

UNIVERSAL JURISDICTION FOR TERRORISM CRIMES: A STUDY OF TERRORISM AS CRIMES AGAINST HUMANITY

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Abstract

Categorizing terrorism as an international crime is not wrong, because the international elements of the crime have been fulfilled. Terrorist crimes involve more than one state, each possessing its own legal system and jurisdictional framework. A number of terrorist acts have been recorded as having disrupted international security stability, including those carried out by networks such as Al-Qaeda, ISIS, and others. In addition to these global terrorist groups, there are also well-known terrorist groups in the Southeast Asian region, namely the Abu Sayyaf Group. This legal research aims to examine universal jurisdiction over terrorism as an international crime, on the basis that terrorist acts may be considered to satisfy the elements of crimes against humanity, insofar as such acts are intentionally committed as part of a widespread attack, involve multiple actors, and target civilian populations at large. This research employs a qualitative normative legal method, utilizing a statute approach and a case approach, and drawing upon primary, secondary, and tertiary legal materials. The findings indicate that the formulation of crimes against humanity constitutes the most appropriate legal basis for prosecuting terrorism under the jurisdiction of the International Criminal Court (ICC). The absence of a universally accepted definition of terrorism has resulted in terrorism not yet being included within the jurisdiction of the ICC. Furthermore, the failure at the regional level to effectively resolve issues related to terrorism underscores the need for a universally agreed definition of terrorism so that perpetrators may be prosecuted before international courts. Strengthened cooperation among states, both at the regional and global levels, is therefore necessary to ensure the effective eradication of terrorist crimes.

Keywords: *crime against humanity; international law; terrorism*

Abstrak

Mengkategorikan terorisme sebagai kejahatan internasional tidaklah salah, karena unsur-unsur internasional dari kejahatan tersebut telah terpenuhi. Dimana kejahatan terorisme melibatkan lebih dari satu negara yang di dalamnya terdapat sistem hukum dan penerapan yurisdiksi.

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Beberapa tindakan terorisme telah tercatat mengganggu stabilitas keamanan internasional, termasuk jaringan Al-Qaeda, ISIS dan sebagainya. Selain kelompok teroris di dunia, terdapat pula kelompok teroris yang cukup terkenal di kawasan Asia Tenggara, yaitu Kelompok Abu Sayyaf. Penelitian hukum ini bertujuan untuk mengkaji yurisdiksi universal terorisme sebagai kejahatan internasional, karena kejahatan terorisme dapat dikatakan memenuhi unsur-unsur kejahatan terhadap kemanusiaan, yang mana tindakan dilakukan dengan sengaja sebagai bagian dari serangan yang meluas, melibatkan banyak pihak dan menargetkan semua warga negara. Penelitian hukum ini menggunakan metode normatif kualitatif, dengan statute approach dan case approach, serta bahan hukum yang digunakan yaitu bahan hukum primer, sekunder dan tersier. Hasil dari penelitian ini menunjukkan bahwa pelanggaran kejahatan terhadap kemanusiaan dianggap sebagai formulasi yang paling tepat untuk mengadili kejahatan terorisme di bawah yurisdiksi ICC. Ketiadaan definisi terorisme yang universal menyebabkan hingga saat ini terorisme belum masuk dalam yurisdiksi ICC. Kegagalan di level regional untuk menyelesaikan permasalahan terorisme sehingga diperlukan kesepakatan definisi terorisme secara universal sehingga para pelaku kejahatan tersebut dapat di adili dalam peradilan internasional. Perlunya penguatan kerjasama antar negara baik di level regional maupun global agar pemberantasan kejahatan terorisme dapat maksimal.

Kata kunci: hukum internasional; kejahatan terhadap kemanusiaan; terorisme

I. Introduction

Terrorism is a crime that is feared in society, because in some cases terrorism is a deadly attack. Terrorism is defined as an act that uses violence or the threat of violence that creates an atmosphere of terror or widespread fear, which can cause mass casualties and/or cause damage or destruction to vital strategic objects, the environment, public facilities, or international facilities with ideological, political or security disturbance motives. One example of a terrorism case that has attracted the attention of the international community was when the Al-Qaeda group from Afghanistan attacked the WTC Building in the United States on September 11, 2001. Several acts of terror also occurred including the Mumbai bomb attack in India on November 26, 2008, the bombing at the Moscow airport in Russia on January 24, 2011, the Boston bombing in the United States on April 15, 2013, the terrorist attack in Paris, France on November 13, 2015, the suicide bombing in Istanbul, Turkey on January 12, 2016, the suicide bombing in Afghanistan, March 27, 2016, and so on.

The expansion of the scope of terror acts that occur in various parts of the world, cannot be separated from technological advances, as a result of human culture that can bring positive and negative impacts. The positive impacts of technological advances, such as facilitating communication, data storage, faster data or information delivery at minimal cost, can be used by terrorists using the internet as a tool for fast, low-risk, and cheap

information dissemination, ranging from potential recruitment to the potential for obtaining prospective partners in their organization.

For the Al-Qaeda group, for example, the internet is not only a method to achieve safer and faster media, but also a turning point for the rise of effective communication strategies compared to traditional media.⁵ This is the antinomy of the use of technology where the internet should be a medium for people who long for peace or stability as a result of technological progress. The use of the internet as a means of crime has given birth to a new form of terrorism, namely cyber terrorism. In essence, it can be said that cyber terrorism is a convergence between cyberspace and terrorism.

The ease of communication facilities available today has caused the easy spread of radical ideologies that are the seeds of terrorism. Even though various eradication efforts have been made, the number of terrorist crimes throughout the world has not decreased until now. This is due to several possibilities, such as the existence of a political background or interest, the existence of a broad, organized network that crosses national borders, and the existence of strong financial support.

