

# UNRAVELING LEGITIMACY: A Critical Examination of Anti-Terror Legislation in Indonesia

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**Abstract:** The Indonesian Law No. 5 of 2018 on the Prevention of the Criminal Acts of Terrorism, which is supposed to be the legal protection for every citizen, has generated resistance, resulting in delegitimization. This study aims to analyze the delegitimization of the anti-terrorism law, resulting in public resistance. The data was collected through observation, interviews and documentation studies in the form of the formulation of the anti-terror law. This study shows that the content of the enacted anti-terrorism law indicates a violation of human rights, which leads to delegitimization. The process of formulating the law without the participation of certain parties is considered counterproductive and makes the law less participatory. These things trigger the emergence of community resistance that leads to the failure of the law or the loss of the substance of the purpose of the legislation. As a result, the image of the government in preventing terrorism and extremism deteriorates, which in turn demonstrates the delegitimization of the law. This paper is limited to measuring the potential failure of the enactment of laws that have been passed and does not evaluate the implementation of anti-terrorism policies. Therefore, further studies are needed that focus on testing the effectiveness of the law by involving stakeholders.

**Keywords:** Delegitimization; anti-terror policy; Indonesia.

## Introduction

Indonesia's anti-terrorism policy, established by the law, tends to be delegitimized by the rejection of the law by various parties. This rejection has taken the form of resistance, either through discourse counters or mass mobilization actions. In the case of the UK, many people who asserted their civil rights were imprisoned due to the anti-terrorism program, which then led to various forms of resistance.<sup>1</sup> Policies aimed at suppressing and preventing terrorist acts tend to trigger terrorism. This has been proven in the past two decades; the Indonesian counterterrorism unit has arrested about 2000 terrorists.<sup>2</sup> In line with this, Audrey referred to a report from the Indonesian National Police, which stated that the increase of terrorist attacks in Indonesia increased by 42% in 2018 compared to the previous year, 2017.<sup>3</sup> This fact shows that preventing and countering terrorism is still a serious challenge for the Indonesian government. Even though the government has enacted an anti-terrorism law, there is still a contradictory response from the community, which leads to the delegitimization of the law.

The existing studies on terrorism tend to concentrate on three aspects: the counter-terrorism project related to human rights<sup>4</sup> and the model of prevention and counter-terrorism with different

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<sup>1</sup> Michael Lister & Lee Jarvis, "Disconnection and Resistance: Anti-terrorism and Citizenship in the UK," *Citizenship Studies*, 17(6-7), (2013): 756-769. <https://doi.org/10.1080/13621025.2013.834129>.

<sup>2</sup> Andi Firdaus, "BNPT: Densus tangkap 2.000 teroris sejak 2000-2019," <https://www.antaranews.com/berita/921076/bnpt-densus-tangkap-2000-teroris-sejak-2000-2019>.

<sup>3</sup> Audrey Santoso, "Kapolri: Kasus terorisme meningkat di 2018, 396 Teroris Ditangkap," <https://news.detik.com/berita/d-4360672/kapolri-kasus-terorisme-meningkat-di-2018-396-teroris-ditangkap>.

<sup>4</sup> Khaeron Sirin, "Hukuman Mati dalam Wacana Demokrasi (Perdebatan Antara Hukum Islam dan HAM di Indonesia)," *Al-Risalah: Jurnal Ilmu Syariah dan Hukum*, Vol. 13 No. 1, (Juni 2013): <https://doi.org/10.30631/al-risalah.v13i01.441>; Tirta Mulya Wira Pradana and Khairul Huda, "Penanganan Pelaku Tindak Pidana Terorisme dalam Perlindungan Hak Asasi Manusia," *Lex Scientia Law Review*, Volume 1 No. 1, November (2017): 19-32; Abdul Wahid et. al., *Kejahatan Terorisme: Perspektif Agama, HAM dan Hukum*, (Bandung: Refika Aditama, 2004); Siti Wulandari, "Penahanan Tersangka Tindak Pidana Terorisme dalam Perspektif Hak Asasi Manusia," *Audito Comparative Law Journal (ACLJ)*, Vol. 1, No. 1 (2020): 56-70. <https://doi.org/10.22219/audito.v1i1.12785>

perspectives,<sup>5</sup> the establishment of anti-terrorism laws,<sup>6</sup> and finally the factors and effects of terrorist ideology.<sup>7</sup> However, studies that examine the delegitimization factors of the anti-terrorism law have not received much attention.

