctrines of human rights, punishment and social reintegration of perpetrators of criminal acts of terrorism. Apart from that, there is also a *case approach* through judges' decisions relating to terrorism cases.

## **RESULTS, DISCUSSION, AND ANALYSIS**

### **Theory of Penal in the Criminal Law System**

Penal law is a collection of norms in which several obligations and prohibitions are related to punitive sanctions, namely an extraordinary suffering created by the legislators (Fuji Lestari, Erdianto Effendi, 2019). Based on the principle of *Nulla Poena Sine Lege*, the judge can only decide on sanctions Criminal by Type and Severity of Sanctions in accordance with the dose determined by Law (Nimerodi Gulo, 2018). Three theories are known in the death penalty in positive law (Fardha, 2023), including absolute theory (retaliation theory), punishment is created to avenge criminal acts committed by people. The essence of punishment is retribution. Relative Theory (goal theory) is used to deter perpetrators from committing crimes. Punishment is a method used to prevent the perpetrator. This theory sees crime not to produce retribution but as a beneficial goal. The combined approach combines criminal objectives between retaliation and the idea of dreams. The purpose of punishment is another way to create protection and security for society. This theory exists because it is considered unfair or one-sided based on the teachings between absolute theory and relative theory (Afifah, 2018).

The death penalty is classified as a form of last resort if other options cannot be used properly. The death penalty cannot be classified as the most crucial option for regulating, ordering and improving society. Because of this, the death penalty can be maintained and continues to exist in the Criminal Code (KUHP); the government



considers the death penalty appropriate and not contrary to the Constitution of the Republic of Indonesia. This assumption was strengthened by the Constitutional Court's (MK) response that human rights could be limited, and Article 28J was placed to enhance this response. Article 28J is the final or closing article of the provisions relating to human rights in Chapter 10A of the 1945 Constitution of the Republic of Indonesia.

Renewal of the national criminal law and equalisation of rules and regulations relating to the death penalty are formulated, implemented and implemented through the criminal justice system in Indonesia. The death penalty is no longer classified as a general crime but has been ranked as an optional form of punishment with unique characteristics. The death penalty can be sentenced using a probation period of 10 years. If the criminal shows good behaviour during probation, the sentence can be changed to life imprisonment or 20 years. Apart from that, for legal certainty to operate, the Constitutional Court recommends that all death penalty decisions with legal force be implemented as soon as possible.

### **Death Penalty as a Sanction Imposed by a Judge**

The death penalty is a sentence or court verdict with the most severe punishment a person can receive as a result of a crime committed. Death penalty or known as capital punishment, is defined as a punishment or form of the most severe sentence given by the Court because in essence the death penalty eliminates the opportunity for convicts to be rehabilitated (Teguh Prasetyo, 2020). On June 22 2018, or to be precise, Friday, the perpetrator of the crime of terrorism, Aman Abdurrahman, was sentenced to death in a trial to read the verdict. The panel of judges revealed that Aman had been clearly and legally proven to have committed a crime in the form of terrorism. Defendant Aman Abdurrahman violated Law No. 5 of 2018 concerning terrorism by encouraging other people to carry out acts of terror (Rozaq, 2023).



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Vol. 12 No. 1 Maret 2024

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The imposition of the death penalty against the defendant Aman Abdurrahman was weighed against several factors, including the defendant is someone who has committed crimes (terrorism) repeatedly or is commonly known as a recidivist, the defendant is an originator, creator and person who founded the Anshorut Daulah congregation which is an organisation which opposed the establishment of the Unitary State of the Republic of Indonesia by considering them infidels and must be fought, the defendant was the mastermind behind his followers carrying out the aliyah jihad, terror was carried out by Aman with his collection of arguments to the point of sacrificing many people. The actions carried out by the defendant caused many victims to fall; some died and were seriously injured. The defendant had uploaded his knowledge regarding the shirk of democracy on a Millah Ibrahim page, which many people could access, thus influencing these people and also causing harm to the state.

In the death penalty decision, the judge considers the defence of human rights for the victims whom the criminal defendant forcibly withdrew. This is done to show that no one has the right to take the life of another person who has not done anything wrong to respect the human rights of fellow human beings according to Article 28 J of the 1945 Constitution of the Republic of Indonesia, which states "everyone is obliged to respect the human rights of other people and must submit to restrictions stipulated by law." In the case involving Aman Abdurrahman, the defendant prostrated himself after the judge sentenced him to death. The imposition of the death penalty for crimes of terrorism has indicated that the hopes and desires of the government and society are still using the terrorism law.

