



Criminal Sanctions for Terrorism Perpetrators in the Perspective of Islamic Criminal Law (Bali Bombing Case Study I)

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Abstract

When the crime of terrorism of the Bali bombing on October 12, 2002 occurred in Indonesia, which is not a country that applies Islamic law, then this became a problem among Muslims in Indonesia. It is clear that the behavior of terrorism is a form of Jarimah Al-Bagyu which sanctions in the form of Qisas and diyat, but in Indonesia there are perpetrators of terrorism who get the death penalty there are those who get life imprisonment with different sanctions sentenced by the judge. The research method used is normative juridical (legal research) which is descriptive analysis with primary data sourced from legal materials. The results of the research conclude that the perpetrators of the Bali I bombing terrorism in Islamic Criminal Law include indirect co-perpetrators (Isytirak ghairul mubasir/isytirak bittasabbubi) appropriately applied in the form of death penalty and life imprisonment. So that this paper will provide an overview of the perpetrators of indirect participation in which sanctions in Islamic criminal law are given in the form of Ta'zir, the judge's verdict in the Indonesian State against terrorism suspects is a form of Ta'zir, namely the punishment for the perpetrator of the jarimah is left entirely to the ruler or judge.

Keywords : Terrorism; Indirect Participation; Jarimah *Ta'zir* .

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Introduction

In the Big Indonesian Dictionary, terrorism is the use of violence to cause fear in an effort to achieve a certain goal, especially a political goal.¹ The same definition can also be found in the Law Dictionary written by Sudarsono. Meanwhile in Law no. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism in Chapter III article 6, it is stated that terrorism is: "an act carried out by anyone who deliberately uses violence or threats of violence, creates an atmosphere of terror or widespread fear of people or causes serious victims." mass in nature, by taking away freedom or eliminating the lives and property of other people or causing damage or destruction to vital strategic objects or the environment or public facilities or international facilities.²

Since acts of terror began to spread after the New Order government with the climax of the bombings in Bali, media reports about terrorists have been widely debated by the public. It was Ustad Abu Bakar Ba'asyir who was suspected of being a terrorist, because he was said to be a Jama'ah Islamiyah figure and had ties to Umar al-Faruq, and had his own perception of terrorists. According to Ustadz Abu Bakar Ba'asyir, terrorism is defined as: "actions that use violence or threats of violence that have a political or power background within a state government. Terrorism can be carried out by parties who oppose a government in power to overthrow it, it can also be carried out by a government against its people or opposition groups to maintain its power. Threatening actions and even acts of violence, including murder or destruction of property, cannot be called terrorists if the parties concerned have declared a state of war.³ From the definition above, it can be concluded that a group can be said to be a terrorist group if it meets the following elements:

1. Systematically exploiting human weaknesses, namely horror or paralyzing fear.
2. There is the use of threats or use of physical violence.
3. There are political goals to be achieved.
4. The targets are generally civil society, and
5. Rational planning and preparation is carried out.⁴

Terrorism is an act of crime against humanity and civilization that poses a serious threat to state sovereignty, a danger to security and world peace and is detrimental to the welfare of society.⁵ Terrorism is a form of crime that is well organized, transnational in nature and classified as an extraordinary crime that does not differentiate between targets (Indiscriminative).⁶ In the Islamic view, terrorism is haram. Terrorism is destructive and anarchic in nature, its aim is to create fear and/or destroy other parties, and is carried out without rules and unlimited targets.⁷

¹ Imran Tahir and Irwan Tahir, "Perkembangan Pemahaman Radikalisme Di Indonesia," *Jurnal Ilmiah Administrasi Pemerintahan Daerah* 12, no. 2 (2020): 74–83..

² "Undang-Undang No. 15 Tahun 2003 Tentang Pemberantasan Tindak Pidana Terorisme," n.d

³ Muhammad Zulfikar and Aminah Aminah, "Peran Badan Nasional Penanggulangan Terorisme Dalam Pemberantasan Terorisme Di Indonesia," *Jurnal Pembangunan Hukum Indonesia* 2, no. 1 (2020): 129–44 .

⁴ Paulus Eko Kristianto, "Persinggungan Agama Dan Politik Dalam Teror: Menuju Terbentuknya Teologi Spiritualitas Politik Dalam Konteks Maraknya Terorisme Di Indonesia," *DUNAMIS: Jurnal Teologi Dan Pendidikan Kristiani* 3, no. 1 (2018): 1–23.

⁵ Fauziah Ratnasari, *Sanksi Terhadap Pelaku Tindak Pidana Terorisme Ditinjau Dari Perspektif Fiqih Jinayah Dan Undang-Undang Nomor 15 Tahun 2003* (Palembang: Fakultas Syari'ah dan Hukum Universitas Neberi Raden Fatah, 2017).

⁶ Iwan Satriawan, Muhammad Nur Islami, and Tanto Lailam, "Pencegahan Gerakan Radikalisme Melalui Penanaman Ideologi Pancasila Dan Budaya Sadar Konstitusi Berbasis Komunitas," *Jurnal Surya Masyarakat* 1, no. 2 (2019): 99–110.

⁷ Pipit Widiatmaka and Muhammad Lukman Hakim, "Pengaruh Terorisme Yang Mengatasnamakan Agama Terhadap Keberagaman Di Indonesia," *Islamic Insights Journal* 3, no. 1 (2021): 19–31.

In the Islamic jurisprudence, terrorism fulfills the elements of criminal acts (jarimah) hirabah. The ulama define al-muharib (hirabah perpetrator) as: "A person who takes up arms against many people and frightens them (causing fear among the community. ⁸" In Indonesian legislation, the criminal act of terrorism is regulated in law number 5 2018 concerning the eradication of criminal acts of terrorism.

Terrorism in Islamic teachings is known as Al-Irhaab (terror) meaning (causing) fear. According to the MUI fatwa, terrorism is an act of crime against humanity and civilization which poses a serious threat to state sovereignty, a danger to security and world peace and is detrimental to the welfare of society. Terrorism is a form of crime that is well organized, transnational in nature and is classified as an extraordinary crime that does not discriminate between targets. ⁹Of the total of all criminal acts of terrorism in Indonesia, 541 people have lost their lives because of the perpetrators of terrorism.

That Islam strictly prohibits its followers from killing each other as stated in Surah Al-Israa (verse: 33):

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَمَنْ قَتَلَ مَطْلُومًا فَقَدْ جَعَلْنَا لَوْلِيَّهِ سُلْطَانًا فَلَا يُسْرِفُ فِي الْقَتْلِ إِنَّهُ كَانَ مَنْصُورًا

Meaning: "And do not kill a soul which Allah has forbidden (to kill), except for a right (reason). And whoever is murdered unjustly, We have indeed given power to his heir, but let not the heir go beyond the limits in killing. Indeed, he is a person who receives help." (QS. al Isra': 33).¹⁰

And this verse is strengthened by the Muslim hadith and Abu Dawud: "The blood of a Muslim is not halal, except for one of three things: a widow who commits adultery, a soul that kills a soul. And people who abandon their religion separate themselves from the congregation. from ibn Ubaid said, Rasulullah. Said: "And whoever is killed intentionally, he has the right to demand qishas."¹¹

Also strengthened by HR hadith. Al-Bukhari and Muslim mentioned the death penalty for perpetrators of murder.