The wide reach of the terrorist network has caused terrorism today to be cross-border, both in regional and global areas, the characteristics of which involve both countries, both the country of origin of the perpetrator and the country of the victim. Various international and national regulations have not been able to overcome the crime of terrorism as a transnational crime, therefore countries and even international organizations through legal instruments are trying to overcome and/or handle the crime of terrorism, both on a regional and international scale.

Not yet there is an agreement between countries in the world on how to enforce the law if this terrorism case is resolved at the international level through the international judicial body (International Criminal Court/ICC). The ICC, which was established based on the Rome Statute of 1998, has the authority to try crimes of genocide, war crimes, crimes of aggression and crimes against humanity. So far, efforts to resolve the law on terrorism crimes have been handed over to countries in accordance with their respective national laws.

ASEAN Region being one of the vital areas, in addition to being used as a place of domicile and a place of learning for terrorists, including Jemaah Islamiyah (JI), the

⁵ Sarinastiti, E. dan Vardhani, N. (2018) 'Internet dan Terorisme: Menguatnya Aksi Global Cyber-Terrorism Melalui New Media', *Jurnal Gama Societa*, 1(1).

Southeast Asian region also functions as a target for threats and targets of terrorism which is dominated by radical attacks in the form of bomb explosions, both on a high scale and on a low scale. The causes are various factors but the dominant ones are poverty factors, inequality factors, fanaticism factors and injustice factors⁶. Attacks are also carried out sporadically against other religious communities which are considered to have sentiments and indicate opposing patterns. The countries in Southeast Asia that are targeted by terrorism are Indonesia, the Philippines, Singapore and Thailand. These terrorist attacks are feared to be able to disrupt the security stability of the Southeast Asian region.

The terrorist group in the Southeast Asia region that has attracted a lot of international attention is the Abu Sayyaf Group which has its base in the Southern Islands of the Philippines, namely in the Jolo and Basilian regions. This group not only carries out its terror acts in the Philippines but also carries out acts of violence and kidnappings in neighboring countries such as Malaysia and Indonesia. This group carries out acts of terrorism such as kidnapping, attacks, hijacking ships, bombings and so on. This group does not hesitate to behead its hostages if they are not given a ransom in the form of money within a specified time. Several Indonesian crew members were once hostages of the Abu Sayyaf group and they were treated inhumanely.⁷

On a national scale, there were several terrorist attacks recorded in several areas, namely, the bombing in front of the Philippine Embassy, Jakarta on August 1, 2000, which resulted in 2 people being killed and 21 people being injured, followed by the bombing at the Santa Anna Church and the HKBP Church in East Jakarta on July 22, 2001, which resulted in 5 people being killed. One year later, for the first time, Indonesia experienced a devastating terrorist attack that attracted the attention and concern of the international community, because the effects of the terrorist attack caused a deep sense of fear and has not been forgotten by the community until now. This terrorist act is known as the Bali Bombing I terror act which occurred on October 12, 2002, which resulted in 202 people being killed. Then there was the bombing in front of the JW Marriot Hotel in Jakarta on August 5, 2003, which killed 13 people and injured 74 people. The Bali Bombing II terror act on October 1, 2005, which resulted in 22 people being killed. The bomb at GBIS

⁶ Pardomuan, A. (2018) *Dinamika Terorisme di Wilayah Asia Tenggara dan Penanggulangannya*. Undergraduate Thesis. Universitas Diponegoro.

⁷ Pujayanti, A. (2016) 'Upaya Pembebasan WNI Sandera Kelompok Abu Sayyaf', *Majalah Info Singkat Hubungan Internasional*, VIII(7).

Kepunton Solo on September 25, 2011, resulted in 28 people being injured, and in 2018 there was a case of a bomb attack on three churches, a police station and an apartment building that occurred in Surabaya in May 2018.

Based on the cases above, it can be said that acts of terrorism cause extraordinary horrors that scratch the human side⁸, so that some experts include acts of terrorism as a form of crime against humanity.⁹ Including terrorism as a form of crime against humanity is not without reason, this is because attacks carried out by terrorist groups are aimed at civilians or the community in a widespread and systematic manner, intentionally causing severe suffering both mental and physical and violations of human rights.¹⁰

Crimes against humanity are evident in various acts of terrorism, including the 2005 London bombings, the 2012-2015 Al-Shabaab attacks in Kenya, the 2014 kidnapping of more than 250 schoolgirls in Nigeria, and the 2014-2017 war orchestrated by ISIS in Iraq and Syria. In the late 2000s, the Taliban deliberately targeted Buddhists in Pakistan's Swat District, successfully terrorizing the region. These attacks were particularly heinous.¹¹ These acts of terrorism demonstrate human rights violations that could qualify terrorism as crimes against humanity.

Including terrorism in its characteristics as an international crime is also still debatable, the lack of a universal definition is the biggest reason why terrorism has not been included in international criminal law for decades, so that the International Criminal Court (ICC) as an international judicial body has jurisdiction only to try international crimes, namely the crime of genocide, crimes against humanity, crimes of aggression and crimes against humanity, as stated in the Rome Statute of 1998. Referring to the jurisdiction of the ICC's authority, the ICC does not have the authority to try crimes of terrorism. The non-categorization of terrorism as an international crime is also due to the opinion that the motives of terrorism are different from most international crimes.