### **Terrorism Crimes from a Legal Perspective**

Terrorism has become a crime against humanity and civilisation. It is a pretty serious threat to the sovereignty of every country because the threat of terrorism is

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categorised as international, which has a significant impact on security and world peace and can also hurt the welfare of society as a result of which eradication must be carried out in a planned and sustainable manner so that the rights human rights can be protected and respected.

In criminal law, terrorism is categorised in the conventional crime group. Terminologically, of course, terrorism uses all forms of violence to frighten people to achieve its primary goal, namely political goals. Perpetrators of criminal acts of terrorism are called terrorists, namely people who use violence to scare other people (Astri Yulianti, Ade Mahmud, & Izadi, 2022).

The consideration for the issuance of Law No. 5 of 2018 is that the crime of terrorism is considered a form of threat to ideology and state security. Indonesia is a country of law, so in a land of law, statutes and regulations are made with the principle of legal certainty and predictability so that the public can know what actions may be subject to legal action. The term radical has yet to have a definite definition, so it is not by the paradigm of the rule of law, one of which is protecting human rights from arbitrary actions by the state (Yunus, 2017). The factors that are considered to encourage the formation of terrorism are as follows economic factors, ideological factors, educational factors, political factors, and psychological factors (Khamdan, Kunci, Radikalisasi, & Damai, 2015).

The death penalty is not a primary or *indispensable factor* in efforts to minimise terrorism. A criminal system so focused on punishing aspects *can* gradually be seen as a system and means different from the concepts of social reintegration and rehabilitation. This concept aims for convicts to reflect and be aware of their mistakes and become highly responsible individuals like before. A criminal philosophy based on retaliation is no longer Indonesia's leading standard or reference. The Constitutional Court stated this firmly through Decision 013/PUU-

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I/2003, which said: “The *non-retroactive principle* refers more to the philosophy of punishment based on retribution, even though this principle is no longer the main reference for the criminal system in our country which refers more to preventive and educational principles”.

An example of a judge's decision in a terrorism case is the bombing case at the Kelapa Dua Mobile Brigade Command Headquarters in 2018. In this case, the East Jakarta District Court judge sentenced six terrorism convicts involved in the riot to death. They were found guilty of being involved in the attack and being the mastermind behind the riot, which resulted in the deaths of five police officers and one prisoner. The defendant was declared to have violated Article 6 of the Anti-Terrorism Law No. 15 of 2003. In his decision against the six defendants, the judge stated that their actions were "very sadistic and inhumane." The verdict read by the panel of judges was based on the public prosecutor's demands at the previous trial, which was held virtually on March 17.

All forms of terrorism are undoubtedly a threat to Indonesia's national security interests, and the state must play a role in eliminating this potential threat. Therefore, in imposing the death penalty from a neutral perspective, it is necessary to pay attention to human rights contained in the life and blood of the Indonesian nation, such as the preamble to the 1945 Constitution of the Republic of Indonesia and further considerations of the 1945 Constitution of the Republic of Indonesia on its impacts and potential threats. Of course, we all know that a terrorist attack is a violation of other people's rights and human rights in Indonesia, which allows the perpetrator to be sentenced to death if there are fatalities.

### **Forms of Terrorism in the Development of Modern Technology**

Modern technology constantly develops and is vital in disseminating and accessing information. Technology becoming increasingly advanced and developing is causing

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Revised: 03 March 2024

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civilisation to become modern quickly. The internet is an example of technological advances influencing humans to act more creatively. The internet creates a new abstract world that feels real and has a real influence on human development. The development of the new world is now better known as cyberspace or *cyberspace*.

Radical and terrorist groups control an internet network. Internet media can be very effective for improving communication and also as a tool for gathering new members. With the development of the internet, the spread of messages and various propaganda will also develop, which will make people aware of this fact and, at the same time, facilitate extremist and radical groups to demonstrate their existence and spread their ideology via information and communication technology-based media, such as social media networks (Syafiq, 2021). For example, ISIS, which only developed in April 2013, shows how this radical extremist group has successfully used information and communication technology as an *extension of man*. Initially, ISIS was a local movement that began with the founding of *Jamaat Jaysh Ahl al-Sunnah wa-l-Jamaah* (JJASJ) (Nuruzzaman, 2018).