This research attempts to identify the symptoms of delegitimization of the anti-terror law in Indonesia. It found that some articles of the law are not in line with the basic principles of human rights, limiting the right to express opinions and reject the enactment of anti-terror laws. Similarly, the formulation of the anti-terrorism law does not include public participation, leading to conflicting attitudes among those perceived as extremists. This research argues that the anti-terror law, which is intended as a legal umbrella to prevent acts of terrorism, still has the potential for delegitimization due to a process that does not take into account and consider humanitarian aspects. In this case, the anti-terror law is considered fragile because of the human rights violations in its content, the limitation of the participation of the targeted groups and

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<sup>5</sup> Ahmad Jazuli "Strategi Pencegahan Radikalisme dalam Rangka Pemberantasan Tindak Pidana Terorisme," *Jikb: Jurnal Ilmiah Informatika*, Vol. 10, No. 2 (2016): 197-209; Ulfa Khaerunisa Yanuarti, "Counter Terrorism bagi Pelaku Tindak Pidana Terorisme Sebagai Upaya Penanggulangan Kejahatan Terorisme di Indonesia," *Law Reform*, Vol. 10, No. 1, (October, 2014): 83-98. <https://doi.org/10.14710/lr.v10i1.12459>.

<sup>6</sup> Ahmad Mukti Aji, "Pemberantasan Tindak Pidana Terorisme di Indonesia: Analisis Terhadap UU No 15 dan 16 Tahun 2003 Berdasarkan Teori Hukum," *Jurnal Cita Hukum*, Vol 01, No 01, (2013). DOI: 10.15408/jch.v1i1.2980; Natalia Budi Darma, "Kebijakan Formulasi Hukum Pidana dalam Penanggulangan Tindak Pidana Terorisme di Indonesia," *Jurnal Daulat Hukum*, Vol 01, No 01 (2018). <https://doi.org/10.30659/jdh.v1i1.2649>; Sujasmin, "Penetapan Aspek Hukum Pidana Materiel dalam RUU Pemberantasan Tindak Pidana Terorisme." *Jurnal Wawasan Yuridika*, Vol 1, No 1 (2017). <https://doi.org/10.25072/jwy.v1i1.128>.

<sup>7</sup> Nugi Mohammad Nugraha et. al, "Dampak Aksi Terorisme dan Upaya Deradikalisasi Penanganan Atas Kondisi Sosial Ekonomi," *Jurnal Teknologi Dan Manajemen Industri*, Vol 5, No 1 (2019): 31-40. <https://doi.org/10.36040/jtmi.v5i1.262>; MS Rahardanto, "Mengkaji Sejumlah Kemungkinan Penyebab Tindak Terorisme: Kajian Sosio-Klinis," *Experientia: Jurnal Psikologi Indonesia*, Vol 1, No 1 (2012): 70-78. <https://doi.org/doi.org/10.33508/exp.v1i1.54>; MT Nugraha, "Dampak Aksi Ekstrimisme dan Terorisme Terhadap Collective Punishment Pada Wanita dan Anak-Anak," *Jurnal Harkat: Media Komunikasi Gender*, Vol 12/1, (2016): 46-52. <https://doi.org/10.15408/harkat.v12i1.7579>; V.W. Widajatun & Sakina Ichسانی, "Dampak Kejadian Aksi Teroris 2000-2016 di Indonesia," *Manners: Management and Entrepreneurship Journal*, Vol 2, No 1 (2019): 61-70.

the forms of resistance. In other words, the anti-terror law risks creating various forms of resistance from parties that are considered terrorist groups or extremists. This is because the law is a legal protection for all levels of society without social status barriers. If the law does not take into account various aspects, this will be the reason for the groups that do not agree with it to reject it in the form of resistance. This, of course, is detrimental to the government's image as a legislator and policymaker, as it creates disappointment among the aggrieved parties. Ultimately, this state of affairs further erodes public confidence in the law, leading to delegitimization.

### **Extremism, Delegitimization, and Resistance**

Extremism is a term used to describe a doctrine or attitude, both political and religious, that calls for action by any means necessary to achieve its goals.<sup>8</sup> Extremism is caused by marginalization, feelings of threat, humiliation, frustration, not being taken seriously, conspiracies, and rumors.<sup>9</sup> The concept of extremism is closely associated with authoritarian dictatorship and totalitarianism. On the other hand, extremism is also related to irrational thinking that usually arises in religious belief systems (fanaticism), which claim a monopoly on truth based on what they seek and transform society according to their backward vision.<sup>10</sup> The factors that lead to extremism show that extremists tend to have closed minds.<sup>11</sup> Furthermore, extremism is characterized by a particularistic morality that applies only to its members.

In Solahudin's research, violent extremism in Indonesia came into the public spotlight after the 2002 Bali bombings, which resulted in the deaths of 202 civilians, the majority of whom were Indonesian

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<sup>8</sup> A Faiz Yunus, "Radikalisme, Liberalisme dan Terorisme: Pengaruhnya Terhadap Agama Islam," *Jurnal Studi Al-Quran*, Vol 13, No 1 (2017): 76-94. <https://doi.org/10.21009/jsq.013.1.06>

<sup>9</sup> Frans Wijzen, "There are radical Muslims and normal Muslims': an analysis of the discourse on Islamic extremism," *Religion*, Vol 43, Issue 01 (2013): 70-88. <https://doi.org/10.1080/0048721X.2013.742745>.