⁸ An example of a terrorist act is the Istanbul Bombings in Turkey on November 15-20, 2003. Two car bombs exploded almost simultaneously outside a synagogue in Istanbul on that Saturday morning, killing 20 people and injuring more than 250. A series of terrorist attacks on March 12, 1993, killed 257 people and injured 700. Following this, the Mumbai bombings occurred in 2002, 2003, and 2006. These bombings were carried out by Lashkar-e-Taiba (LeT) and the Students Islamic Movement of India (SIMI). The 2008 Mumbai terrorist attacks were also confirmed to have been masterminded by Lashkar-e-Taiba (LeT). These terrorist acts demonstrated that many innocent civilians were victims, creating a horrific and tense atmosphere that wounded humanity.

⁹ As stated by Noam Chomsky, in Sihbudi, R. (2002) *Terorisme dan Konspirasi Anti Islam*, Jakarta: Pustaka Al Kautsar, p. 56

¹⁰ Article 7(1) of the Rome Statute (1998).

¹¹ Noberg, N. (2010) 'Terrorism and International Criminal Justice: Dim Prospects for a Future Together', *Santa Clara Journal of International Law*, 8(1), p. 17.

Terrorism is primarily driven by ideological motives, which creates difficulties in categorizing terrorism as an international crime.

Various acts of terror in the world show that the legal settlement of terrorism crimes until now the perpetrators have not been able to be tried at the ICC, this is because the ICC does not have the authority to try these crimes. Terrorism cases so far have only been resolved through the national law of the victim country. Legal research focuses on the issue of the extent of the ICC's jurisdiction over terrorism crimes that can be categorized as crimes against humanity.

II. Method

The research method in writing this law uses a normative legal qualitative research type, with the approach used being the statute approach by studying international conventions and laws and regulations related to terrorism regulations. The next approach used is the case approach by studying cases of terrorism to analyze how to resolve the law, and examine in depth examples of terrorism crimes, namely the bombing of the WTC Building, the Abu Sayyaf group, so that it meets the criteria as a crime against humanity. The legal materials used are primary legal materials consisting of national and international legal regulations, secondary legal materials in the form of reference books, journals and articles related to the theme taken in writing this law. The next legal material used is tertiary legal material in the form of news or data taken from websites or the internet.

III. Analysis and Discussion

A. Characteristics of Terrorism

The definition of the term Terrorism until now has not been universally applicable or can be used as a reference in relation to the crime of terrorism. This is because the crime of terrorism is so complex, both concerning the background of the emergence of the crime of terrorism, concerning various aspects of life, the involvement of citizens of a country as perpetrators of terrorism, and the impacts caused by the crime of terrorism. One fairly old legal definition of terrorism, as contained in The Convention for the Prevention and Punishment of Terrorism, 1937 which states that "Terrorism as criminal acts directed against a state and intended or calculated to create a state of terror in the minds of

particular persons, or group of persons or the general public".¹² The definition of terrorism in this convention emphasizes more on the goals and/or consequences arising from acts of terrorism, namely a situation of horror or chaos resulting from violence or cruel acts. According to the CIA (US Central Intelligence Agency), terrorism is the threat or use of violence for political purposes carried out by individuals or groups, in the name of or against a legitimate government, by frightening the wider community than the direct victims of terrorism.¹³

The phenomenon of terrorism has become a concern or concern for the international community including the UN. The General Assembly in Resolution Number 49/60 (adopted on December 9, 1994) with the Title: "Measures to Eliminate International Terrorism," explains terrorism, as a criminal act intended or calculated to cause a state of terror in the general public, a group of people or certain people for political interests under no circumstances can be justified, whatever political considerations, philosophy, ideology, race, ethnicity, religion or any other nature that can be called to justify them.

In Indonesian law, the definition of terrorism as a criminal act can be found in Article 1 Number 1 of Perppu RI No.1 of 2002 concerning the Eradication of Criminal Acts of Terrorism¹⁴, that: "criminal acts of terrorism are acts that fulfill the elements of a criminal act in accordance with the provisions of this Government Regulation in Lieu of Law". Meanwhile, criminal acts of terrorism, according to Article 6 of Perppu RI No. 1 of 2002 are

"Any person who intentionally uses violence or the threat of violence to create an atmosphere of terror or fear in people on a widespread basis or causes mass casualties, by depriving others of their freedom or lives and property, or causing damage or destruction to vital strategic objects or the environment or public facilities or international facilities."

Indonesian legal regulations and several updates to regulatory products show that Indonesia is one of the countries that holds a strong commitment to preventing and eradicating criminal acts of terrorism. The birth of these regulations was influenced by the bomb terror that had occurred in Indonesia, namely during the Bali Bombing I and Bali Bombing II, where at that time Indonesia did not have specific regulations related to criminal acts of terrorism.

¹² Convention for the Prevention and Punishment of Terrorism (1998).

¹³ Sulaiman, F. (2007) *Who is the Real Terrorist?*. Yogyakarta: ElMatera Publishing.

¹⁴ Lihat Perppu RI Nomor 1 Tahun 2002 Tentang Pemberantasan Tindak Pidana Terorisme.

The existence of various types of acts in acts of terrorism in the world makes it difficult for the international community to agree on the definition of terrorism, but it can be underlined that terrorism is basically a crime committed with the intention of forcing, intimidating, or terrorizing civilians or governments, with ideological, religious, and political motives. The Convention for the Suppression of the Financing of Terrorism, 1999, defines terrorism as follows.

“Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.”