عَنِ ابْنِ مَسْعُودٍ رَضِيَ اللَّهُ عَنْهُ قَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : لَا يَجِلُّ دَمُ امْرِئٍ مُسْلِمٍ إِلَّا بِأَحَدٍ ثَلَاثٍ : الثَّيْبُ الزَّانِي، وَالنَّفْسُ بِالنَّفْسِ، وَالتَّارِكُ لِدِينِهِ الْمَفَارِقُ لِلْجَمَاعَةِ

Meaning: From ibn Mas'ud ra said: Rasulullah, said "it is not permissible for the blood (killing) of a Muslim who testifies that there is no god but Allah and I am the messenger of Allah, except for one of three reasons: a married person commits adultery, killing other people, leaving their religion and separating themselves from the congregation" (Saheeh Muslim, 1988:224).¹²

In this case, killing is something that is strictly prohibited by Islam and are greatly hated by Allah , unless they kill based on the orders of their position, such as executioners who carry out the qishas sentence, before the executioner carries out his duties, he must first pay attention to the conditions for a person to be sentenced to death (qishas): (1) The murderer is amukallaf person (mature and sensible), then it is not diqisas if the perpetrator is a child or

⁸ Denis Azizah, "TINJAUAN YURIDIS MENGENAI ASPEK PIDANA TINDAK PIDANA TERORISME (HIRABAH) DALAM PANDANGAN HUKUM PIDANA INDONESIA DAN HUKUM PIDANA ISLAM" (Universitas Andalas, 2019).

⁹ Astri Yulianti, Ade Mahmud, and Fariz Farrih Izadi, "Pemidanaan Bagi Pelaku Terorisme Dalam Perspektif Hukum Pidana Positif Dan Hukum Pidana Islam," *Jurnal Riset Ilmu Hukum*, 2022, 101–6.

¹⁰ Yulianti, Mahmud, and Izadi.

¹¹ Yulianti, Mahmud, and Izadi.

¹² "HR. Al-Bukhari," nd

a madman, because his actions are not subject to taklif. Likewise with people who are sleeping/epile, because they have no legitimate intention or intention; (2) There is an element of intent, namely that the perpetrator deliberately killed the victim by using something that usually takes life, whether in the form of a sharp object or other object that is generally used to kill; (3) Murder has freedom, not coercion, meaning that if one kills one because one is forced, then according to Hanafiyah it is not qisas, but according to Jumhur it is still qisas even if forced.

When a person has fulfilled the three elements above, then on the order of the judge the executioner can carry out his task of carrying out qisas.

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ فَمَن تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ يَوْمَن لَّمْ يَحْكُم بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ

Meaning: "And We have decreed for them in it (At the Torah) that soul (will be repaid) for soul, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds (even) have their meaning. Whoever relinquishes (his rights to kisas), then relinquishes those rights (becomes) atonement for his sins. Whoever does not decide matters according to what Allah has sent down, then they are wrongdoers." (QS. Al-Maidah: 45).

So for perpetrators of terrorism who have caused casualties on purpose, according to Islamic law, this is something that is required by Allah (qisas) and even if it is not carried out in accordance with Allah 's orders, the law is a sin.

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ ۗ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ ۗ فَمَن عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبَاعُ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ ۗ فَمَن اعْتَدَىٰ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ ١٧٨

وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ ١٧٩

Meaning: "O you who believe, qishaash is obligatory on you regarding those who are killed; freeman with freeman, slave with slave, and woman with woman. So whoever receives forgiveness from his brother, let (the one who forgives) follow it in a good way, and let (the one who is forgiven) pay (diat) to the one who forgives in a good way (too). . this is a relief from your Lord and a mercy. Whoever transgresses the limit after that, then he will have a very painful punishment. And in that qishaash there is (a guarantee of continuity) of life for you, O people of understanding, so that you may be pious' (QS. AlBaqarah: 178-179).

The first Bali Bombing was a tragedy that occurred on October 12 2002, with this event, Indonesia shocked the world with the first Bali Bombing, this incident claimed many victims, claimed 200 lives, and left 300 people injured, the problem is that The victims were not only Indonesian citizens, many tourists or visitors from outside Indonesia were victims of this suicide bombing. ¹³This Suicide Bombing incident is considered an act of terrorism by the government as regulated in article 1 paragraph (1) of Law No. 15 of 2003 which states that it is an unlawful act carried out systematically with the intention of destroying the sovereignty of the nation and state. Usually carried out using violence or threats, thereby causing fear of people in general. Which often results in many victims and the destruction of public objects and facilities.¹⁴

¹³ Eggy Fajar Andalas, Purwati Anggraini, and Joko Widodo, "Memori Terorisme: Memori Traumatis Dan Strategi Mengatasi Trauma Korban Bom Bali I Dalam Teks Sastra Indonesia," *Satwika: Kajian Ilmu Budaya Dan Perubahan Sosial* 6, no. 1 (2022): 167–79.

¹⁴ "Undang-Undang No. 15 Tahun 2003 Tentang Pemberantasan Tindak Pidana Terorisme."

It is stated in Article 9 of Perpu 1/2002: It states that people who bring or release explosive weapons, firearms and other dangerous materials to and/or from Indonesia with the aim of committing a criminal act of terrorism will be sentenced to prison for a minimum of three years and a maximum of 10 years, the death penalty, or life imprisonment.¹⁵

Criminal acts or criminal acts are sometimes carried out individually and sometimes in groups. In criminal acts of terrorism, of course the actions are carried out in groups. Participating in performing *jarimah* is performing jointly, either through agreement or coincidence, instigating, ordering others, providing assistance or power.¹⁶

In the view of Positive Criminal Law (KUHP) regarding responsibility for participation in committing criminal acts. In short, participation means the participation of one or more people when another person commits a criminal act. This can be seen further in the formulation of the law regarding the theory of participation contained in Articles 55 and 56 of the Criminal Code, where in this article it can be concluded that there are five groups of participants. criminal offenses namely:

- a. The one who commits the act (*plager*, *deader*).
- b. The one who orders it to do it (*doen plager*).
- c. Who also did it (*Medelpegen*).
- d. Those who persuaded them to do it (*uitloker*).
- e. which helps the action (*medeplichtige*).

