TARJIH MAQASIDIY FOR THE PLACEMENT OF TERRORIST CONVICTS IN EAST JAVA

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Abstract: Prisons have contributed significantly to the deradicalization process and served as a machine for positive changes for terrorist convicts. On the other hand, instead of isolating and making terrorist convicts repent, public prison is ideal for spreading radicalism understanding. Public prisons cannot prevent terrorist convicts from disseminating their extreme views. This research answered the pros and cons of placing terrorist convicts in public prisons or special prisons containing kindness, *maslahah,* and target. This empirical research was processed descriptively. Data collection was conducted through field research in Class I Prison in Surabaya and Class II Prison B in Lamongan through a phenomenological approach, interpretive paradigm, and analysis of *Tarjih maqasidiy*. This study concluded that the placement of terrorist convicts alongside non-terrorist convicts in public prisons caused more substantial damage (*mafsadah arjah*) than gathering terrorist convicts in one particular prison by taking the lighter one out of two *mafsadah, mafsadah* of radical doctrine, recruitment networks, and *mafsadah* of giving a chance for consolidation to terrorist convicts. This research answered the problem of placing terrorism convicts and formulated an efficient, effective and targeted policy basis for terrorism convicts.

Lembaga pemasyarakatan(Lapas) telah memberikan kontribusi yang signifikan terhadap proses deradikalisasi dan mesin perubahan positif bagi narapidana teroris. Di sisi lain, alih-alih mengisolasi dan membuat narapidana teroris bertobat, penjara umum justru menjadi lokasi ideal untuk menyebarkan paham radikal. penjara umum belum bias menjadi penghalang bagi teroris untuk menyebarkan paham ekstemisme. Penelitian ini akan menjawab tentang pro kontra penempatan narapidana teroris di lapas umum atau lapas khusus yang mengandung *maslahah* , kebaikan serta tepat sasaran. Penelitian empiris ini diolah secara deskriptif. Pengumpulan data dilakukan melalui penelitian lapangan di Lapas Kelas I Surabaya dan Lapas Kelas II B Lamongan melalui pendekatan fenomenologis, paradigma interpretif, dan analisis Tarjiḥ maqaṣidiy. Penelitian ini menyimpulkan bahwa penempatan narapidana teroris bersama narapidana non-terorisme di Lapas Umum mengandung mafsadah (arjah) yang lebih kuat daripada mengumpulkan narapidana teroris di satu Lapas tertentu dengan mengambil mafsadah

antara dua mafsadah, mafsadah doktrin radikal dan jaringan rekrutmen, dan konsolidasi mafsadah antar terpidana terorisme. Penelitian ini menjawab problem penempatan narapidana terorisme dan merumuskan dasar kebijakan yang efisien, efektif dan tepat sasaran bagi narapidana terorisme.

Keywords: *Tarjiḥ Maqāṣidiy; Placement; Public Prison; Terrorist Convicts.*

INTRODUCTION

In the deradicalization program of terrorist convicts, the prison as a Technical Implementation Unit of the Ministry of Law and Human Rights has many opportunities to incubate the changes and transformation ideology of terrorist convicts. It must be recognized that prisons have a significant contribution to deradicalizing terrorist convicts so far.

At the same time, prison is a very troubling environment where convicts are more likely to explore new beliefs and associate with anyone in prison. Facing the loss of social networks and new conditions, general convicts are particularly vulnerable to interacting with and being recruited by terrorist networks within prisons.

Radicalization in prisons is possible because convicts often experience things causing them easy to be exposed to radicalism, such as alienation, anti-social attitudes, disappointment, social isolation, and a tendency to conduct violence. Starting from these phenomena, terrorist convicts in prisons have the opportunity to influence the other ordinary convicts. Those who belong to extreme groups adapt to other groups to spread their ideology among the ordinary convicts.