<sup>10</sup> Astrid Böttcher, "Towards Academic Consensus Definitions of Radicalism and Extremism," *Perspectives on Terrorism*, Vol 11, No 4 (August 2017): 73-77. <https://www.jstor.org/stable/26297896>.

<sup>11</sup> Alex P. Schmid, "Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review," *The International Centre for Counter-Terrorism - The Hague* 4, no. 2 (2013). DOI: <http://dx.doi.org/10.19165/2013.1.02>.

and Australian citizens.<sup>12</sup> This shows that terrorism is also included in the practice of extremism, which is carried out through acts of terror, violence, and bombings that kill innocent people and cause destruction.<sup>13</sup> Terrorism is a form of threat of violence, either through speech, writing, images, symbols, or body movements, that can cause fear in individuals or communities and restrict the essential freedoms of individuals or society.<sup>14</sup> Terrorism is divided into two ideological orientations, namely right-wing terrorism, which is more likely to occur during prolonged periods of economic deprivation, and left-wing terrorism, which is more likely to occur during periods of improved economic conditions.<sup>15</sup> Terrorist activities are generally supported by religious fundamentalism, which is carried out based on instructions in the form of sacred texts as a justification for their actions.<sup>16</sup>

Law is a social institution that is a set of rules to meet basic human needs at all levels, which aims to achieve peace in society.<sup>17</sup> In the idea and construction of a state of law, the birth of the state of law is not despite the demand will be the fulfilment of human rights (HAM) and delegitimization of power that is arbitrary (absence of

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<sup>12</sup> Dina Afrianty, "Islamic Education and Youth Extremism in Indonesia," *Journal of Policing, Intelligence and Counter Terrorism*, Vol 7, No 2 (2012): 134-146. <https://doi.org/10.1080/18335330.2012.719095>; M Iqbal et. al., "Death Reminders Increase Agreement with Extremist Views but Not Violent Extremist Action in Indonesian Muslims," *Journal of Cross-Cultural Psychology*, Vol 47, Issue 6, (2016): 891-897. <https://doi.org/10.1177/0022022116646875>.

<sup>13</sup> M.H. Kamali, "Extremism, Terrorism and Islam: Historical and Contemporary Perspectives," *Islam and Civilisational Renewal*, Vol 6, No 2, (2015): 148-165. <https://doi.org/10.12816/0019163>.

<sup>14</sup> Aria Nakissa, "Security, Islam, and Indonesia," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia*, 176 (2-3), (2020): 203-239. <https://doi.org/10.1163/22134379-bja10004>.

<sup>15</sup> Simon Varaine, "Revisiting the Economics and Terrorism Nexus: Collective Deprivation, Ideology and Domestic Radicalization in the US (1948–2016)," *Journal of Quantitative Criminology*, Vol 36, No 3, (September 2020): 667-699. <https://doi.org/10.1007/s10940-019-09422-z>.

<sup>16</sup> I. E. Putra & Z. A. Sukabdi, "Can Islamic Fundamentalism Relate to Nonviolent Support? The Role of Certain Conditions in Moderating the Effect of Islamic Fundamentalism on Supporting Acts of Terrorism," *Peace and Conflict*, Vol 20, No 4, (2014): 583-589. <https://doi.org/10.1037/pac0000060>

<sup>17</sup> Muhammad Gazali Rahman, "Penegakan Hukum di Indonesia," *Al-Himayah*, Vol. 4 No. 1 (2020): 142-159.

arbitrary power).<sup>18</sup> Furthermore, in a state of law, laws and regulations are formed as the main pillar in the administration of a legal state that aims to provide legal security in society.<sup>19</sup> The process of making laws and regulations as a form of legal development begins with planning, proposing, discussing and ratifying, where all these processes are carried out by actors that in a modern democratic system are carried out by the executive and the legislature.<sup>20</sup> However, the participation of community groups in the making of laws and regulations is still low, leading to delegitimization in law.

Delegitimization in law often occurs because the government, as the ruler of the legislature, is seen as less aspirational and does not pay attention to the aspirations of the community as the subject of regulation.<sup>21</sup> Legal delegitimization in Indonesia can be seen in the birth of the KPK Law, which is delegitimized at the level of legal reformulation. Legal reformulation is necessary because the law moves to follow the dynamics of society and the state, but in the context of legal reformulation, legal considerations, and institutional aspirations are needed as a basis to legitimize the urgency of its formation. In the process of reformulating the KPK law, the domain of authority lies with the legislature along with the executive, but its authority must remain on the legal rails within the framework of legal supremacy. Meanwhile, other legal legitimacy can also be seen in the laws and regulations regarding criminal acts of terrorism, which still have weaknesses. Efforts to cover up these weaknesses are always made by the executive and legislative branches by amending the terrorism law and the penal code. The eradication of criminal acts of terrorism should be included in special laws and regulations because terrorism is an extraordinary crime in the form of transnational