Initially, ISIS was a local movement whose aim was to establish an Islamic state in Iraq and Syria. However, during the development process, this organisation consisting of fighters or *militias* not only came from Iraq and Syria but there were also ISIS members who came from countries outside the Middle East. Soldiers who came from various countries and joined ISIS, such as England, France, Germany and other European countries, as well as from America, the Arabian Peninsula and the Caucasus. Not only coming from various countries, the ISIS movement or ideology has also been successfully sent and spread outside Iraq and Syria. Indonesia is also a country where ISIS has branches in various regions. The firm rejection from the government and society was carried out to prevent the presence of ISIS in Indonesia (Nuruzzaman, 2018).

In 2015, at least hundreds or even thousands of young people from Western countries were recruited by ISIS just by using the power of social media. 1/6 of them are women. The massive terrorist movement on Timeline is driving social media companies crazy. Facebook, Google, and Twitter have begun to mobilise their forces to combat radical propaganda on social media. In 2015, Twitter closed 125,000 ISIS parent accounts, as with Facebook. The Internet and social media facilitate terrorism and extremist activities. The old pattern of recruiting jihadists through face-to-face meetings is still practised, and this movement is being accelerated with the help of social media.

Take the example of Akbar, who intended to join ISIS after learning that his parents, Yazid Urwan Farahuddin and Virdan Muhorad, had joined ISIS. If Yazid cannot be contacted directly, Akbar cannot participate. This proves that recruitment patterns are the same as before, with technology playing an increasing role in radicalism. So, communication becomes more accessible, and radicalism reaches Indonesia more quickly.

### ***Special Punishment in the Death Penalty for Terrorism Crimes***

In Law Number 1 of 2023 concerning the Criminal Code, the death penalty or capital punishment is still regulated as a criminal sanction. Still, it is no longer covered by other groups of essential criminal sanctions. Law Number 1 of 2023 concerning the Criminal Code Article 67 contains provisions that the death penalty is a grave crime and that alternatives are always offered. Even though it is not included in the list of basic crimes, the death penalty is recognised as a particular form of bare punishment. The description of this article states that the death penalty is included in a separate report to show that this kind of punishment is exceptional. The death penalty is the most severe type of crime compared to other sorts of crimes. Therefore, the convict must constantly be threatened with another criminal

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Vol. 12 No. 1 Maret 2024

Submit: 16 Dec 2023

Revised: 03 March 2024

Published: 25 March 2024

offence, namely life imprisonment or a maximum sentence of 20 years(Widayati, 2017).

Death punishment can receive a conditional sentence with a probation period. In its implementation, the death penalty can only be postponed by undergoing a probationary period of 10 years with certain conditions, namely: "(i) the public reaction is not too big, (ii) the convict shows regret, and there is hope for improvement, (iii) the position of the convict the inclusion of a criminal act is not very important, and (iv) there are mitigating reasons." Regarding the postponement of the death penalty, this also exists in several countries, in American states, for example. In this country, the purpose of postponing the death penalty is to stop the death penalty while awaiting in-depth studies related to the reform of the existing death penalty system(Arief, 2010).

In the formulation of the death penalty, there are three opinions contained in Law Number 1 of 2023 concerning the Criminal Code: "First, the death penalty is abolished as a form of criminal sanction. Second, the death penalty remains a form of criminal sanction as the main punishment. Third, the death penalty remains a form of criminal sanction. Still, it is special, with special conditions." Each comes with supporting solid arguments. Law Number 1 of 2023 concerning the Criminal Code finally states that the death penalty is a "special punishment and is always threatened alternatively".

Regarding the existence of death penalty regulations in Indonesia, especially in the Draft Criminal Code, the application of the death penalty is a particular *punishment*(Biro humas, 2022). In contrast to *Mary's discipline*, which is fixed and constant, *special punishment* can change. If a convict behaves well, the sentence can be reduced to life imprisonment or twenty years. While serving as a correctional officer (WBP), good behaviour can help you apply for a reduced sentence or parole. Similar

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to the death penalty in Law Number 1 of 2023 concerning the Criminal Code, several countries that still maintain the death penalty only apply the death penalty for certain crimes, threatening other options for life or prison. However, in its development, there has been a tendency to reduce the use of prison punishment.