It is undeniable that the prison environment is one of the potentials for the development of radicalism because of various risks, including the recruitment of convicts, support of radical-terrorist militancy from outside, preparation of terrorist acts after release, conflict with other groups and staff employees, and strong radicalism potential. Those potentials happen because of complaints, frustration anger at the conditions inside prisons.

A study of radicalization in various prisons in Europe and America conducted by Silke and Veldhuis (2017) mentioned the primary origins of radicalization. There are multiple institutional, social, and individual factors, such as overpopulation (overcrowding) and deprivation, violence and group dynamics, and desire for protection and ownership. In particular, two factors encourage inmates towards ideology and extremist groups, namely overcapacity/population in prison and charismatic leadership.[1]

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[1] Tinka Silke, Andrew & Veldhuis, "Countering Violent Extremism in Prisons: A Review of Key Recent Research and Critical Research Gaps," *Perspectives on Terrorism,* Vol 11, no. 5, October 2017. 2-11. https://www.jstor.org/stable/26297927

Studies carried out by Simon & Sudirman (2015) found that radicalization in several prisons in Indonesia occurred due to many factors, such as overcapacity of residents in jail, the limited ability of officers, lack of facilities in jail so that they could not apply Treatment of High-Risk Prisoners. Treatment of prisoners in various jails was different from one to another. For example, only a few dungeons could separate terrorist prisoners from other ordinary prisoners. They were generally combined in one block or one room. Prisons are so poorly managed that many inmates consider the principles of *jihad* very attractive and have been led to the path of radicalization.[2]

Unlike the above studies on radicalization in prisons in Indonesia and other parts of the world, this paper explains how placing terrorist convicts in East Java into the prison containing *maslahah*, effective and targeted based on the maqasid shariah approach.

In this study, the authors used a qualitative approach. This research used qualitative methods referring to collecting and interpreting the meaning of texts and verbal data. The real-world observations to explain reality from the collected data were conducted through field research in Class I Prison in Surabaya and Class II Prison B in Lamongan. The researchers then applied descriptive analysis to find facts and data to make the correct interpretation. The authors have conducted unstructured interviews with informants consisting of prison leaders and officers, terrorist convicts (prisoners), former terrorist convicts, and experts. The authors also observed some prisons with special blocks for terrorist prisoners or the prisons that did not provide special blocks.

PRISON FOR TERRORIST CONVICTS

The placement of terrorist convicts in prisons is divided into two. The first is placed in a particular block/cell. The second is united with another convict. At the initial stage or all terrorist convicts are placed in a specific block. Under the standard operating procedure (SOP) and regulations that terrorist convicts belong to the high-risk category separated from other convicts. In comparison, the placement of terrorist convict is united with another convict if the evaluation of coaching conducted by the disciplinary observer team of the terrorist convict has shown good attitude and behavior and can follow the coaching program to blend with another convict.[3]

The vulnerability interaction of terrorist convicts and non-terrorist convicts in prisons should always be alerted because of the impossibility of maximum

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[2] A. Josias & Sudirman Simon and Dindin, *Narapidana Teroris Dan Perlakuan Di Lembaga Pemasyarakatan Indonesia.* (Jakarta: Prenadamedia, 2015). 2.
[3] *Sukir, Interview, Surabaya,* 12 July 2019.

surveillance on the activities of terrorist convicts for 24 hours recruitment of members and transformation of the doctrine radicalism-terrorist. For example, the case of Class 1 Prison Surabaya with the discovery of some evidence used by four terrorist convicts spread radical understanding. The discovery of radical books, images, ISIS flags, and a series of electronic items to assemble bombs. It is believed that their target is a non-terrorist convict who has minimal religious knowledge, such as drug and criminal convict for recruitment of members in prisons.[4] Priyo Hadi Purnomo aka PHP (convicted drug case) influenced by the teachings of radicalism from terrorist convicts, Shibgohtulloh and Maulana Yusuf Wibisono, while being a convict in Porong Prison (Class I Surabaya).