Each of these five groups has different criteria and legal consequences regarding the punishment they will impose. Basically in Islamic criminal law, the *fuqaha* differentiate this inclusion into two parts:

1. Taking part in direct action (*istirak-mubasyir*), the person who does it is called *syarik mubasyir*, this occurs when a *syarik mubasyir* becomes a real friend in the implementation of a criminal act. Direct participation occurs when more than one person actually carries out the *jarimah* in the sense that each person participates and takes part directly, even though it is not finished. So it is enough to be considered as directly participating if someone has carried out an act which is seen as the beginning of the implementation of the *jarimah*. As for the jurists, there is a separation between cooperation in carrying out criminal acts:

- a. Happened by chance (*tawafuq*).
- b. It was indeed planned together beforehand (*tamalu*).¹⁷

According to the Malikiyah Ulama, the responsibility of the *tawafuq* is a direct participation (*tawafuq*) and (*tamalu*), the difference is that *tawafuq* is only responsible for the actions carried out, while *tamallu* is fully responsible for the consequences of the actions that occur (because a previous agreement has been made). However, there is another difference of opinion according to Hanafiyah scholars, who argue that between *tawafuq* and *tamallu* they are responsible for their own actions and are not responsible for the actions as a whole. *Jarimah hudud* and *Qisas* are sanctions for direct legal responsibility to the perpetrator.

2. Participating in an indirect act (*ishtirak ghairul mubasyir / isytirak bittasabbubi*), the person who does it is called *sharik mutabbaib*. Participating in an indirect act is any person who enters into an agreement with another person to carry out an act that violates the

¹⁵ “Undang-Undang Republik Indonesia.”

¹⁶ Nafi' Mubarak, “Kriminologi Dalam Perspektif Islam” (Dwiputra Pustaka Jaya Sidoarjo, 2017).

¹⁷ Mawah Nurba Aini, “Pertanggungjawaban Pidana Terhadap Pelaku Penyertaan Pembunuhan Dalam Putusan Pengadilan Negeri Nomor: 1538/Pid. B/2014/PN. Bks Perspektif Hukum Pidana Islam” (UIN Sunan Gunung Djati Bandung, 2018). Hal 38

law, ordering another person to provide assistance in the act with intention. ¹⁸Indirect participation occurs in the following ways:

- a. Agreement
- b. Order or incitement (*tabridl*).
- c. Providing assistance (*i`anah*).

The criminal sanction for the legal responsibility of the perpetrator of indirect fingering is only *Ta'zir*.¹⁹ Regarding the punishment for participants committing indirect jarimah, according to Islamic law it is a ta'zir punishment, because the tawamah also acts indirectly and is not determined by the syara', both the form and type of law. The only Jarimah prescribed by Sharia is Hudud and Qisas Diyat. These two forms of jarimah are only directed at the jarimah which is only directed at the jarimah which is done directly, not to the friend who did it (indirect maker). Indirect acts are illat and show syubhat (security) in the actions of jarimah, while syubhat in hudud (jarimah hudud and qisas or diyat) according to the rules must be avoided, therefore, the sanctions for the perpetrators of jarimah include the book *Ta'zir*, not hudud or qisas.²⁰

In the explanation of Islamic law, the sanctions given to perpetrators of terrorism or Al-Bagyu are Qisas, but in the case of the Bali bombing I, all the perpetrators were given the death penalty, but there was one perpetrator named Ali Imron who was given a life prison sentence. So this is the source of the problem that the author will examine regarding Criminal Sanctions for Terrorism in the Perspective of Islamic Criminal Law (Bali Bombing Case Study I). To make it easier for the author to research, the author uses a research method with a normative juridical type of research (*legal research*). Yeng is descriptive analytical with qualitative data types, primary legal material data sources, jinayah fiqh literature, the Koran and Hadith along with ulama fatwas known as ijthad of ulama in accordance with the research theme. Using data collection techniques, namely library research.

Results and Discussion

Criminal Sanctions for Terrorism Perpetrators in the Bali Bombing Case I in the Perspective of Indonesian Criminal Law

Sanctions are a punitive measure imposed by a state or certain group because of a violation committed by a person or group. Sanctions are something that we hear and see very often. Even in small communities, the word sanction is often used to punish someone or a group of people who are guilty, for example, if someone steals in the village, they will be subject to the sanction of being expelled from the village or being taken to the local police . Sanctions are also a coercive tool, where sanctions force to enforce the law or force to heed legal norms. Sanctions as a law enforcement tool can also consist of canceling the act which constitutes the violation, either null and void by law or null and void once it is declared by a judge. Sanctions in a legal context are punishments imposed by a court. ²¹In the context of sociology, the meaning of sanctions is social control. Sanctions imposed by a court or in a

¹⁸ Mukhsin Nyak Umar and Zara Zias, "Studi Hukum Pidana Islam Dan Hukum Pidana Positif Tentang Sanksi Pidana Bagi Pelaku Pembantu Tindak Pidana Pembunuhan," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 6, no. 1 (2017): 128–55.

¹⁹ Ahmad Zainut Tauhid, "Hukuman Mati Terhadap Pelaku Tindak Pidana Terorisme Perspektif Fikih Jinayah," *IN RIGHT: Jurnal Agama Dan Hak Asasi Manusia* 1, no. 2 (2012).hal. 12

²⁰ Muhammad Rizky Afwan Fanani, "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Pendanaan Terorisme Ditinjau Dari Hukum Pidana Dan Hukum Pidana Islam," *CLEAR: Criminal Law Review* 1, no. 2 (2023): 84–102.

²¹ Irvino Rangkuti, "Kajian Norma Pancasila Terhadap Penerapan Sanksi Pidana Mati Dalam Hukum Positif Di Indonesia," *Res Nullius Law Journal* 5, no. 1 (2023): 47–59.

legal context are certainly much more severe and binding because they have legal force. If a person or group violates the law then he or she will be subject to sanctions, this could be sanctions in a sociological context, it could also be sanctions in a legal context. Sanctions are also often used in other contexts, such as international sanctions which include legal action against a group of countries, diplomatic sanctions, economic sanctions and also military sanctions. So, the meaning of sanctions is quite broad when viewed from various contexts. It is hoped that the existence of these sanctions will deter someone and will not repeat their mistakes, either the same or different mistakes. The more serious the mistake a person commits, the heavier the sanctions they will receive.²²

Sanctions in criminal law are divided into two, namely: criminal sanctions and action sanctions. Criminal sanctions are actually reactive to an act, while action sanctions are more anticipatory in nature towards the perpetrator of the act. The focus of criminal sanctions is aimed at wrongdoing that a person has committed through the imposition of suffering so that the person concerned is deterred. The focus of action sanctions is more focused on efforts to provide assistance to the perpetrator so that he changes. So criminal sanctions emphasize the element of retaliation (retribution) and are suffering that is deliberately imposed on an offender. Meanwhile, action sanctions originate from the basic idea of protecting the community and coaching or caring for the person who created it. Or as JE Jonkers said, criminal sanctions are focused on the punishment applied for the crime committed, while action sanctions have a social purpose. In short, criminal sanctions are oriented to the idea of imposing sanctions on the perpetrator of an act, while action sanctions are oriented to the idea of protecting society.²³ According to Law Number 5 of 2018, which was subsequently summarized (Law No. 5 of 2018), sanctions for perpetrators of criminal acts of terrorism are contained in Article 6, Article 10A, Article 14, Article 15, namely as follows.²⁴