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<sup>18</sup> Moh Fadhil, "Komisi Pemberantasan Korupsi, Politik Hukum Antikorupsi dan Delegitimasi Pemberantasan Korupsi," *Al-Ahkam*, Vol. 15 No. 2 (2019): 7-36. <https://doi.org/10.37035/ajh.v15i2.2203>

<sup>19</sup> Suwardi Sagama, "Analisis Konsep Keadilan, Kepastian Hukum dan Kemanfaatan dalam Pengelolaan Lingkungan," *Mazahib: Jurnal Pemikiran Hukum Islam*, Vol. 15, No. 1, (June 2016): 20-41. <https://doi.org/10.21093/mj.v15i1.590>

<sup>20</sup> Muhammad Resa Maulana, "Upaya Menciptakan Produk Hukum Berkualitas Konstitusi Melalui Model Preventif Review," *Jurnal Konstitusi*, Vol. 15 No. 4 (2018): 774-795. <https://doi.org/10.31078/jk1545>

<sup>21</sup> Joko Riskiyono, "Partisipasi Masyarakat dalam Pembentukan Perundang-Undangan untuk Mewujudkan Kesejahteraan," *Aspirasi*, Vol 6, No 2 (2015): 159-176.

networks such as people involved and financial support from outside the country.<sup>22</sup>

James C. Scott defines resistance as a reaction to a change in an individual's life, especially when the individual is under pressure so that the reaction takes the form of rejection and support from social groups.<sup>23</sup> Resistance is described as opportunities or adaptations for powerless groups to openly oppose the existing power structure in order to protect their interests and identity. Resistance is a form of expression that shows dissatisfaction with dominance.<sup>24</sup> This is in line with Foucault's view that where there is power, there is resistance.<sup>25</sup> The presence of resistance is influenced by several factors, namely changes in the culture and economy of the community, the existence of a new social structure, and the urgency of the social environment.<sup>26</sup> Meanwhile, the form of resistance in the community movement appears in five forms: ridicule, co-option, formal social control, violence, and silence, the five elements of which can be realized in the form of language and symbolic behavior.<sup>27</sup> This form of resistance results in decision-making in community groups to maintain equality and equal access in social interactions.<sup>28</sup>

Resistance is most often applied to the causal analysis of terrorism as an instrument of counter-hegemonic movements. Furthermore, resistance is also associated with vulnerable or

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<sup>22</sup> M Rahmat, "Politik Hukum Terhadap Tindak Pidana Terorisme dalam Pembaharuan Hukum Pidana Indonesia," *Jurnal Wawasan Yuridika*, Vol. 1, No. 2 (September 2017): 155-173. <https://doi.org/10.25072/jwy.v1i2.138>

<sup>23</sup> Stellan Vinthagen & Anna Johansson, "Everyday Resistance: Exploration of a Concept and its Theories," *Resistance Studies Magazine*, 1 (2013): 1-46.

<sup>24</sup> Roni Factor, Ichiro Kawachi & David R. Williams, "Understanding High-Risk Behavior Among Non-Dominant Minorities: A Social Resistance Framework," *Social Science and Medicine*, Vol. 73, Issue 9, (November 2011): 1292-1301. <https://doi.org/10.1016/j.socscimed.2011.07.027>

<sup>25</sup> Richard Niesche, "Foucault, Counter-Conduct and School Leadership as a Form of Political Subjectivity," *Journal of Educational Administration and History*, Volume 45, Issue 2 (2013). <https://doi.org/10.1080/00220620.2013.768968>

<sup>26</sup> Satriani, Juhaepa, & Ambo Upe, "Resistensi Sosial Masyarakat Suku Bajo (Studi Kasus Atas Perlawanan Masyarakat di Pulau Masudu Kecamatan Poleang Tenggara Terhadap Kebijakan *Resettlement* Ke Desa Liano Kecamatan Mataleo Kabupaten Bombana)," *Jurnal Neo Societal*, Vol 3, No 2, (2018).

<sup>27</sup> Oman Sukmana, *Konsep dan Teori Gerakan Sosial* (Malang: Intrans, 2016).