Spiritual programs and religious activities in prisons become opportunities to be used by terrorist convicts who know about religion to become a leader (imam) of prayer and hold quranic recitations. They will quickly gain legitimacy as *Ustaz,* who has a high social position in prison and is considered a qualified religious understanding than another criminal convict such as in-class II Prison B Lamongan.

For example, deradicalization proses in prison are the terrorist prisoner case of Aman Abdurrahman, a hard-line terrorist who managed a success to recruit three convicts who had no previous tendency to the jihad of imprisonment.[5] Bomber Thamrin Sunakim, aka Afif, once lived in prison safely. Then after his release, he re-entered the network and committed an extraordinarily brave terror. Similarly, the pot bomb detonation perpetrator in Taman Pandawa, Bandung, Yayat Cahdiyat is a recidivist terrorist case for attending military training in Aceh and communicating with other terrorist cells from inside prison.

The intermingling of the terrorist convict with another non-terrorist convict, such as the current prison conditions, makes a pattern of social interaction between one and the other. Social interactions between terrorist convicts, general convicts, and prison employees influence attitudes, behaviors, political and religious understanding.

As stated by Umar Patek as an essential consideration for placement of terrorist convicts is if the families of terrorist convicts belong to a radical group, then the place of punishment of terrorist convicts should be kept out of the reach of the family, but if the families of terrorist convicts are not radicalized can cooperate with prisons then the placement of terrorist convicts should be close to the family".

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[4] Nancy Junita, "ISIS Di Lapas Surabaya: 4 Teroris Incar Napi Narkoba," last modified 2020, accessed March 25, 2020, https://kabar24.bisnis.com. isis-di-lapas-surabaya-4-teroris-incar-napi-narkoba.

[5] Noor Huda Ismail, "Prison Radicalization and How It Happens: An Analysis into Root Causes of Terrorism," last modified 2020, accessed March 23, 2020, https://www.thejakartapost.com/news/2010/08/27/prison-radicalization-and-how-it-happens-an-analysis-root-causes-terrorism.html;.

So the placement of terrorist convicts in public prisons does cause problems of radicalism and recruitment, such as Riyanto and Purnama Adi[6] are still in solid radical doctrine with the number of groups who are like them. It is hazardous if they feel strong with the number of friends. Still, if only two people are no longer strong power, they will not dare to recruit other people because we will report them.[7]

SPECIAL PRISON CONTROVERSY FOR TERRORIST CONVICTS

The deradicalization program that fosters terrorist convicts still does not carry out appropriate procedures for developing terrorist convicts, especially for the convicts classified as hardliners with a relatively high degree of radical thinking and assessment process of new terrorist convicts in prison. A crucial problem is the absence of trained correctional officers in conducting assessments for terrorist convicts.

Meanwhile, as Frank J. Cilluffo et al., the vulnerability of convicts in prisons with insufficient financial, emotional, and absence support for their families. When there is no support for them, they will be approached by religious groups or communities. These extremist groups are disguised and claim to be legal organizations that help convicts who have just left prison.[8]

In the mechanism of placement in prisons, there are three distribution systems for high-risk convicts such as terrorist convicts, namely: a) placed in one concentration place), b) blocked/unique rooms in prisons (separation), and c) isolated from each other (isolation). There are no specific rules on whether high-risk convicts should be concentrated in one or more institutions or dispersed within the prison system. However, the is vital to note that the placements of terrorist convicts still heed the provisions in the minimum standards.[9]

The two interrelated factors that determine the success of the development of terrorist convicts are profiling and assessment. If profiling and assessment do not work correctly will have an impact on recommendations of coaching patterns and wrong placements. On the contrary, the construction and order will not run properly if the profiling and assessment results are correct but not continued or implemented.[10]

Conditions inside prisons play an essential role in helping individuals be more radical in fighting the state. In other words, punishment conditions in prison

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[6] Terrorist convicts in Class I Surabaya Prison

[7] *Umar Patek, Interview, Sidoarjo,* , 12 October 2019.