(Article 6) : every person who deliberately uses violence or threats of violence which creates a widespread atmosphere of terror or fear of people, causes mass casualties by depriving other people of their freedom or loss of life and property, or causing damage or Destruction of public objects or international facilities is punishable by a minimum of 5 (five) years and a maximum of 20 (twenty) years, life imprisonment or the death penalty.²⁵ **(Article 10 A)** : every person who unlawfully enters the territory of the Unitary State of the Republic of Indonesia, makes, receives, obtains, hands over, controls, carries, has supplies to him or has in his possession, stores, transports, concealing, or removing from the territory of the Unitary State of the Republic of Indonesia chemical weapons, biological weapons, radiology, microorganisms, nuclear, radioactive or their components, with the intention of committing a crime of terrorism shall be punished by imprisonment for a minimum of 3 (three) years

²² Ruben Achmad, "Hakekat Keberadaan Sanksi Pidana Dan Pemidanaan Dalam Sistem Hukum Pidana," *Legalitas: Jurnal Hukum* 5, no. 2 (2017): 79–104.

²³ Ahmad.

²⁴ M Zen Abdullah, "Analisis Yuridis Terhadap Undang-Undang Nomor 15 Tahun 2003 Jo Undang-Undang Nomor 5 Tahun 2018 Tentang Pemberantasan Tindak Pidana Terorisme Dalam Hubungan Dengan Hak Azasi Manusia," *Legalitas: Jurnal Hukum* 13, no. 1 (2021): 26–35.

²⁵ Aulia Rosa Nasution, "Penegakan Hukum Terhadap Tindakan Terorisme Sebagai 'Extraordinary Crime' dalam Perspektif Hukum Internasional Dan Nasional," in *Talenta Conference Series: Local Wisdom, Social, and Arts (LWSA)*, vol. 1, 2018, 8–14.

and a maximum of 20 (two) years. twenty) years, life imprisonment, or death penalty.²⁶ **(Article 14)** : every person who deliberately mobilizes another person to commit a crime of terrorism as intended in article 6, article 7, article 8, article 9, article 10, article 10A, article 12, article 12 A, article 12 B, Article 13 letter b and letter c, and article 13A are punished with the same crime in accordance with the provisions referred to in article 6, article 7, article 8, article 9, article 10, article 10A, article 12, article 12A, article 12B, article 12 letters b and c, and article 13A.²⁷ **(Article 15)** : Every person who commits criminal conspiracy, preparation, attempt, or assistance to commit a crime of terrorism as intended in Article 6, Article 7, Article 8, Article 9, Article 10 Article 10A, Article 12, Article 12A, Article 12B, Article 13 letters b and c, and Article 13A shall be punished with the same crime in accordance with the provisions as intended in Article 6, Article 7, Article 8, Article 9, Article 10, Article 10A, Article 12, Article 12A, Article 12B , Article 13 letters b and c, and Article 13A.²⁸

In the first Bali bomb case which occurred on October 12 2002, there were four suspects who were sentenced to death or life imprisonment²⁹: the first suspect was Ali Imron, who acted as field coordinator, bomb assembler, surveyor and also the person who brought the car containing the bomb. to Paddy`s Pun. Ali Imron was the first person to carry out terror in Indonesia. The sentence Ali Imron received was life imprisonment. Did not get the death penalty because of his regret and became a Justice collaborator. Second suspect: Amrozi bin H Nursyam acted as a buyer of explosives and L-300 cars to carry bombing equipment, the sentence he received was the death penalty and was executed on November 9 2008 at around 00.15 WIB. The third suspect, Imam Samudra (Abdul Aziz), acted as a coordinator who distributed tasks to each person for the bombing. The sentence he received was the death penalty, which was sentenced on September 10 2003. The fourth perpetrator, Ali Gufron (Mukhlis), acted as a fund-raiser for the bombing, to be precise. for making mukhlis bombs he was sentenced to death on October 2 2003 and executed on November 9 2008.³⁰

Jarimah acts or criminal acts are sometimes carried out individually and sometimes carried out in groups. Participating in performing jarimah means carrying out jarimah together, either by agreement or by chance, instigating, ordering others, providing assistance or power. There are several terms in criminal law regarding participating in committing a criminal act, namely: a. Get involved. b. Also committing an offense. c. Participate; d. Deelneming (Dutch), complicity (English), participation (French). e. Criminal liability. In criminal law in Indonesia (KUHP), the division of participation consists of:

1. An act or dader (article 55) consists of: a) The perpetrator (pleger), b) The person who orders it (doen plager), c). Those who participate (medepleger), d. Advocate (uitloken) e. Assistant or (medeplichtige).

²⁶ Maulana Rahmat, "Politik Hukum Terhadap Tindak Pidana Terorisme Dalam Pembaharuan Hukum Pidana Indonesia," *Jurnal Wawasan Yuridika* 1, no. 2 (2017): 155–73.

²⁷ Rahmat.

²⁸ Rahmat.

²⁹ Dhika Paskah Adi Putri, Ismaya Salindri, and Yosua Revie Nouke Satria, "ANALISIS PENERAPAN ASAS RETROAKTIF DALAM PUTUSAN PENGADILAN NEGERI DENPASAR NOMOR 167/PID. B/2003/PN. DPS TERKAIT KASUS TINDAK PIDANA TERORISME BOM BALI 1," *Recidive: Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 2, no. 1 (n.d.).

³⁰ M Syaiful Ibad and Thomas Nugroho Aji, "Bom Bali 2002," *AVATARA, e-Journal Pendidikan Sejarah*, 2020, 1–14.

2. Pleger (perpetrator) is a person who personally commits an act that fulfills the formula of the offense, namely: a) A person who is responsible (Indonesian judiciary), b) A person who has the power or ability to end a prohibited situation, but causes a situation that is prohibited to continue (Dutch judiciary), c). The person who is obliged to end the forbidden situation (Pompe). The position of plegers in article 55 is people as makers. So, pleger entered it (Hazewinkel Suringa). Those who are responsible are those in the position of makers (Pompe).

3. Doenpleger (the person who orders it to be done), Doenpleger is the person who carries out the action through the intermediary of another person, while the person who is the intermediary is only likened to a tool. In doenpleger there are two parties, namely: (1) the direct actor or the one who is ordered onmiddelijke dader, autor physicus, manus ministra), (2) the indirect actor or the one who orders (meddelijke dader, doenpleger, auctor intellectualis or moralis, manus domina). To order someone to do something is to make them a tool. The person used as a tool cannot be punished because he is not responsible according to criminal law for the actions he commits for the reasons: a). The person did not commit a criminal event or the act he committed cannot be qualified as a criminal event, b) The person committed one or more reasons that eliminate the error.