In the convention, there are five important elements contained therein, namely behavior, victims, transnational, intent, and motive. In relation to this, the purpose of terrorism is to create and spread terror among a certain population, to shake or destroy the institutional structure of a country. The creation and spread of fear is mainly used as a means to advance ideological, religious, or political motives. James Wolfe, as quoted by Fx. Adji Samekto, stated that there are several characteristics of terrorism, including the following.¹⁵

1. Terrorism can be politically or non-politically motivated.
2. The targets of terrorist acts can be civilians (supermarkets, shopping centers, schools, places of worship, hospitals) and other public facilities, as well as civilian targets (army camps).
3. Acts of terrorism can be used to threaten or influence government policy.
4. Terrorist acts are carried out with acts that do not respect international law or international ethics. The attacks are deliberately carried out to destroy civilians when they occur.
5. Terrorist activities create a sense of insecurity and cause psychological problems for society.
6. Preparation or planning of terrorist acts can be transnational. This means that the perpetrators of terrorist acts can be citizens of the country itself or foreign citizens, or a combination of both.
7. The short-term goal of terrorist acts is to attract media and public attention.

¹⁵ Mulkan, H. (2020) *Buku Ajar Hukum Tindak Pidana Khusus*. Palembang: CV Amanah.

8. Terrorist activities have a surprising element that is very useful for terrorists themselves in attracting attention. Therefore, the impact of terrorist activities always seems cruel, brutal and does not respect human values.

As mentioned above, looking at its history, terrorism has become a very serious problem in the international community, including in Indonesia, especially after the Bali bombings in November 2002. Of course, all forms of terrorism cannot be justified, whatever the motivation, whenever the place and whoever the target. As a country that has an obligation to protect the dignity of its citizens, Indonesia has created laws and regulations governing terrorism in order to protect citizens from acts of terrorism.

Some examples of the definition of terrorism above show that the goal of terrorism is to make people afraid, and to attract the attention of members of society, even the state. Terrorism is carried out as a psychological weapon to create an atmosphere of panic, uncertainty and create distrust of the government, and to force society or certain groups to follow the wishes of the perpetrators of terror. These acts of violence and coercion are put forward to fight enemies who are considered to have threatened state security, in the sense of national political and economic stability.¹⁶ Based on the activities of the perpetrators of terror, several characteristics of terrorism can be observed, namely¹⁷:

1. It is coercive intimidation;
2. As a means to achieve certain desired goals, often carrying out systematic destruction and/or murder;
3. Victims are not the goal, but rather a means to create chaotic psychological and social conditions, namely killing one person to scare many people;
4. The targets of the terror acts are selected, working in secret, but the goal is publicity;
5. The message of the action is quite clear, even though the perpetrators do not always express themselves personally.
6. The perpetrators are generally motivated by quite strong idealism.

Similar opinions, related to the characteristics of terrorists as stated by Hasnan Habib, namely first, the exploitation of terror as one of human weaknesses systematically;

¹⁶ Jawahir, T. (2013) *Terorisme Negara, Kekejaman Konsporatif Menjinakkan Islam Fundamental*. Yogyakarta: UII Press.

¹⁷ Rahmawati, Y. (2022) *Apakah Terorisme = Kejahatan Terhadap Kemanusiaan?* [Online]. Tersedia di: <https://www.hukumonline.com/klinik/a/apakah-terorisme-kejahatan-terhadap-kemanusiaan-lt6093956e0d893/>

second, the use of elements of surprise and surprise, planning every act of terror; third, having strategic goals to achieve political goals and specific targets in general.¹⁸

Thus, in short, terrorism has specific characteristics that are not found in conventional crimes, namely that it is carried out with careful preparation or planning, carried out systematically and widely, and organized in an orderly manner. It is also not uncommon for its actions, as mentioned above, to use weapons of destruction and mass destruction.

B. Terrorism as a Crime Against Humanity

Nowadays, terrorism has a wide and global network that threatens national and international peace and security. Academically, terrorism is categorized as an "extraordinary crime" and is also categorized as a "crime against humanity". Given such a category, its eradication certainly cannot use ordinary methods such as dealing with ordinary crimes such as theft, murder or assault. Terrorist crimes always use threats or acts of violence that threaten the safety of life without choosing who will be the victim.¹⁹

Terrorism can be simply defined as a planned act of violence that causes fear in society or civilians. Violence that occurs in terrorism can occur to the state or to certain groups. Terrorist acts are intended to threaten or intimidate so that the interests of a group of people can be fulfilled because the usual methods are no longer possible, therefore terrorists have the belief that violence is the most effective method to achieve targets that are reinforced by the interpretation of belief in an ideology partially.²⁰

Romly Atmasasmita argues that from a sociological background, terrorism is a crime that is very detrimental to society both nationally and internationally, and is also a violation of human rights. Terrorism not only causes loss of life and damage to property, acts of terrorism also damage the stability of the state, especially in terms of economy, defense, security, and so on. Meanwhile, sociologically, acts of terrorism damage spiritual

¹⁸ King, *op.cit.*, p. 35

¹⁹ Junaid, H. (2013) 'Pergerakan Terorisme Dalam Perspektif Barat dan Islam', *Sulesana Jurnal Wawasan Keislaman*, 8(2), p. 121-122.