<sup>28</sup> Brais X Currás and Ines Sastre, "Egalitarianism and Resistance: A Theoretical Proposal for Iron Age Northwestern Iberian Archaeology," *Anthropological Theory*, Vol 20, Issue 3 (2020): 300-329. <https://doi.org/10.1177/1463499618814685>

disenfranchised groups.<sup>29</sup> According to Junor, O'Brien, and O'Donnell, collective resistance is most often applied to social movements that oppose structural forces through oppositional actions and behaviors such as protests, dissent, rebellion, strikes, work bans, and absenteeism.<sup>30</sup> In extremist movements, such as the phenomenon of Islamic radicalism, resistance is born especially in Middle Eastern society as a result of an identity crisis that leads to reaction and resistance to the West, which is spreading colonialism and imperialism in the Islamic world. Resistance has led to the emergence of radical Islamic movements that call on Muslims to return to pure Islamic teachings and fight against regimes that are considered secular and deviate from pure religious teachings.<sup>31</sup>

## Research Method

This research uses qualitative research, where data is obtained through observation, interviews, review of the text of the law, literature studies and online news publications. For some things that need clarification, the author also conducted interviews with relevant parties. The text of the Anti-Terrorism Law No. 5 of 2018 is the main source of this research. The selection of informants was based on the needs of this study after reviewing the main sources. Given the limited information on the legislative process, the authors conducted interviews and validated information with the members of House of Representative who participated in special committee meetings on anti-terror laws.

The concept of legitimacy is used not only to look at the process of formulating laws, but also to find out the extent of public participation at all levels of discussion. The next stage, after obtaining the data, is to analyze the thematic data through the six steps

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<sup>29</sup> Ahmaed Al-Rawi, "Anti-ISIS Humor: Cultural Resistance of Radical Ideology," *Politics, Religion and Ideology*, Vol 17, Issue 1, (2016):52-68. <https://doi.org/10.1080/21567689.2016.1157076>

<sup>30</sup> Anne Aly, "The Policy Response to Home-Grown Terrorism: Reconceptualising Prevent and Resilience as Collective Resistance," *Journal of Policing, Intelligence and Counter Terrorism*, Vol 8, Issue 1, (2013): 2-18. <https://doi.org/10.1080/18335330.2013.789594>

<sup>31</sup> Anzar Abdullah, "Gerakan Radikalisme dalam Islam: Perspektif Historis," *Addin: Media Dialektika Ilmu Islam*, Vol 10, No 1, (2016): 1-28. <https://doi.org/10.21043/addin.v10i1.1127>



developed.<sup>32</sup> The available data were collected based on the themes of the study. After the classification of the data, a review and cross-checking of the documents will be carried out to obtain a complete set of information. Law No. 15 of 2003 is the culmination of a continuous policy formulation process since 2003. Therefore, most of the documents that are the source of this paper refer to events that took place between 2003 and 2018.

### **Delegitimizing the Law**

This paper argues that Law No. 5 of 2018 (the Anti-Terrorism Law) is, in fact, illegitimate and has the potential to fail to provide strength in dealing with criminal acts of terrorism. Public legitimacy is the spirit of a legal product. The delegitimization in this law is due to articles that are not in line with basic human rights principles, the lack of public participation, especially from radical groups, as well as the opposition of some community groups to its ratification.

Law No. 5 of 2018, designed to replace Law No. 15 of 2003, is expected to meet the need for a legal umbrella to allow the government to act more freely. It states: "...to provide a more solid legal basis to ensure legal protection and certainty in the eradication of criminal acts of terrorism, ...." Article 28(1) states "Investigators may detain any person suspected of committing a terrorist offence on the basis of sufficient preliminary evidence for a maximum period of 14 (fourteen) days." Paragraph 2 then states that "If the period of detention referred to in paragraph (1) is insufficient, the investigator may apply to the president of the district court whose jurisdiction covers the investigator's place of residence for an extension of detention for a maximum period of 7 (seven) days." The basic principles of human rights are also found in Article 31, which allows officers to open mail and conduct wiretaps.

Indonesia is one of 142 countries that have ratified the International Covenant on Civil and Political Rights (ICCPR). Through Law No. 12 of 2015 on the International Covenant on Civil and Political Rights, the Indonesian government is committed to mainstreaming the fundamental principles of civil and political rights. This was emphasized by Vice President, Ma'ruf Amin, in his remarks

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<sup>32</sup> V. Braun Clarke & N. Hayfield, "Thematic Analysis," in *Qualitative Psychology: A Practical Guide to Research Methods* edited by Jonathan A Smith (London: SAGE Publications, 2015), 222-248.

at the opening of the commemoration of Human Rights Day, 2019, saying that “the content of the article on human rights in the 1945 Constitution can be said to be the largest compared to reference texts on human rights from other countries.”

The Indonesian government is also involved in several discussions on international human rights initiatives, such as the Equal Futures Partnerships (EFP), the #HeForShe Global Campaign, and the Convention Against Torture Initiative (CTI). Procedurally, the mechanism for nominating members of the DPR-RI also has a human rights perspective, as evidenced by the women's quota. However, the practice of human rights violations is still found in the content of the articles of the Anti-Terror Law.