4. Medepleger (Participating) Medepleger is a person who deliberately participates in doing or taking part in something that is prohibited by law. This means that they fulfill all the offense formulas, whether one fulfills all the offense formulas or each fulfills some of the offense formulas. Thus, there are two elements to say that the form of participation is taking part, namely: a) Between the participants there is a conscious cooperation, b). The participants together have carried out. The conditions are as follows: 1). There is conscious cooperation (bewuste samenwerking), namely there is an understanding between participants regarding the actions carried out for cooperation, 2). Physical cooperation (gezamenlijke uitvoering or fysieke samenwerking) is aimed at things that are prohibited by law. Physical cooperation or joint implementation, namely close and direct cooperation for actions that directly lead to the completion of the offense in question.

5. Uitloker (Encouragement) Advocating or persuading (uitloker) according to article 55 paragraph 1 sub 2 of the Criminal Code is a person who mobilizes another person to commit a criminal act using means determined by law. The elements of persuasion are: a. Using one or more of the methods referred to in the Criminal Law, intentionally persuading (inviting) another person to commit an act that is prohibited by the Criminal Law. b. The desire of the perpetrator (who is persuaded) to commit an act prohibited by the Criminal Law is the result of persuasion from the person who persuaded him. c. There must be a "psychische causaliteit". d. Those who are persuaded have carried out or have tried to carry out acts (which are prohibited by the Criminal Law and which they want). e. Those who are persuaded are fully responsible according to criminal law, if they cannot be punished, then there is no persuasion but there is someone who orders them to do it. Methods of persuasion that are strictly determined in the Criminal Law, namely: 1). Giving, 2) Promises, 3) Misusing power, 4) Using violence, 5). Making threats, 6). Using trickery, 7) Giving opportunities, 8) Giving effort, 9). Give information. From all these explanations, it can be concluded that the conditions for a persuader to be subject to a legal offense are as follows: Deliberately committing or persuading another person to commit a criminal act. Limitative mobilization

or persuasion efforts are determined by law. The perpetrator's will arises as a result of the persuasion mentioned in points 1 and 2 (psychische limitatif). The perpetrator carries out the action desired by the mover. The perpetrator must be accountable.

Review of Islamic Criminal Law on Criminal Sanctions for Perpetrators of Terrorism in the Bali Bomb I Case.

Terrorism in Islamic teachings is known as Al-Irhaab (terror) meaning (causing) fear. According to the MUI fatwa, terrorism is an act of crime against humanity and civilization which poses a serious threat to state sovereignty, a danger to security and world peace and is detrimental to the welfare of society. Terrorism is a form of crime that is well organized, transnational in nature and is classified as an extraordinary crime that does not discriminate between targets.³¹ Of the total of all criminal acts of terrorism in Indonesia, 541 people have lost their lives because of the perpetrators of terrorism. That Islam strictly prohibits its followers from killing each other as stated in Surah Al-Israa (verse: 33):

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَمَنْ قَتَلَ مَطْلُومًا فَقَدْ جَعَلْنَا لَوْلِيهِ سُلْطَانًا فَلَا يَسْرِفُ فِي الْقَتْلِ إِنَّهُ كَانَ مَنْصُورًا

Meaning: "And do not kill a soul which Allah has forbidden (to kill), except for a right (reason). And whoever is murdered unjustly, We have indeed given power to his heir, but let not the heir go beyond the limits in killing. Indeed, he is a person who receives help." (QS. al Isra': 33).³² And this verse is strengthened by the Muslim hadith and Abu Dawud: "The blood of a Muslim is not halal, except for one of three things: a widow who commits adultery, a soul that kills a soul. And people who abandon their religion separate themselves from the congregation. from ibn Ubaid said, Rasulullah. Said: "and whoever is killed intentionally, he has the right to demand qishas."³³ Also strengthened by HR hadith. Al-Bukhari and Muslim mentioned the death penalty for perpetrators of murder.

عَنِ ابْنِ مَسْعُودٍ رَضِيَ اللَّهُ عَنْهُ قَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : لَا يَجِلُّ دَمُ امْرِئٍ مُسْلِمٍ إِلَّا بِأَحَدٍ ثَلَاثٍ : الثَّيِّبُ الزَّانِي , وَالنَّفْسُ بِالنَّفْسِ , وَالتَّارِكُ لِدِينِهِ الْمُفَارِقُ لِلْجَمَاعَةِ

Meaning: From ibn Mas'ud ra said: Rasulullah, said "it is not permissible for the blood (killing) of a Muslim who testifies that there is no god but Allah and I am the messenger of Allah, except for one of three reasons: a married person commits adultery, killing other people, leaving their religion and separating themselves from the congregation" (Sabeeh Muslim, 1988:224).³⁴

In this case, killing is something that is strictly prohibited by Islam and are greatly hated by Allah, unless they kill based on orders from their position, such as executioners who carry out the qishas sentence, before the executioner carries out his duties, he must first pay attention to the conditions for someone to be sentenced to death (qishas): (1) The murderer

³¹ Yulianti, Mahmud, and Izadi, "Pemidanaan Bagi Pelaku Terorisme Dalam Perspektif Hukum Pidana Positif Dan Hukum Pidana Islam."

³² Yulianti, Mahmud, and Izadi.

³³ Yulianti, Mahmud, and Izadi.

³⁴ "HR. Al-Bukhari."

is a Mukullaf person. (mature and sensible), then it is not diqisas if the perpetrator is a child or a madman, because his actions are not subject to taklif. Likewise with people who are sleeping/epile, because they have no legitimate intention or purpose; (2) There is an element of intent, namely that the perpetrator deliberately killed the victim by using something that usually takes life, whether in the form of a sharp object or other object that is generally used to kill; (3) Murder has freedom, not coercion, meaning that if one kills one because one is forced, then according to Hanafiyah it is not qisas, but according to Jumhur it is still qisas even if forced. When a person has fulfilled the three elements above, then on the order of the judge the executioner can carry out his task of carrying out qishas.

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصًا فَمَن تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَّهُ يَوْمَ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ

Meaning: "And We have decreed for them in it (At the Torah) that soul (will be repaid) for soul, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds (even) have their meaning. Whoever relinquishes (his rights to kisas), then relinquishes those rights (becomes) atonement for his sins. Whoever does not decide matters according to what Allah has revealed, then they are wrongdoers." (QS. Al-Maidah: 45).

So for perpetrators of terrorism who have caused casualties on purpose, according to Islamic law, this is something that is required by Allah (qishas) and even if it is not carried out in accordance with Allah 's orders, the law is a sin.

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْهُ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ فَمَنِ اعْتَدَىٰ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ ١٧٨

وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ ١٧٩

Meaning: "O you who believe, qishaash is obligatory on you regarding those who are killed; freeman with freeman, slave with slave, and woman with woman. So whoever receives forgiveness from his brother, let (the one who forgives) follow it in a good way, and let (the one who is forgiven) pay (diat) to the one who forgives in a good way (too). . this is a relief from your Lord and a mercy. Whoever transgresses the limit after that, then he will have a very painful punishment. And in that qishaash there is (a guarantee of continuity) of life for you, O people of understanding, so that you may be pious" (QS. AlBaqarah: 178-179).