[8] Andrew J Whitehead Frank J. Cilluffo, Sharon L Cardash, "Radicalization: Behind Bars and Beyond Borders," *The Brown Journal of World Affairs*, Vol 8 No 2 ,(Spring/ Sumer 2007). 113-122 . https://doi.org/10.26300/79aq-te74

[9] Bryans Shane dan Tomris Atabay, *Hand Book on The Management of High-Risk Prisoners: Criminal Justice Handbook Serie* (New York: UNODC, 2016).

[10] Insan Firdaus, "Penempatan Narapidana Teroris Di Lembaga Pemasyarakatan," *Jurnal Penelitian Hukum De Jure* vo 4, no 17 (Desember 2017): 438. DOI: http://dx.doi.org/10.30641/dejure.2017.V17.429-443

determine the process of individuals becoming more radical. It certainly depends very much on how the shapes and patterns of convicts were coached in prison.[11]

Head of the National Counterterrorism Agency (BNPT) Suhardi Alius revealed that there are currently 289 terrorist convicts spread across 113 prisons throughout Indonesia. Nevertheless, coaching to terrorist convicts is carried out with a small number of people.[12] The classification of the convict is seen in terms of security coaching, and maintaining negative influences that can affect other convicts needs to be realized through assessment by prison officers.

The practice of authorizing terrorist convicts to manage mosques in prisons and provide lectures is proven to bring some teachings of radicalism even in small forms as happened in class II Prison B Lamongan, such as SM identified giving the instructions of radicalism to officers and general convicts, as well as the case of E perpetrators of police station attacks in Paciran who were exposed to radicalism in class I Prison Surabaya and some of the same instances in prisons.

A former terrorist official, Ali Fauzi, said that prison conditions in Indonesia make it easier for terrorist convicts to carry out raids on another convict. Even the center of extremism in Indonesia is in prison. Radicalization is in prisons because prisons in Indonesia are not appropriate to imprison them. If the government considers terrorist cases an extraordinary crime, prison security should be tighter and not united with another criminal case convict.[13]

The longer duration for convict held in a specific prison, the more influential he will be in jail. Usually, his supervision will be reduced, and many prisoners will be concerned about influencing prison. Therefore, the placement of prisoners based on the classification is vital to avoid security and order disturbances within the prison.[14]

Terrorist observer, Noor Huda Ismail, mentioned the effect of inadequate security on terrorist convicts. Such actions occur in Mako Brimob, which can be repeated in other prisons managed by Human Rights Ministry. Human resources officers in prisons are very inadequate. And also the problem of overcapacity of residents in prisons, corruption, and lack of staff salaries.[15]

Some cases of friction between terrorist convicts and other convicts often occur in prisons in Indonesia as follows:

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[11] Peter R. Neumann, *Prisons and Terrorism Radicalisation and De-Radicalisation in 15 Countries* (London, 2010). 37.

[12] Ratna Puspita, "Kepala BNPT 289 Napi Terorisme Tersebar Di 113 Lapas," last modified 2020, accessed February 20, 2020, www.republika.co.id/berita/nasional/hukum

[13] Sri Lestrai, ", 'Penjara Indonesia Dukung Penyebaran Terorisme,' Indonesia/; Diakses 20 Juli 2019.," last modified 2020, https://www.bbc.com/indonesia/berita_indonesia/2016/02/160218_indonesia_penjara

[14] Rahmat Hi Abdullah, "Urgensi Penggolongan Narapidana Dalam Lembaga Pemasyarakatan," *Fiat Justisia Jurnal Ilmu Hukum*, no. 9 (Maret 2015),54. DOI: https://doi.org/10.25041/fiatjustisia.v9no1.587

[15] Aghnia Adzkia, "Pengamanan Napiter Minim di Lapas Padat Penghuni," accessed February 20, 2020, https://beritagar.id/artikel/berita/pengaman-napiter-minim-di-lapas-padat-penghuni;