There are at least two things in the articles of the Anti-Terrorism Act that have the potential to trigger human rights violations. The first concerns detention. Article 28(1) states: “Investigators may detain any person suspected of committing a terrorist offence on the basis of sufficient preliminary evidence for a maximum period of 14 (fourteen) days.” Paragraph 2 then states: “If the period of detention referred to in paragraph (1) is not sufficient, the investigator may apply to the president of the district court whose jurisdiction covers the investigator's place of residence for an extension of detention for a maximum period of 7 (seven) days.” The basic principles of human rights are also found in Article 31. Article 31(2) reads: “The wiretapping referred to in paragraph (1)(b) shall be carried out after a decision has been taken by the president of the district court whose jurisdiction includes the investigator's place of residence, who authorizes the wiretapping on the basis of a written application. the investigator or the investigator's superior.” Paragraph 3 goes on to say: “The wiretapping referred to in paragraph 2 shall be carried out for a maximum period of 1 (one) year and may be extended 1 (one) time for a maximum period of 1 (one) year.”

### **The Process of Formulating the Law is Not Participatory**

Public participation in the formulation of laws, including anti-terrorism laws, has not yet reached the realm of substantive participation. Kamarudin reports that so far, community participation in the discussion of laws has been limited to consultations and has

not yet reached the decision-making process.<sup>33</sup> In addition, in interviews conducted with RA and BH, who are experts in the Special Committee on the Anti-Terrorism Law. They said: "The question of who is invited to the hearing depends on the leadership of the Special Committee; radical groups have never been invited."<sup>34</sup>

The lack of public participation is also reported by Jati in his paper on public participation in the formation of responsive legislation.<sup>35</sup> The government even shuts down media outlets that are seen as mouthpieces for radical groups. According to the official the ministry of communication and information website, BNPT asked to close 22 radical websites. The main reason for the closure of these online Islamic media is that the government is concerned about the strengthening of ISIS in Indonesia, which has a radical Islamic mission that will lead to changes in religious life in Indonesia.

Meanwhile, outside the process, the government restricts radical groups so that they cannot freely shape public opinion. Online media is a vehicle for the exchange of ideas, which is now agreed to be one of the pillars of democracy. In Indonesia, online media has become a space for different ideas, including radical groups, to compete for the attention of the public sphere.<sup>36</sup> During the process of formulating the law, the Indonesian government closed the space for dialogue by shutting down 33 websites that were considered radical. The media was shut down because the government was concerned about the strengthening of the Islamic State of Iraq and Syria (ISIS).

### **Resistance of Extremists to The Anti-Terror Law**

In 2017, a total of 176 suspected terrorists were arrested, and in 2018, the Special Anti-Terrorism Detachment arrested 396 suspected terrorists. In one year, the number of suspects arrested has more than doubled. In addition to the increasing number of suspected terrorists,

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<sup>33</sup> Kamarudin, "Tinjauan Yuridis Partisipasi Masyarakat dalam Proses Pembentukan Undang-Undang," *Perspektif Hukum*, 15(2), (2017): 165-184. DOI: <https://doi.org/10.30649/ph.v15i2.35>.

<sup>34</sup> Interview with RA and BH, October 20-21, 2018.

<sup>35</sup> Rahendro Jati, "Partisipasi Masyarakat dalam Proses Pembentukan Undang-Undang yang Responsif," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 1(3), (2012): 329-342. DOI: <http://dx.doi.org/10.33331/rechtsvinding.v1i3.88>.

<sup>36</sup> Imam Fauzi Ghifari, "Radikalisme di Internet," *Religious: Jurnal Studi Agama-Agama dan Lintas Budaya*, 1(2), (2017): 123-134. DOI: <https://doi.org/10.15575/rjsalb.v1i2.1391>.

2008 was also marked by a large mass movement involving a radical group that later became known as the 212 Movement. The movement then developed into different forms, all of which identified themselves as a Muslim community-based movement. Opposition to the anti-terror law has been expressed by some leaders of Islamic organizations, human rights activists, and the families of terrorist convicts. The expressions of disapproval of the policy have taken different forms, ranging from outright rejection to acceptance on condition that there are changes in the tone of the law that are considered problematic, or even some who have proposed a judicial review of the law, as was done by the family of Abu Jibril. Both the refusal of the human rights activists, the leaders of the social organization and the former terrorist prisoner's family, was based on the potential for discrimination in the law.

Resistance to the articles of the anti-terror law must be understood in the context of democracy and security sector reform.<sup>37</sup> One form of resistance is the act of disobeying the current anti-terrorism policy. In 2017, a total of 176 suspected terrorists were arrested, and in 2018, the special anti-terror detachment arrested 396 suspected terrorists.<sup>38</sup> In one year, the number of suspects arrested has more than doubled. In addition to the increase in the number of terrorist suspects, 2008 was also marked by a large mass movement, with some of the posters brought by participants calling for the establishment of the caliphate, which became known as the 212 movement.<sup>39</sup> The movement then developed in different forms, all of which can be identified as part of political communication.<sup>40</sup>

The attitude of resistance to the anti-terror law is not only in the form of action, but also in the form of discourse of rejection or critical views. Human rights activists, families of those convicted in terrorism cases, leaders of Islamic organizations and media professionals have expressed their resistance in various statements. Abu Jibril called for the annulment of the anti-terror law through a

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<sup>37</sup> Imron Rasyid, et al., *Kajian Kontra Terorisme dan Kebijakan: Peran TNI dalam Penanggulangan Terorisme* (Jakarta: The Habibie Center, 2018).