Regarding sanctions in Islamic criminal law, there are several distinctive functions, namely, *first*, revenge, a person who has caused damage to another person, according to this reason, is obliged to suffer the same as what was inflicted on another person. *Second*, the removal of sins (expiation), this concept originates from religious thoughts that originate from God. *Third*, imprison (deterrent). *Fourth*, reforming the perpetrator of the crime (rehabilitation of the criminal), this crime is applied as an effort to change criminal attitudes and behavior so that they do not repeat the crime. As has been explained, the criminal act of terrorism in Islamic law is included in the jarimah. In simple terms, jarimah is a sharia prohibition which Allah threatens with a had punishment or tazir. In this case, an act is considered a Jarimah

offense if it fulfills the general elements of Jarimah, namely: first, the formal element, namely the existence of a law or text. This means that every act is not considered against the law and the perpetrator cannot be punished unless there is a text or law that regulates it.³⁵In law, this is known as legality, namely that an act cannot be considered against the law and the perpetrator cannot be sanctioned until there are regulations that support it. In Islamic sharia, this is better known as ar-rukun asy-syar'i. The rule that supports this element is "no action is considered to violate the law and no punishment is imposed unless there is a provision in nas. Second, the material element, namely the nature of being against the law. This means that a person's behavior forms a finger, either through an attitude of action or an attitude of inaction. This element in Islamic criminal law is called ar-rukun al-madii. Third, the moral element, namely The perpetrator is Mukalaf, meaning that the perpetrator of Jarimah is a person who can be held criminally responsible for the Jarimah he commits. In Islamic sharia, the moral element is called ar-rukun al-adabi.³⁶Jarimah in Islam, seen from the level of punishment, is classified into three, namely first, jarimah hudud, namely an act of breaking the law for which the type of threat of punishment is determined by the text, namely had punishment (Allah's right). The punishment in question does not have a lower or higher limit and cannot be abolished by individuals or community representatives. Second, Jarimah qisas and diyat are acts that are threatened with punishment of qisas and diyat. Qisas and diyat punishments are punishments that have predetermined limits, there are no lower or highest limits, but are the rights of the individual (the victim or their guardian), which is therefore different from the law of had which belongs solely to Allah. Third, jarimah ta'zir, namely giving lessons, meaning that a jarimah is threatened with the punishment of ta'zir, namely punishment other than had and qisas and diyat. In this case, the implementation of the ta'zir punishment, whether the type of prohibition is determined by the text or not, whether the act concerns Allah's rights or individual rights, the punishment is left entirely to the authorities.³⁷The jurists in Islamic criminal law include terrorism in the category of jarimah hudud, where criminal acts which are ultimately sentenced to had as a right of Allah are carried out for the public interest, namely to reject chaos in society and to create security and tranquility for society.

Criminal acts or criminal acts are sometimes carried out individually and sometimes in groups. In criminal acts of terrorism, of course the actions are carried out in groups. Participating in performing jarimah is performing jointly, either through agreement or coincidence, instigating, ordering others, providing assistance or power.³⁸In article 55 of the Criminal Code, it can be known as medepleger (who participates in committing a criminal act). Medepleger is a person who deliberately participates in doing or taking part in something that is prohibited by law. This means that they fulfill all the offense formulas, whether one fulfills all the offense formulas or each fulfills some of the offense formulas. Thus, there are two elements to say that the form of participation is taking part, namely: a. Between the participants there is a conscious cooperation. b. The participants together have carried out. The conditions are as follows: 1) There is conscious cooperation (bewuste samenwerking),

³⁵ Fauziah Ratnasari, "SANKSI TERHADAP PELAKU TINDAK PIDANA TERORISME DITINJAU DARI PERSPEKTIF FIQH JINAYAH DAN UNDANG-UNDANG NOMOR 15 TAHUN 2003." (UIN RADEN FATAH PALEMBANG, 2017).

³⁶ Moh Jauhari, "Filsafat Hukum Islam" (PT. Liventurindo, 2020).

³⁷ Nurul Irfan, *Fiqh Jinayah* (Amzah, 2022).

³⁸ Jazuli, *Upaya Menanggulangi Kejahatan Dalam Islam* (Jakarta: Raja Grafindo Persada, 2000).16

namely there is an understanding between the participants regarding the actions carried out for cooperation. 2) Physical cooperation is aimed at things that are prohibited by law. Physical cooperation or joint implementation, namely close and direct cooperation for actions that directly lead to the completion of the offense in question.³⁹In Islamic criminal law it is called Al-Isytirak (Participating in performing the jarimah). It can be seen that Al-Isytirak is divided into two:

1. Participate in direct action (*istirak-mubasyur*) . According to Abdul Qadir Audah, taking part directly is:

إِشْتَرَاكَ الْمُبَشِّرِيَّةَ : الْأَصْلُ أَنْ يَكُونَ إِذَا إِلَى عَمَلِهِ الْإِشْتِرَاكُ يُجْرَى فِي حَالِ تَعَدُّدِ الْجَنَاةِ الَّتِي يُبَشِّرُنَ رُكُوهُ الْجَزِيمَةِ الْمَاد

*This means: taking part in direct action basically has to happen if there are actually more people than one person or a large number of perpetrators.*⁴⁰ Direct participation can occur when a person commits an act which is seen as the beginning of the implementation of the jarimah which is sufficient to be characterized as immoral and which is intended to carry out the jarimah. In current terms, that is, if he has carried out an experiment, whether the jarimah he has carried out has been completed or not, because whether or not a jarimah is completed does not affect his position as a person who took part in the action directly. The effect is only limited to the amount of punishment, that is, if the Jarimah he has committed is completed, while the Jarimah is in the form of *Had Jarimah* , then the maker is sentenced to Had, and if it is not completed then he is only sentenced to Takzir. In this direct action there are terms known as tawafuq and tamallu. The majority of jurists distinguish between the direct responsibility of the perpetrator in cases of coincidence or spontaneity (tawafuq) and criminal cases that were planned in advance (tamalu). In cases of coincidence, each direct actor is only responsible for the consequences of his actions and is not responsible for the actions of others.⁴¹ *Tawafuq* means that the intention of the people who take part in a criminal act is to carry it out, without any prior agreement (consensus) between them. In other words, each actor acts because of his personal impulses and thoughts that arise at that moment. In the Tamalu case, the perpetrators have agreed to commit a criminal act and want to realize the results of that criminal act together. It should be noted that fuqaha differ in defining the meaning of at-tamallu. Hanafiah Ulama, Syafi'iyah Ulama , and Hanabillah Ulama, based on a more accurate opinion according to them, say that at-tamallu' according to their terms is the same desire of the perpetrators in an action even though it is not preceded by an agreement between them beforehand, if they were together - the same commits the crime spontaneously even without prior planning or agreement (spontaneous beating). So according to them, at-tamallu. has a broader meaning, includes gang-banging, which means there was no prior agreement or planning, and includes plotting or conspiracy, which means

³⁹ Kemas Muhammad Musyaffa Ramadhan, "TINJAUAN YURIDIS MEDEPLEGER (TURUT SERTA) DALAM TINDAK PIDANA PEMBUNUHAN (Studi Putusan Mahkamah Agung Nomor: 702 K/Pid/2018)" (Universitas YARSI, 2022).