Figure 1:
The conflict between terrorist convicts and other convicts 2015-2020

Date	Cases	Prison
August 8, 2015	Terrorist convicts vs. General convicts vs. Prison Officer	Class I Prison Officer Lowokwaru Malang Malang
August 26, 2017	Terrorist convicts vs. General convicts	Class IIA Pamekasan Madura Madura
November 7, 2017	Terrorist convicts vs. General convicts	Class II Prison A Nusakambangan, Central Java
May 8, 2018	Terrorist convicts vs. Prison Officer	Mako Brimob Jakarta

It is an obstacle for terrorist convicts when mixed with another convict. After all, they have to be different because they are perpetrators of ideological crimes. Still, because of the limitations of prisons, the government, through the Human Rights Ministry, spread terrorist convicts to several prisons, including in east Java the most yan here (6 people) placement of terrorist is not origin. Still, an assessment that can determine terrorist convict should be placed by looking at the verdict, the category of the terrorist, and the existing prison's readiness. [16]

Law enforcement officials face the common problem in handling terrorist suspects: whether it is best to treat terrorist convicts differently and separately from other convicts or blend in with others between integration and segregation.[17]

After all, discovery concluded the characteristics of cooperative terrorist convicts in daily activities such as saying hello to officers, following the coaching program, and praying in the central mosque prison. In contrast, the non-cooperative do not want to say hello to the officer (if there is a need only), do not want to follow the coaching program (especially personality coaching), and usually do not want to pray congregation in the principal mosque of prison As did two terrorist convicts in Class I Prison Surabaya. [18]

Meanwhile, other comments about the placement of terrorist convicts in prisons received sharp criticism from Noor Huda Ismail

In the placement of terrorists in prison, it is necessary to classify or assess to an understanding of ideology for a terrorist convict, if the level is only fringe terrorists or in the case of a terrorist because of trivial issues, the officer prison

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[16] *Bambang Sugianto, Interview , Sidoarjo, 12 Juli 2019.*
[17] Research and Development Agency for Law and Human Rights, Ministry of Law and Human Rights of the Republic of Indonesia, Development of Terrorist Prisoners in Deradicalization Efforts in Correctional Institutions, 2016.
[18] *Bambang Sugianto, Interview , Sidoarjo, 12 Juli 2019*

must mix him with another convict, so that he knows the association, meets with various people. If the level is already ideolog, it is necessary to isolate because he spreads his ideology.[19] Former terrorist convict Arif Budi Setyawan also expressed another opinion.

Terrorist convicts are preferably placed in a public prison with a maximum of two prisoners. Furthermore, if more than that, then it is not adequate they will be in groups such as in Cipinang prison there are dozens and appeared two strongholds of a terrorist convict, namely the stronghold of Sufyan Tsauri group and Aman Abdurahman group, when they block them would strengthen each other even though at first the assessment is low. [20]

MAQĀṢID AL-SHARIA

The definition of *maqāṣid al-sharī'a* is concrete and operationally proposed by contemporary scholars. *Maqāṣid al-sharī'a* is divided into three: *maqāṣid 'āmmah*, *maqāṣid khāṣṣah* and *maqāṣid juz'iyyah*. *Maqāṣid 'āmmah*, like the meaning, wisdom, and secret and purpose of the general derivation of shari'ah without specializing in one particular field.[21] *Maqāṣid khāṣṣah* is defined as a certain set of methods desired by *shāri'* to realize a human benefit in specific fields. As for *maqāṣid juz'iyyah* is what is the purpose of every *sharī'at* law whether it is obligatory sunnah or makruh.[22]

Alal al-Fasi defines maqāṣid al-sharia in a concise rule that is the purpose of shari'ah and secrets (asrār) the establishment of the rule of law. Then, he added that maqāṣid 'āmmah is to purify the earth, to keep the rules of life, to maintain its sound, to uphold justice, and to maintain the benefit of reason and honor.[23] *Maqāṣid al-sharī'ah* which is *ghāyah, ḥikmah* or intent, by some *fuqaha* is likened to *maṣlaḥah*, distinguished into *ḍarūriyyāt, ḥajjiyyāt* and *taḥsīniyyāt*.[24]

The three levels of maqāṣid in its application complement each other, and the lower mas}lah}ah should follow the higher *maṣlaḥah*. Orderly *maṣlaḥah* is an essential thing as a foundation for setting a priority and tarjīḥ when ta'arrud occurs, both *ta'arrud* between levels and equally at the level of *ḍarurī*.