²⁰ Lukika, R. (2023) *Peran International Criminal Court (ICC) Dalam Penanganan Kejahatan Terorisme Sebagai Kejahatan Terhadap Kemanusiaan (Crime Against Humanity)* [Online]. Tersedia di: https://www.researchgate.net/publication/369911409_PERAN_INTERNATIONAL_CRIMINAL_COURT_ICC_DALAM_PENANGANAN_KEJAHATAN_TERORISME_SEBAGAI_KEJAHATAN_TERHADAP_KEMANUSIAAN_CRIME_AGAINST_HUMANITY

values in the order of community life by raising religious arguments as justification for these acts of terror.²¹

In various countries in the world, terrorism crimes have occurred both in developed and developing countries, the acts of terror that have been carried out have claimed victims indiscriminately, which caused the United Nations in its congress in Vienna Austria in 2000 to raise the theme The Prevention of Crime and The Treatment of Offenders, among others, mentioning terrorism as a development of violent acts that need attention. According to Muladi, terrorism is an extraordinary crime that also requires handling by utilizing extraordinary methods (Extraordinary Measure) for various reasons:²²

1. Terrorism is an act that creates the greatest danger to human rights. In this case the human right to life and the human right to be free from fear.
2. Terrorism targets are random or indiscriminate, which tends to victimize innocent people.
3. The possibility of using weapons of mass destruction using modern technology.
4. The tendency for negative synergy between national terrorist organizations and international organizations.
5. Possible cooperation between terrorist organizations and organized crime, both national and international.
6. May endanger international peace and security.

Terrorism as a crime has developed into a transnational crime. Crimes that occur within a country are no longer viewed as the jurisdiction of one country but can be claimed to include the jurisdiction of criminal acts of more than one country. According to Romli Atmasasmita; terrorism in its development causes jurisdictional conflicts that can disrupt international relations between countries that have an interest in handling dangerous criminal cases that are cross-border in nature. Terrorism crimes use one form of transnational crime that is very threatening to world peace and tranquility.

Terrorism is a form of violent crime committed by a person or group of people with urgent policies to prevent, protect, and deradicalize terrorism against civilian targets, both their communities and their families. Terrorist crimes from the perspective of international criminal law are crimes against humanity and extraordinary crimes. Terrorist crimes are

²¹ Atmasasmita, R. (2004) *Pengantar Hukum Pidana Internasional Bagian II*. Jakarta: Hecca Mitra Utama.

²² Junaid, H., *op.cit.*, p. 23

equivalent to blatant human rights violations, such as genocide, ethnic cleansing and other forms of serious human rights crimes. The eradication of terrorism crimes therefore cannot be carried out with conventional methods and approaches alone. This requires combining elements of different criminal justice systems and making decisions that must take into account the dynamics of national law.

Crimes against humanity in Article 7 (1) of the Rome Statute contains the definition of crimes against humanity. The acts themselves are mostly crimes of great suffering and do not necessarily occur, namely murder, torture, rape and forms of sexual abuse, slavery, and forced exile. One of the characteristics or features of these crimes against humanity is that they are carried out intentionally as part of a widespread and systematic attack, involving many parties, and targeting all citizens, under the political encouragement of the state or organization to commit the crime, carried out systematically in accordance with the policies developed.²³

Based on the characteristics of terrorism, there are similarities in characteristics with serious human rights violations, especially crimes against humanity regulated by international rules and the Human Rights Court Law. In the definition of crimes against humanity in the 1998 Rome Statute, there are several important characteristics, namely the existence of an attack, the existence of a widespread or systematic attack, the existence of actions that are part of a widespread and systematic attack, and what is meant by with knowledge of the attack. The word attack is not always associated with armed conflict. Article 7 paragraph (2) letter a of the 1998 Rome Statute states: "... the multiple commission of acts referred to in paragraph 1 ... pursuant to or in furtherance of a State or organizational policy to commit such attack."

Characteristics of crimes against humanity include:²⁴

1. Attacks are carried out repeatedly, related to the follow-up of organizational or state policies.
2. Widespread and systematic, which means widespread referring to the large number of victims, while systematic means a plan to carry out an attack.
3. The connection between the crime against humanity and the widespread or systematic attack. This condition will be met when a person or group of people

²³ Rahmatullah (2022) 'Kejahatan Terorisme Sebagai Extraordinary Crime Dalam Perspektif Hukum Pidana Internasional', *Jurnal Ilmu Hukum*, 2(1), p. 50-51.

²⁴ Rahmawati, Y., *op.cit.*

commits one or more of the crimes against humanity under the direction of an organization or state policy.

4. *With knowledge of the attack* requires that in order to be considered a crime against humanity, the perpetrator must know that his environment is undergoing a widespread and systematic attack.

Characteristics of crimes against humanity when compared with the characteristics of terrorism crimes, there are several similarities in characteristics that can be categorized as crimes against humanity as one form of serious human rights violations, namely attacks on humans that result in humans being injured or even killed. The perpetrators of crimes against humanity can be carried out by officials or the government, or non-state actors. The explanation above regarding crimes against humanity, then terrorism crimes can also be categorized as crimes against humanity.

From the foregoing analysis, the Abu Sayyaf Group may be qualified as a perpetrator of terrorist crimes because it fulfills the principal elements generally recognized in national and international law concerning terrorism, namely in terms of conduct, intent or purpose, and organizational pattern. First, with regard to the element of conduct, Abu Sayyaf has consistently carried out serious and unlawful acts of violence, including bombings, shootings, kidnapping for ransom, and civilians and security personnel. These acts have resulted in loss of life, destruction of property, and the spread of widespread fear within society. Under modern definitions of terrorism, the use of violence or threats of violence against civilian populations constitutes a core characteristic of the offense of terrorism.²⁵

Second, with regard to intent or purpose, the actions of Abu Sayyaf do not merely constitute ordinary crimes, but are aimed at creating terror fear among the population, exerting pressure on or coercing the Philippine government and other parties to comply with their demands whether political, ideological, or financial and strengthening the group's existence through the propaganda of violence. This ideological motivation combined with systematic violence is consistent with the characteristics of terrorism as a crime oriented toward public intimidation and coercion.²⁶

²⁵ Krispriyoga, R., Damanik, A., and Oktaviana, R. (2021) 'Kebijakan Antisipatif Hukum Dalam Penanggulangan Cyber Terrorism Di Indonesia', *Al-Hakam Islamic Law & Contemporary Issues*, 2(2).