⁴⁰ Akhmad Farid Zamani, "Tindak Pidana Penyertaan Pembunuhan Perspektif Hukum Islam (Analisis Putusan Mahkamah Agung No. 959 K/Pid/2012)," 2014.

⁴¹ Zamani.

there was a prior agreement. ⁴²Meanwhile, Malikiyah scholars say, at-tamallu is agreement and conspiracy, namely there are two or more people who intend to kill someone and beat them. So, at-tamallu,, requires an agreement made beforehand to carry out an action that at-tawafuq (a beating that occurs spontaneously and coincidentally) in an act of violation is not considered as at-tamallu. However, all of them were still sentenced to death if they had the intent and intention to carry out and were present at the action, even though in the end only one of them carried out the action while the others only watched and supervised, for example, but with the condition that if there was time If they are asked to help carry out the action, then they will help. According to the Malikiyah Ulama, people who are involved in an act of murder where there was no previous agreement or conspiracy between them, they are all still sentenced to death, if indeed they took part in the beating intentionally and in the abuse and the victim died on the spot, while the blow - the blows they deliver cannot be differentiated from one another, or they can be differentiated but it is not known which blow is fatal and which is fatal. ⁴³Direct perpetrator punishment, basically the number of perpetrators of a criminal act does not affect the amount of punishment that is appropriate to be imposed on them, which is the same as committing a criminal act alone. Therefore, the punishment imposed on a person who participates in committing a criminal act (co-perpetrator) is the same as the punishment imposed on a person who commits it alone, even though when together with others, they do not commit all the acts that constitute the crime. In cases of murder, based on the agreement of the imams of the four schools of thought, it is legally obligatory to punish a group of people for killing one person. This is in *the context of saddudz dzara ' i* (closing gaps that could potentially be used as an entrance to something forbidden). Because if all of them are not destroyed, of course it will have an impact on the implementation of the kisas law which cannot be carried out. Because if so, the act of murder carried out jointly will be used as a trick and engineering to avoid being punished by criminal punishment. Apart from that, many cases of murder that occur are carried out jointly by a group of people, because usually a murder case does not occur unless it is carried out collaboratively by a group of people. The friends were quick to respond in anticipating problems like this, so they issued a comprehensive fatwa against all members of the murder plot. The first case like this occurred during the caliphate of Umar Ibnu Khattab, namely a husband left his wife in the city of Shan'a along with a child from his other wife. Then the wife has another dream man and does bad things. The child also knew about this act. The wife then said to the other dream man, "This child knows what we have done, therefore, kill him." However, the man refused, causing the wife to "sulk" and no longer want to have anything to do with the man. - the man, so that the man finally complied with the wife's request to kill the child. Then he murdered the child together with another man, his wife and her servant by mutilating the child and throwing him into a well. Then the incident was revealed and spread widely. After this incident, the Amir of Yemen arrested the man and he admitted his actions, then the other perpetrators also admitted their actions. The Amir of Yemen then sent a letter to Umar ibn Khattab, then Umar Ibn Khattab sent a reply letter stating that they should all be sentenced to death (kisas). Umar ibn Khattab said, "By Allah,

⁴² Zamani.

⁴³ Zamani.

if the people of Shan'a joined together to kill that child, I would definitely sentence them all to death.

2. Participating in indirect actions (isytirak ghairul mubasyir / isytirak bittasabbubi) .
According to Abdul Qodir Audah, taking part in indirect actions is:

يَعْتَبِرُ شَرِيكًا مُتَسَبِّبًا مَعَهُ اتِّفَاكٌ مَعَ غَيْرِي عَلَّ إِزْتِكَابِ فِعْلٍ مُعَالِيَةٍ مَعَهُ حَزْضٍ غَيْرِيٍّ أَوْ إِعَاوَعَلَ ذَا الْفِعْلِ
يَشْتَرِطُ فِي الشَّرِيكِ أَنْ يَكُنْ لِاصِدًّا الْإِتِّفَاقَ أَوْ التَّحْزِيضَ أَوْ الْإِعَاوَةَ عَلَّ الْجَزِيْمَةَ

This means: every person who agrees with another person to carry out an act for which he can be punished, a person who instigates (moves) another person to assist in this act, with the indication that there is deliberate intent in the agreement, instigation and provision of such assistance.⁴⁴

Mutasabbib is a party who carries out an action that can usually result in damage or destruction of something. The action itself is not actually what directly brings about this destruction, but rather through the intermediary of something else, namely the action of another person who does it of his own free will. If the *mutasabbib*'s actions are deemed to be an act that violates and exceeds the limits, then only he is responsible. This is based on the rule that a *mutasabbib* is not held responsible unless he commits an act that violates whether it was intentional or not. Or based on the rules, an action is attributed or attributed to *mutasabbib* if there is no mediating agent, namely when it is not possible to demand responsibility from the direct perpetrator because the direct perpetrator is a person who cannot possibly be held responsible or the direct perpetrator does not exist or is unknown, or the action is *mutasabbib* stronger effect and more dominant than the actions of the direct perpetrator. In conclusion, the *mutasabbib* is the one who must be responsible if his actions are the cause of it being more dominant than the actions of the direct perpetrator. According to Jumhur, apart from the Hanafiah ulama, in cases of murder, the direct perpetrator and indirect perpetrator can be punished together. In cases of coercion to commit murder, both the party who is coerced and the party who is coerced are equally accused, because the party who is coerced is in fact the party who carries out the murder directly, while the party who is coerced is the party who is the cause (*mutasabbib*).⁴⁵ In another murder case, where there were two perpetrators, one of whom was holding the victim and the other who committed the murder of the victim, Malikiyah ulama had a different opinion from the opinion of other madzhab ulama, namely that both of them were equally criticized, because the perpetrator who was in charge of holding the victim was the *mutasabbib* and his colleague in charge of killing was the direct perpetrator. Those who are considered to have participated in an indirect act are any person who enters into an agreement with another person to carry out an act that is punishable, or orders another person, or provides assistance in the act, accompanied by intention in the agreement and ordering and providing assistance. There are three elements of indirect participation, namely as follows: a. Actions that can be punished with criminal penalties (criminal acts). b. The way to carry out this action is by entering into an agreement, instigating, or providing assistance. c. The intention of the perpetrator is not direct so that the intended action can occur.⁴⁶ The first element, for participation to occur, requires an act

⁴⁴ Zamani.

⁴⁵ Zamani.