In addition to being related to these three levels, ta'arrud can occur between *kulliyāt al-khams*, whose orderly order is not the agreement of scholars. Some scholars prioritize *ḍarūrah diñniyyah* over *ḍarūrah dunyawiyyah*. Some others think otherwise. Some even do not give special attention. Orderly *kulliyāt al-khams*.

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19 *Noor Huda Ismail, Interview, Surabaya, 9 Octobre 2019,*
20 *Arif Budi setiawan, Interview, Lamongan, 31 July 2019.*
21 Thahir bin 'Asyur, *Maqāṣhid al-Sharī'ah al-Islāmiyyah* (Kairo: Dar al-salam, 2009), 41
22 Ahmad Raisuni, *Nadzariyyāt al-Maqāṣid 'inda Imām al-Shaṭhibi* (Jeddah: Dar al-Ilmiah li al- Kitab al-Islami, 1995), 6
23 Allal al-Fasi, *Maqāṣid al-Sharīah al-Islāmiah wa Makārimihā* (Mesir: Dar al-Gharb al- Islami,1993), 3
24 The classification formulated al-Juwaini is in principle accepted by scholars afterwards began al-Ghozali, al-Razi, al-Amidi, Izzudin, Syatibi to Thahir Ibn Assyur, with reception that is not static, but dynamic Jasir 'Audah,. *Maqāṣid al-syarī'ah : Dalil li al-Mubtadī'in.* London: IIIT, 2010. 15

proposed by al-Ghozali who prioritizes ḥifẓ al-dīn of ḥifẓ al-nafs, ḥifẓ al-nasl, ḥifẓ al-aql, dan ḥifẓ al-māl.[25]

In addition, al-Najjar expanded maqâshid al-syarî'ah in the social field of society (hifz al-mujtama' or hifz al-Insan). In the framework of hifz al-mujtama', they are allowed to know each other, help, even guarantee social welfare (takaful al-ijtima'i). [26]

TARJĪḤ MAQĀṢIDĪY

Tarjīḥ maqāṣidīy is the superiority of a law using the (quyūd) maqāṣid shar'i.[27]Alternatively, in other terms, is Tarjīḥ bi al- maqāṣid that is to precede him (taqdīm) a mujtahid one of the two pieces of evidence contrary to the power (quwah) maṣlaḥah.[28] Tarjīḥ maqāṣidīy or Tarjīḥ bi al-maqāṣid then changed not only about the strong opposition between the two propositions but on the conflict of forms, kinds, and categories of maṣlaḥah and mafsadah produced by the rule of law.[29]

It is undeniable that the effort to determine the choice is a certainty in life, so it is not surprising that Imam Nawawi said that doing tarjīḥ to choose one of several opposing propositions is very important. This tarjīḥ process can only achieve perfection in mastering various science fields.[30]

To see the problem in detail and contradiction situation will understand the problem. Such conditions lead to a solution formulation based on methods that correspond to existing contradictions. Towards the more dominant maṣlaḥ ah situation (arjaḥ maṣaliḥ). To assess the more dominant position of a problem requires a clear and consistent standard so that the dominant position exists definitively and is not based on assuming. Like the contradiction between maslahah and maslahah, the contradiction between mafsadah and mafsadah in the same category ḍaruriyah, ḥajiyah, and taḥsiniyah. From this consideration, the author brings up the five scales *maslahah* as follows :