<sup>38</sup> Audrey Santoso, "Kapolri: Kasus terorisme...."

<sup>39</sup> M. I. Achfandhy, "Penegakan Khilafah Dalam Poster Aksi "Mujahid" 212 (Analisis Semiotik Model Roland Barthes)," *Al-Munzir*, 13(1), (2020): 1-18.

<sup>40</sup> Assyari Abdullah, "Membaca Komunikasi Politik Gerakan Aksi Bela Islam 212: Antara Politik Identitas dan Ijtihad Politik Alternatif," *An-Nida'*, 41(2), (2018): 202-212.

judicial review by the Constitutional Court. Abu Jibril's lawyer, Suryono, said that "the law must be repealed." Media Arrahmah sees deradicalization as part of the war against Islam and the distortion of Islamic teachings.<sup>41</sup>

The study on policy legitimacy shows that there are problems in the process of discussing anti-terrorism laws in Indonesia.<sup>42</sup> In the process of formulating and discussing laws, there are no detailed rules regarding the involvement of civil society, in this case extremist groups. This has an impact on the lack of representation of radical groups in the formulation of the law. The party's negligence led to a lawsuit over the validity of the anti-terror law product. The delegitimization process is characterized by the loss of opportunities for radical groups to participate in the formulation of laws, either during the process in the parliament building or in the struggle for public discourse. In addition, delegitimization is also evidenced by the emergence of articles in Law No. 5 of 2018, which sparked controversy because it was seen as potentially violating human rights. For these reasons, this anti-terrorist policy loses its legitimacy. The elitist perspective arises from the assumption that more public participation will have an impact on the inadequate quality of legislation. This perspective has led to a low level of public participation in the process of drafting legislation. Furthermore, although not the only one, money politics has become the most influential factor in strengthening elitist democracy in Indonesia.<sup>43</sup> Money politics means that the platforms of political parties do not reflect their political behavior. Thus, a democracy that involves only a small group of elites is considered more likely to guarantee the quality of legislative products.

The reality of the delegitimization of counter-terrorism policy reflects the strengthening of elitist and procedural democracy in the Indonesian political system. This fact again proves the old thesis that in society there is always a minority group that becomes the

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<sup>41</sup> Endang Turmudi and Riza Sihbudi, *Islam dan radikalisme di Indonesia* (Jakarta: Yayasan Obor Indonesia, 2005).

<sup>42</sup> Reki Wicaksono and Nyaman Serikat Putrajaya, "Tinjauan Yuridis Pasal 43d Uu No 5 Tahun 2018 Pelaksanaan dan Kendala Deradikalisasi Sebagai Upaya Penanggulangan Terorisme," *Spektrum Hukum*, 17(1), (2020). <https://doi.org/10.35973/sh.v17i1.1390>

<sup>43</sup> Syarif Hidayat, "Demokrasi Elitis? Relasi Kekuasaan Pasca Pilkada," *Jurnal Masyarakat, Kebudayaan dan Politik*, 23(3), (2010): 169-180.

determinant. The behavior of the ruling elite then causally influences the formation of social institutions.<sup>44</sup> The emergence of democratic procedures was originally intended to make the abstract concept of democracy more measurable and assessable. However, along the way, procedural democracy has hindered the achievement of the main goals of democracy, including the loss of meaning of representative democracy.<sup>45</sup> Political parties, which are expected to represent the community, have failed in their duties.<sup>46</sup> These two things make the process of anti-terror legislation procedurally legitimate, but not substantively so.

The existence of the Anti-Terror Law to prevent acts of terrorism and extremism has stimulated the birth of new seeds. It is observed that the growth of the seeds of radicalism, which is said to be the forerunner of the emergence of terrorism, is increasingly worrying. The Wahid Foundation reported that 33% of Muslim students who are members of the *Rohani Islam* (Muslim youth organization) believe that the Bali bombers such as Amrozi and Imam Samudra were mujahid, they also believe that Osama bin Laden died in the state of Shahid. In addition to the seeds of radicalism being sown among young people, there is also the potential threat of foreign fighters. Fenton and Price reported that there were as many as 264-350 fighters who could potentially return to Indonesia from conflict zones.<sup>47</sup> Similarly, political policies mixed with Islamophobia have led to resistance from some political activists.<sup>48</sup> Meanwhile, a study in Africa shows the emergence of a culture of resistance

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<sup>44</sup> Matias López, "Elite theory," *Sociopedia.isa*, (2013). DOI: 10.1177/20568460131112.