⁴⁶ Zamani.

that can be punished and the act must occur although it does not have to be completed completely. Therefore, in criminal trials, the perpetrator cannot immediately be sentenced. Likewise, to impose punishment on an indirect perpetrator, the direct perpetrator does not have to be sentenced. This is because sometimes the direct perpetrator has good intentions so he is not sentenced, but the indirect perpetrator is still sentenced or the direct perpetrator is pardoned because he is still a minor or crazy, while the indirect perpetrator is still sentenced.⁴⁷ There are three elements, indirect participation can occur in the following ways: 1) Agreement. Agreements can occur because of a sense of mutual understanding and because of the same desire to commit a criminal act. If there is no prior agreement, then there is no "participation". So there is no "participation" if there has been a previous agreement, but not because of the Jarimah that occurred and was done together. If someone agrees with another person to steal a buffalo, then the maker immediately hits the owner of the buffalo or steals a buffalo that does not belong to the target person, then there is no agreement regarding the jihad taking place. However, the absence of participation does not mean that the agreement is not punished, because the agreement itself is an immoral act. In terms of indirect participation, Imam Malik has a different theory from other jurists. He considers a person who agrees with another person to commit a criminal act and that person witnesses the crime taking place, that person is considered a "direct co-perpetrator", not an indirect perpetrator. That is Imam Malik's theory regarding absolute indirect actors, whether the method of carrying out these indirect actions is through agreement, instigation, or assistance. 2) Inciting What is meant by instigating is persuading other people to commit jarimah, and this persuasion becomes the impetus for the committing of jarimah. If there is no persuasion or incitement, it is certainly impossible to say that persuasion or incitement is an incentive for someone to commit a criminal act, whether the incitement has an effect or not, because incitement itself is an immoral act and a command to commit evil. Orders (inducement) or coercion to kill may be considered incitement. The difference between orders (persuasion) and coercion is that orders do not affect the freedom of will of the person being ordered to choose so that he can carry out the crime or abandon it, whereas coercion affects the person's freedom of will. This means that he can only choose between two things, committing a crime or reaping what was threatened to him and being patient with it. If the person who orders (persuades) has power over the person being ordered, such as the power of a father over his child or a teacher over his students, the order can be called coercion. However, if the person being ordered is not a minor, is not stupid or crazy, and the person giving the order does not have power over him, the order is considered ordinary inducement which may or may not give rise to a criminal offense. In cases where there is power in the person giving the order, the jurists differentiate between whether the person being ordered is mumayiz or not. If the person being ordered is not mumayiz and it is impossible for him to oppose the person who is ordering him, it means that he is a tool of the person who is ordering him even though he is the one who directly committed the crime.⁴⁸ In cases like this, the person who ordered it is considered the direct perpetrator and he is not considered the indirect perpetrator. Imam Malik is of the opinion that if the person who instigated it also witnessed and was at the scene where the crime took place, he is considered to be the original perpetrator, whether he helped the perpetrator directly or indirectly, provided that if

⁴⁷ Zamani.

⁴⁸ Zamani.

the direct perpetrator did not commit the crime, he himself will do it. 3) Assistance: People who assist other people in committing a criminal act are considered indirect perpetrators even though they did not previously agree to commit the criminal act. For example, a person who monitors the road to make theft or murder easier for another person (the perpetrator), is considered a person who provides assistance to the perpetrator. Likewise, the person who leads the victim to the scene of the crime and then leaves him to be killed or confiscated by the perpetrator of the crime, he is also considered to be the person who provided assistance to the perpetrator. The jurists differentiate between direct actors and assistants.⁴⁹ According to them, the direct perpetrator is the person who commits or tries to do the prohibited act, while the assistant does not do or try to do it, but only helps the original perpetrator with acts that have nothing to do with the prohibited act.⁵⁰ Therefore, he is not considered to be the perpetrator of this act. The jurists differ in their opinions regarding the law of the (first) person holding the victim so that a third person can kill him. Some of them, namely Imam Abu Hanifah, Ash-Shafi'i, and the first opinion of the Hanbali school of thought, are of the opinion that the person holding this is an accompanying actor as a helper, not a direct perpetrator. They reasoned that even though the person holding it caused the murder because of his actions, someone else did it. In this case, direct action defeats cause if the direct action is not based on absolute coercion. Meanwhile, some other jurists, namely Imam Malik and the second opinion of the Hanbali school of thought, are of the opinion that the person who holds and the person who kills them are both considered to be the direct perpetrators of the murder. They reasoned that the person who killed was the one who committed the murder, while the person who held it was the cause of the murder. The direct action and the cause are in the same position in terms of creating the result of the action, namely murder, because an effect will not occur if one of the two actions is not fulfilled.⁵¹ Imam Malik considers the person who provides assistance as a direct perpetrator in a criminal case that has been planned and there is a prior agreement, if the person who assists is present and witnesses the crime at the scene of the crime or is nearby, in case he is asked for assistance to commit the crime. , it's not too late to do it. However, if the criminal act is committed without prior agreement and the person who assists is present at the scene of the crime, but he is not ready to commit the criminal act if he is asked to do so, he is only considered an indirect perpetrator.⁵² Meanwhile, other jurists consider the person who helps as an indirect perpetrator in all cases if he does not commit the crime directly. Basically, the rules of Islamic law stipulate that punishments of a predetermined amount, namely in hudud and qisas crimes, are imposed on the direct perpetrators of the crime, not on indirect perpetrators. Based on this order, anyone who participates in hudud and kisas crimes will not be sentenced to the hudud punishment that has been determined in the amount, regardless of the form of their participation. In this case, he was sentenced to takzir. If the actions of an indirect perpetrator can be seen as a direct perpetrator, it is just a tool driven by the indirect perpetrator, he is sentenced to hudud or kisas because he is categorized as a direct perpetrator, not as an indirect perpetrator. According to Imam Malik's theory, an indirect perpetrator, regardless of the method and form of his participation, is considered a direct perpetrator, namely if he is present and witnesses the crime. This is because if the

⁴⁹ Zamani.

⁵⁰ Zamani.

⁵¹ Zamani.

⁵² Zamani.

direct/original actor is unable to carry it out, he himself (indirect actor) will carry it out or participate with other people in the implementation. Based on this theory, indirect perpetrators will be sentenced to hudud and kisas immediately they are considered as direct perpetrators.⁵³

Conclusion

In the terrorism case that occurred in Bali on October 12 2002, there were four suspects who had been sentenced by the judge, the first suspect Ali-Imron who was sentenced to life imprisonment, the second suspect Amrozi bin H Nursyam, the sentence he received was the death penalty. executed on November 9 2008 at around 00.15 WIB. The third suspect, Imam Samudra (Abdul Aziz), received the death penalty and was sentenced on September 10 2003. The fourth suspect, Ali Gufron (Mukhlis), received the death penalty on October 2 2003 and was executed on November 9 2008. Under legal review In Islamic crime, the author found that the suspects were indirect perpetrators, with the sanctions received in the form of *Ta'zir*, *Ta'zir* given in the form of prison sentences and the death penalty. Suggestions for readers to expand this discussion with new research, so that this research does not just stop at this point but can update this research with new phenomena in the future.

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⁵³ Zamani.

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