According to Article 34 paragraph (2) Government Regulation no. 28 of 2006 concerning Amendments to Government Regulation no. 32 of 1999 concerning Requirements and Procedures for the Implementation of the Rights of Prisoners, remission is given to prisoners and criminal children if they have good behaviour and have served an illegal term of more than six months. Specifically, prisoners who are classified as having *Extraordinary Crimes*, namely the crime of terrorism, can be given remission if they have good behaviour and have served one-third of their sentence.

Government Regulation No. 28 of 2006, which changed the provisions in PP Number 32 of 1999, considering the specificity and impact of this act of terrorism is so significant, the conditions for applying for remission for criminal acts of terrorism are more stringent, namely that terrorist convicts can apply for the remission if they have served 1/3 of their sentence. And has behaved well while in correctional institutions. They are starting from the issue of criminal acts of terrorism, which are classified as extraordinary *crimes*.

Judging from the impact and victims caused by criminal acts of terrorism, granting remission to terrorist convicts is considered to harm the sense of justice of victims of acts of terrorism and society in general who demand the most severe punishment commensurate with their actions. The public's understanding of justice is disturbed when a terrorist who takes many innocent lives or causes widespread fear in real terms only serves two to three years in prison in a correctional institution because after serving 1/3 of the sentence, he is already entitled to remission. As an



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*extraordinary crime*, society wants terrorism convicts to be punished with the maximum sentence.

### **CONCLUSION**

Acts of terrorism are seen as a threat to ideology and national security. The imposition of the death penalty on terrorism convicts is weighted against someone who has committed terrorist crimes repeatedly or commonly known as a recidivist. The death penalty contradicts the State constitution, namely the 1945 Constitution of the Republic of Indonesia, contained in Articles 28 A and 28 I paragraph (1). Apart from that, the death penalty also does not provide a deterrent effect. The imposition of the death penalty must be based on the consideration of the Supreme Court so that the President can make a final decision. Unlike the main punishment, which is fixed and constant, the *special penalty* can change according to Article 34 paragraph (2) Government Regulation no. 28 of 2006 concerning Amendments to Government Regulation no. 32 of 1999 concerning Requirements and Procedures for the Implementation of the Rights of Prisoners, remission is given to prisoners and criminal children if they have good behaviour and have served an illegal term of more than six months. For this reason, terrorism convicts can be given remission if they have good behaviour and have served one-third of their sentence.

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Vol. 12 No. 1 Maret 2024

Submit: 16 Dec 2023

Revised: 03 March 2024

Published: 25 March 2024

### REFERENCES

- Afifah, H. (2018). Penjatuhan Pidana Mati Terhadap Teroris Dalam Pasal 6 Undang-Undang Nomor 15 Tahun 2003 Tentang Pemberantasan Tindak Pidana Terorisme Perspektif Hukum Islam.
- Arief, B. N. (2010). *Kapita Selekta Hukum Pidana*. Bandung: Citra Aditya Bakti.
- Astri Yulianti, Ade Mahmud, & Izadi, F. F. (2022). Pemidanaan bagi Pelaku Terorisme dalam Perspektif Hukum Pidana Positif dan Hukum Pidana Islam. *Jurnal Riset Ilmu Hukum*, 101–106. <https://doi.org/10.29313/jrih.v2i2.1456>
- Biro humas, H. dan K. (2022). Wamenkumham: Hukuman Mati Merupakan Special Punishment”, [www.kemenkumham.go.id](http://www.kemenkumham.go.id), 28 Maret 2022, p.1., [Htts://Kemenkumham.Go.Id/](https://Kemenkumham.Go.Id/), p. 1. Retrieved from <https://kemenkumham.go.id/berita-utama/wamenkumham-hukuman-mati-merupakan-special-punishment>
- Chandrawati, I. G. A. . F. (2020). Pidana Penjara Seumur Hidup Atau Pidana Mati (Konfigurasi Dilematis Antara Hukum Dan Kemanusiaan). *Kertha Semaya: Journal Ilmu Hukum*, 8(12), 1984. <https://doi.org/10.24843/ks.2020.v08.i12.p15>
- Fardha, K. V. (2023). Perkembangan Teori-Teori Hukum Pidana. *INNOVATIVE: Journal Of Social Science Research*, 3(5), 3987.
- Fuji Lestari, Erdianto Effendi, and W. E. (2019). TINJAUAN YURIDIS PIDANA MATI TERHADAP TINDAK PIDANA TERORISME PERSFEKTIF HAK ASASI MANUSIA. *Jurnal Online Mahasiswa (JOM) Bidang Ilmu Hukum*, 6(2), 1–15.
- Khamdan, M., Kunci, K., Radikalisasi, :, & Damai, B. (2015). Rethinking Deradikalisasi: Konstruksi Bina Damai Penanganan Terorisme. *Addin*, 9(1),