²⁶ Putra, I. and Lubis, A. (2022) 'Operasi Militer Selain Perang (OMSP) Tni Untuk Mengatasi Aksi Terorisme dalam Perspektif HAM dan Penegakan Hukum', *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)*, 6(2).

Third, with regard to the element of targets, Abu Sayyaf frequently directs its attacks against civilians, foreign tourists, humanitarian workers, and local communities not directly involved in armed conflict.²⁷ Such targeting of non-combatants is contrary to the principle of civilian protection under international humanitarian law and further reinforces its classification as terrorism rather than as ordinary armed rebellion.²⁸ Fourth, with regard to organizational structure, Abu Sayyaf possesses a relatively organized armed group structure, including leadership, recruitment networks, and sources of funding obtained, inter alia, through kidnapping and extortion. This organized character indicates that the acts of violence committed are not spontaneous individual acts, but form part of a collective strategy aimed at achieving the group's objectives.²⁹

Fifth, from the transnational dimension, the activities of Abu Sayyaf do not only affect southern Philippines but also involve victims and the interests of other states, particularly in the Southeast Asian region, such as through the kidnapping of foreign nationals and cross-border maritime operations. This cross-border element fulfills the characteristics of terrorism as a crime that may assume an international or transnational nature and become a matter of concern for the international community.³⁰

Based on the fulfillment of these elements namely serious acts of violence, the objective of spreading terror and coercing other parties, the targeting of civilians, a structured organizational pattern, and cross-border impacts Abu Sayyaf may, both juridically and conceptually, be qualified as a perpetrator of terrorist crimes rather than merely an ordinary criminal actor or a purely criminal group. This qualification is also consistent with state practice and the approach of the international community, which classifies Abu Sayyaf as a terrorist organization

C. Universal Jurisdiction over Crimes Against Humanity

The early history of the implementation of universal jurisdiction began with the case of sea piracy since 1998. The history of universal jurisdiction comes from the practice of

²⁷ Putri, A. (2022) 'Deradikalisasi Badan Nasional Penanggulangan Terorisme Pada Teroris Wanita Dalam Upaya Pertahanan Negara', *Peperangan Asimetris*, 8(2), p. 86.

²⁸ Diastutui, F., Mumtaaz, G. and Wardhana, T. (2021) 'Anti Cyber Terrorism sebagai Upaya Strategis dalam Menanggulangi Cyber Terrorism di Indonesia', *Journal Al-Hakam Islamic Law and Contemporary Issues*, 2(2).

²⁹ Junaid, H., *loc.cit.*

³⁰ Azzahra, F., Sapanah, M., Amelia, D., Tetrya, S. (2025) 'Peran Hukum Pidana Internasional Dalam Penanggulangan Tindak Pidana Terorisme', *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial*, 3(4).

countries that became international customary law against piracy and robbers in the 1600s, before modern international law had the term. Piracy at that time began to be considered as *hostis humani generis* (the enemy of all mankind). This means that the concept of universal rights to try and punish has been recognized. Grotius recognized universal jurisdiction as the right of a state to try crimes committed outside its territorial jurisdiction if the crime is contrary to natural law and the law of nations.³¹

In international crimes, the principle of universal jurisdiction applies to eradicate crimes that are included in international crimes. Based on this principle, every country has jurisdiction to try perpetrators of international crimes committed anywhere without regard to the nationality of the perpetrator or victim.³² The rationale for the emergence of this principle is the assumption that the crimes committed are crimes against all mankind, and it is a common desire to eradicate these crimes, so cooperation is needed for all countries. Based on this, the demands made by a country against the perpetrator are on behalf of the entire international community. The requirements for a country to be able to apply universal jurisdiction are that the country has national legal provisions in trying international crimes and the crimes being tried are included in international crimes.³³

Universal jurisdiction applied to crimes against humanity means that every country has the right to arrest the perpetrators of the crime and punish them regardless of their nationality and the place where the crime was committed. Universal jurisdiction according to Amnesty International is a jurisdiction where any national court can investigate, prosecute someone accused of committing an international crime without regard to the nationality of the perpetrator, victim or other relationship with the country where the court is located. The main characteristic of an act or action that can be said to be an international crime is that the act must meet the requirements as a violation of the interests of the international community or "*delicto jus gentium*", and meet the requirements that the crime in question requires international handling.³⁴

For perpetrators of international crimes, every country has the right and obligation to arrest, detain, prosecute, and try the perpetrators of the crime wherever the crime was

³¹ Lukika, R., *op.cit.*

³² Pradhana, W. dan Lestrika, D. (2025) 'Tindak Pidana Terorisme Sebagai Kejahatan Terhadap Kemanusiaan Dalam Perspektif Hukum Pidana Internasional Dan Yurisdiksi Mahkamah Pidana Internasional', *Causa Jurnal Hukum Dan Kewarganegaraan*, 12(5).

³³ Pratiwi, D. (2019) 'Implementasi Prinsip Yurisdiksi Universal Mengenai Pemberantasan Kejahatan Perompakan Laut di Indonesia', *Supremasi Jurnal Hukum*, 2(1), p. 121.