<sup>45</sup> B. Barry, *Is Democracy Special? Democracy and Power* (Oxford: Oxford University Press, 1991), 24-60.

<sup>46</sup> Ridhah Taqwa, "Pemilihan Umum sebagai Praktik Demokrasi: Demokrasi Prosedural vs Demokrasi Substansial," in *Percikan Pemikiran Untuk Indonesia Baru* (Yogyakarta: FWI, 2009), 127-144.

<sup>47</sup> Adam James Fenton, & David Price, "Breaking ISIS: Indonesia's Legal Position on the Foreign Terrorist Fighters Threat," *Australian Journal of Asian Law*, 16(1), (2015): 1-18.

<sup>48</sup> R. Finlay, & P. Hopkins, "Resistance and Marginalisation: Islamophobia and the Political Participation of Young Muslims in Scotland," *Social & Cultural Geography*, 21(4), (2020): 546-568.

through publications on security policy.<sup>49</sup> This demonstrates the need to involve parties in the formulation of the law before it becomes policy.

Step by step, the issuance of the anti-terrorism law shows that the Indonesian government has implemented a securitization policy in dealing with terrorism.<sup>50</sup> Although this approach is seen as effective in certain contexts, it also becomes a challenge to achieving the goals of democracy. Canada and the United States are examples of security policies that have discriminated against certain groups. Squire (2015) notes that security-oriented policies have led to the stigmatization and discrimination of immigrant groups.<sup>51</sup> On the other hand, Atak notes that unfair behavior has been accepted by refugees in Canada due to security-oriented counter-terrorism policies.<sup>52</sup> These two cases illustrate that securitization policies have consequences that increase the use of law enforcement approaches, resulting in the loss of rights of some citizens. This is a result of political and social transformation where the relationship between different institutions, regimes, religious and social leaders shows the dynamics of competition.

On the basis of the above, the illegitimate practice of anti-terrorism legislation demands an immediate and appropriate response. Delays and mistakes in mitigation will have an impact on the failure to deal with terrorism. The results of this research show that the main problems in anti-terror legislation are the lack of public participation, the discovery of discriminatory policy content and the emergence of resistance. For this reason, derivative policies and strategic programs that refer to Law No. 5 of 2018 on Terrorism must provide a home for groups that may be affected by the implementation of these policies. The National Counter-Terrorism Agency (BNPT), which will

<sup>49</sup> Tomas František Žák, "Building A Culture of Resistance: Securitising and De-Securitising Eastleigh During the Kenyan Government's Operation Usalama Watch," *Journal of Eastern African Studies*, Vol 14, Issue 4, (2020): 1-20.

<sup>50</sup> Erlinda Matondang, "Penanganan Isu Terorisme dalam Kebijakan Pertahanan Indonesia Pada Tahun 2002-2015," *Jurnal Pertahanan & Bela Negara*, Vol 6, No 1, (2016): 99-118. <https://doi.org/10.33172/jpbh.v6i1.296>

<sup>51</sup> Vicky Squire, "The Securitisation of Migration: An Absent Presence?" in *The Securitisation of Migration in the EU. The European Union in International Affairs* edited by Lazaridis, G. and Wadia, K. (London: Palgrave Macmillan, 2015). [https://doi.org/10.1057/9781137480583\\_2](https://doi.org/10.1057/9781137480583_2)

<sup>52</sup> Idil Atak, Graham Hudson, and Delphine Nakache, "The Securitisation of Canada's Refugee System: Reviewing the Unintended Consequences of the 2012 Reform," *Refugee Survey Quarterly*, Vol 37, No 1, (March, 2018): 1-24.

be the leading sector, donor agencies, and non-governmental organizations that will work on terrorism prevention and prevention projects must listen to the voices of radical groups.

## Conclusion

The system of anti-terror legislation, which is procedurally legitimate, is essentially illegitimate. This research found that the illegitimacy lies in three main areas: the content of the law, the non-participatory formulation process, and the emergence of resistance from legal subjects. Furthermore, this study discovered that illegitimate legal products have the potential to trigger the failure of policy implementation. In this context, the anti-terror law is not effective in preventing and overcoming the occurrence of criminal acts of terrorism. Thus, anti-terrorism law requires derivative policies that are more participatory and have a human rights perspective in order to gain public legitimacy.

The theory of legitimacy, which requires the participation of legal subjects in the entire legislative process, is not accommodated in the legislative process of Law No. 5 of 2018. This indicates that the anti-terrorism law in Indonesia has the potential to be ineffective in preventing and overcoming criminal acts of terrorism. This research proved that public legitimacy is an element that needs to be fulfilled in the entire legislative process. Therefore, this study recommended that the government make special provisions for public participation, including radical groups. Departments or institutions at the ministerial level as the leading sector, agencies and community organizations that run programs to deal with and combat terrorism are advised to design activities in a more participatory manner and to listen to the voices of radical groups.

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### **Interview**

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