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P-ISSN: 2337-9251 E-ISSN: 2597-9094

Vol. 12 No. 1 Maret 2024

Submit: 16 Dec 2023

Revised: 03 March 2024

Published: 25 March 2024

181–204.

Mareta, J. (2018). REHABILITASI DALAM UPAYA DERADIKALISASI DALAM NARAPIDANA TERORISME. *Masalah-Masalah Hukum*, 47(4), 339.

<https://doi.org/10.14710/jis.%v.%i.%Y.527-539>

Marzuki, P. M. (2010). *Penelitian Hukum*. Jakarta - Indonesia: Kencana Prenada Media Grup.

Nimerodi Gulo, A. K. M. (2018). DISPARITAS DALAM PENJATUHAN PIDANA. *Masalah-Masalah Hukum*, 47(3), 225.

Nuruzzaman, M. (2018). TERORISME DAN MEDIA SOSIAL SISI GELAP BERKEMBANGNYA TEKNOLOGI INFORMASI KOMUNIKASI. *Syntax Literate: Jurnal Ilmiah Indonesia*, 3(9), 68. Retrieved from file:///C:/Users/ASUS/Downloads/460-Article Text-1208-1-10-20180927.htm

Puro, D. R., Sudarmanto, K., & Arifin, Z. (2023). Optimalisasi Pelaksanaan Pidana Mati Dalam Mewujudkan Efek Jera Pada Tindak Pidana Pembunuhan Berencana pelaku tindak pidana pembunuhan memiliki beberapa bentuk atau kualifikasi. *JURNAL USM LAW REVIEW*, 6(35), 8–12.

Rizkiansyah, M. (2013). MAKNA IDEOLOGI DAN BENTUK PROPAGANDA MEDIA ( Studi Semiotika Barthes media Eramuslim dan National Israel Terhadap Kasus Mavi Marmara ). *Communication*, 2(1), 545–555. Retrieved from <https://www.slideshare.net/ALBICEE/lembar-observasi-siswa-50178674>

Rozaq, M. (2023). *Kebijakan Kriminal Dalam Rangka Pemberantasan Tindak Pidana Terorisme Di Indonesia*. 6(2), 4985–4993.

Syafiq, M. (2021). Proses Perubahan Diri Seorang Teroris menjadi Aktivistis

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## Universitas Muhammadiyah Tangerang

P-ISSN: 2337-9251 E-ISSN: 2597-9094

Vol. 12 No. 1 Maret 2024

Submit: 16 Dec 2023

Revised: 03 March 2024

Published: 25 March 2024

Perdamaian. *Jurnal Ilmiah Psyche*, 15(2), 73–92.

<https://doi.org/10.33557/jpsyche.v15i2.1564>

Tambajong, M., Sondakh, D. K. G., & Lengkong, N. L. (2021). Analisis Hukum Tentang Penerapan Hukuman Mati Terhadap Pelaku Tindak Pidana Terorisme Dalam Perspektif Hak Asasi Manusia Di Indonesia. *Lex Administratum*, IX(8).

Teguh Prasetyo, J. kameo. (2020). PERADILAN HAK ASASI MANUSIA: SUATU PERSPEKTIF MENURUT JURISPRUDENCE KEADILAN BERMARTABAT Teguh Prasetyo 1 , Jeferson Kameo 2. *Jurnal Ilmu Hukum*, 15(2), 143–154.

Widayati, L. S. (2017). Pidana Mati Dalam Ruu Kuhp: Perlukah Diatur Sebagai Pidana Yang Bersifat Khusus?(Death Penalty In The Bill Of Criminal Code: Should Regulated As A Special Punishment?). *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 7(2), 167–194.

Yunus, A. F. (2017). Radikalisme, Liberalisme dan Terorisme: Pengaruhnya Terhadap Agama Islam. *Jurnal Online Studi Al-Qur An*, 13(1), 76–94.  
<https://doi.org/10.21009/jsq.013.1.06>