³⁴ Jawahir, T., *op.cit.*, p. 30.

committed. Universal jurisdiction in international law aims to eliminate the phenomenon of impunity for perpetrators of certain crimes. International Criminal Law has several principles in determining the jurisdiction to try an international crime, namely the principle of *au dedere au punere* and the principle of *au dedere au judicare*. The principle of *au dedere au punere* means that perpetrators of international crimes can be punished by the country where the crime occurred (*locus delicti*), namely within the territorial boundaries of the country or extradited to the requesting country that has jurisdiction to try the perpetrator. The principle of *au dedere au judicare* is a principle that states that every country is obliged to cooperate with other countries in arresting, detaining, prosecuting and trying perpetrators of international crimes.³⁵

In general, the implementation of jurisdiction is based on the existence of a problem connection that can be regulated by a country. However, the principle of universal jurisdiction does not operate on the basis of a connecting factor that links a situation with the interests of the country. Eugene Kontorovich formulated the concept of universal jurisdiction from court decisions, so he concluded that: "universal jurisdiction is an exception to these sovereignty based principles of international jurisdiction. Universal jurisdiction crimes can be prosecuted by any nation, even if the forum state has no connection with the offense". Robert Cryer et al in his book also defines universal jurisdiction as: "jurisdiction established over a crime without reference to the place of perpetration, the nationality of the suspect or the victim or any other recognized linking point between the crime and the prosecuting State."³⁶

Based on several definitions above that have been explained by experts, what is meant by universal jurisdiction is the authority of each country to try certain international crimes without looking at the *locus delicti*, the nationality of the accused, or the nationality of the victim. The implementation of the principle of universal jurisdiction can only be carried out on certain international crimes. There is a difference between "core international crimes" and other international crimes. Core international crimes have generally been defined in the Rome Statute of 1998 from various international criminal courts and existing international instruments. In addition, core international crimes involve

³⁵ *Ibid.*

³⁶ Ariqa, W. (2022) *Yurisdiksi Negara Dalam Ekstradisi Narapidana Terorisme Ditinjau Dari Hukum Internasional (Studi Kasus Terpidana Tindak Kejahatan Hambali)*. Undergraduate Thesis. Universitas Islam Riau.

violations that are not only derived from the rules of international law contained in the convention, but also customary international law. The core international crimes in question include piracy, slavery, genocide, crimes against humanity, war crimes.³⁷³⁸

As previously stated, so far universal jurisdiction can only be applied in cases of international crimes according to the United States Supreme Court judge in the Hostage Case, namely: "an international crime is such an act universally recognized as criminal, which is considered as a grave matter of international concern and for some valid reason cannot be left within the state that would have control over it under normal circumstances".

Thus, for a crime to be considered an international crime, it must fulfill the following conditions.

1. The act is universally recognized as a crime, has been formulated as a crime in all criminal law systems in all countries. All countries condemn the act and determine the appropriate punishment.
2. The crime must meet certain criteria as an international crime, namely that the perpetrator is an enemy of humanity and his actions are contrary to the interests of humanity so that international law enforcement must be carried out, through customary international law and international agreements, by punishing the perpetrator.
3. Due to its nature which is very dangerous for the international community, it is very reasonable not to only give jurisdiction to a country which, under normal circumstances, has the right to implement it.

Classical international law mentions war crimes and piracy as international crimes that can be applied to universal jurisdiction. Article 404 of the Restatement (Third) of the Foreign Relations Law of the United States states that universal jurisdiction applies to piracy, human trafficking, attack or hijacking of aircraft, genocide, war crimes, and terrorism. The ICTY includes serious violations of the 1949 Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity as international crimes that require universal jurisdiction. The ICTR's jurisdiction includes genocide, crimes against humanity, violations of Article 3 together with the Geneva

³⁷ Shaw, M. (2008) *International Law*, 6th ed. Cambridge: Cambridge University Press, p. 30.

³⁸ Utama, I., Mangku, D., dan Yulianti, N. (2020) 'Yurisdiksi International Criminal Court (ICC) Dalam Penyelesaian Kasus Rohingnya Dalam Perspektif hukum Internasional', *Jurnal Komunitas Yustisia Universitas Pendidikan Ganesha Program Studi Ilmu Hukum*, 3(3).

Conventions and Additional Protocol II of 1977. The Rome Statute of 1998 on the authority of the ICC mentions genocide, war crimes, crimes against humanity and crimes of aggression as its jurisdiction.

A crime can become an international crime in accordance with Cassese's opinion, which emphasizes that based on universal jurisdiction, a country has the authority to try someone who commits an international crime and this is contained in the 1949 Geneva Convention and the Convention Against Torture and several international Conventions on Terrorism. Meanwhile, O'Brien emphasizes that several international crimes are already considered international crimes according to customary international law, namely piracy and crimes against humanity or war crimes.

Looking at the categorization mentioned above, in general, the application of universal jurisdiction to international crimes can be in the form of the application of universal jurisdiction to international crimes by countries that are bound by a certain international legal instrument, and the application of universal jurisdiction is carried out by all countries regardless of whether they are bound or not bound by a certain international convention. The application of universal jurisdiction can also be seen from the considerations given by judges of international and national judicial institutions (in this case for cases with international dimensions).

The application of universal jurisdiction is one of the differences between transnational crimes and international crimes, because this principle in practice is only recognized for cases of international crimes. The rationality of the principle of universal jurisdiction is rooted in the concept of the 1998 Rome Statute, namely *actio popularis*. Based on this concept, the state acts on behalf of the international community, because as a member of the international community, the state has an interest in maintaining world order. The application of the theory of universal jurisdiction is considered an effective way to eliminate impunity at the national legal level.³⁹⁴⁰

In the case of terrorism crimes, the application of universal jurisdiction to determine whether terrorism is included in the level of crime that requires universal jurisdiction is still

³⁹ Cohen, A. (2012) 'Prosecuting Terrorists At The International Criminal Court: Reevaluating Unused Legal Tool To Combat Terrorism', *Michigan State International Law Review*, 2(20).

⁴⁰ Rizk, A. (2017) *Is Terrorism an International Crime? The Potential Role of the ICC in Prosecuting Terrorism* [Online]. Tersedia di: https://www.researchgate.net/publication/361925705_IS_TERRORISM_AN_INTERNATIONAL_CRIME_THE_POTENTIAL_ROLE_OF_THE_ICC_IN_PROSECUTING_TERRORISM (Diakses 30 Juli 2023).

difficult to apply, although there are several rules or conventions that determine terrorism as an international crime. At least for now, there is a conflict to be resolved if there is no broader understanding of terrorism in national and international court forums, because including terrorism in the international court forum also presents problems in the definition and difference between transnational crimes and international crimes. Much attention must be paid to sorting out the impact of terrorism on these two types of crimes in order to determine the right forum to try terrorism crimes.

Terrorism may be categorized as an international crime when its conduct constitutes a serious threat to the interests of the international community as a whole and gives rise to criminal responsibility beyond the jurisdiction of a single state. This qualification arises particularly when terrorist acts are carried out in a widespread and systematic manner against civilian populations, possess political or ideological dimensions that disrupt international peace and security, and are associated with violations of fundamental norms of international law, such as the prohibition of violence against civilians and the principle of protection of non-combatants. In certain contexts, terrorism may overlap with other categories of international crimes, especially crimes against humanity, when committed as part of a widespread or systematic attack directed against a civilian population. Accordingly, terrorism acquires an “international” character not merely because it occurs across national borders, but because of its nature and consequences that threaten the international legal order and international security.

Conversely, terrorism is classified as a transnational crime when the elements of the act involve more than one state, whether in the stages of planning, execution, financing, or in the effects produced. This category emphasizes the existence of a cross-border element, for example when perpetrators operate in one state, victims are nationals of another state, or terrorist acts are carried out through the use of international networks for logistics and funding. Within this framework, terrorism is understood as a crime that is essentially a domestic criminal offense but has international implications because it transcends state jurisdictions. Consequently, the applicable legal regime places greater emphasis on inter-state cooperation through extradition, mutual legal assistance, and sectoral counter-terrorism conventions, rather than on the classification of terrorism as a core crime under international criminal law. Thus, the principal distinction between terrorism as an international crime and as a transnational crime lies in their normative foundations: the former is based on the nature of the threat posed to the international

community, while the latter is based on the cross-border character of the conduct involved.⁴¹

However, it is possible that in the future the application of universal jurisdiction for terrorism crimes can also be applied, because terrorism has begun to be considered an international crime because it has fulfilled international elements, and there are similarities with crimes against humanity. The widespread impact and terror and the consequences caused make terrorism equated with crimes against humanity and there are elements of human rights violations in the crime.

Terrorism can also be categorized as a crime against humanity, as explained in the previous sub-chapter. Crimes against humanity are part of international law that has universal jurisdiction since the decision of the judges at the Nuremberg Trials stated in the Nuremberg principles, namely that any country can declare a court with jurisdiction over crimes in accordance with the charter. The application of universal jurisdiction has received support from various groups, and more and more countries are implementing universal jurisdiction through their laws and regulations, however, not many countries are then practicing it, especially for pure universal jurisdiction, namely jurisdiction that is applied to perpetrators of crimes who have no relationship whatsoever with the country that is trying them.

Thus, all countries, even though they have no connection with the nationality of the perpetrator or victim, or the place where the crime was committed, can legally process the perpetrator. Several countries such as Belgium and England already have national laws implementing this universal jurisdiction⁴². The existence of universal jurisdiction is intended so that perpetrators of international crimes do not escape punishment wherever the perpetrator is.

Regarding the authority of the international judicial body in this case the ICC, basically the crime of terrorism is not included in the jurisdiction of the ICC, so it is not easy to find the relevance of the crime of terrorism with the crime of genocide or with crimes against humanity, because the regulations are placed in different conventions. However, in the international or national community, almost every sovereign state or

⁴¹ *Ibid.*

⁴² Sefriani. 2006. 'Penerapan Yurisdiksi Alien Tort Claim Act Dalam Perspektif Hukum Pidana Internasional', *Jurnal Hukum*, 13(2), p. 190.

international institution can criminalize the crime of terrorism into crimes against humanity. International law itself, both in the form of Conventions, in the form of Resolutions, and customary international law has developed to place terrorism as part of crimes against humanity.⁴³

It is important for the world to pay attention that the crime of terrorism can be tried at the ICC if the crime has a widespread impact, not only affecting one country, but also the crime has a bad impact or is detrimental to other countries, and the act of terrorism has become the concern of the international community which has an impact on a global scale, and can even affect relations between countries.

IV. Conclusion

Until now, although there is no universal definition of terrorism, terrorism is a heinous crime with the aim of terrorism to make people afraid, and attract the attention of members of society, even the state, and create distrust of the government, and force society or certain groups to follow the wishes of the perpetrators of terrorism. The crime of terrorism is a form of serious violation of human rights so that the crime can be categorized as a crime against humanity because it has similar characteristics. Crimes against humanity are part of international law that has universal jurisdiction since the decision of the judge at the Nuremberg Trials, so it is possible for perpetrators of terrorism to be tried at the ICC if the crime has had a widespread impact on an international scale.

⁴³ King, *Who Is The Real Terrorist ?*

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