1. *Qimāh Shumul al maṣlaḥah (maṣlaḥah quality);*
2. *Miqdār Shumul al maṣlaḥah (maṣlaḥah quantity);*
3. *Taakud Nataij al maṣlaḥah (maṣlaḥah accuracy);[31]*

25 Jamal al-Din Athiyah, *Nahwa Taf''īl al-Maqāṣid al-Shari'ah* (Damaskus: al-Ma'had al-Alamy li al-Fikr al-Islamy), 28-48

26 Abd al-Majid al-Najjar. *Maqashid al-Syari'ah bi Ab'ad Jadidah*, (Beirut: Dar al-Gharab al-Islami, 2006), 173.

27 Muhammad Jabri Syamsuddin, *Al-Tarjih Al-Maqasidiy Bayna Al-Nusūs Al-Muta'ariḍah*, Dalam Http:// Iefpedia.Com/Arab/?P=8130. accesed 16 Maret 2020"

28 Muhammad al-Asuri, "Al-Tarjīḥ Bi Al-Maqāṣid Wa Ḍawābituhu Wa Atsaruhu Fiqhi" (Universitas al-Haj Li Hadar Jazair, 2008). 38.
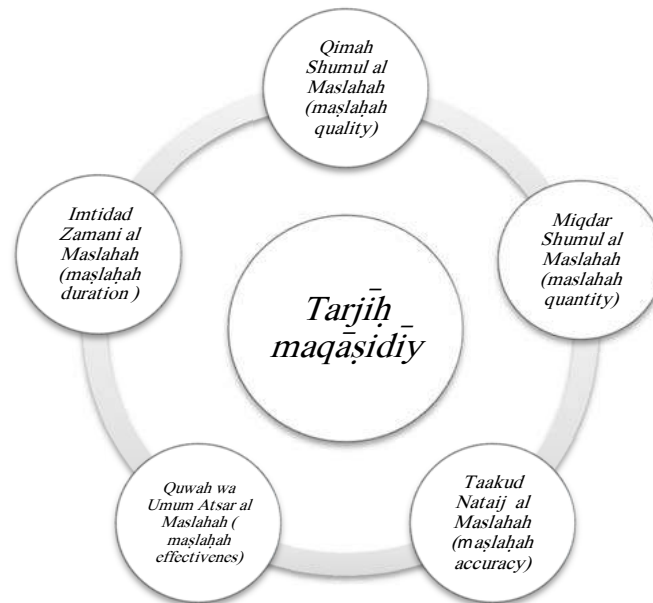
29 Ahmad Imam Mawardi, *Fiqh Minoritas* (Yogyakarta: LKIS, 2010). 230.

30 Jalal al-din 'Abd al-Rahman Ibn Abi Bakar al-Suyuti, *Tadrib Al-Rawi Fī Sharḥ Taqrīb Al-Nawawi*, 2nd ed. (Beirut: Dar Ihya al-Sunnah al-Nabawiyyah, 1979).196.

31 Muhammad Sa'id Ramadan al-Buti, *Ḍawābit Al-Maṣlaḥah Fī Al-Sharīah Al- Islāmiyyah* (Beirut: Mu'assasah al-Risalah, 2000). 249-254.

4.   *Quwah wa umum Atsar al maṣlaḥah* (*maṣlaḥah effectiveness*);[32]
5.   *Imtidād Zamāni al maṣlaḥah* (*maṣlaḥah duration*).* [33]

Figure 2 : *Tarjīḥ maqāṣidīy* **Concept**

TARJĪḤ MAQAṢIDĪY SPECIAL PRISON FOR TERRORIST CONVICT

All prison services dealing with terrorists need to decide how to distribute this prisoner population around their systems. In most cases, this boils down to three related questions, namely whether they should all be held in one place (concentration), whether they should be separated from the general prison population (separation), and if they should be isolated from each other (isolation).

Not all the problems done by the government through BNPT are considered adequate; deradicalization measures in the form of intermingling between non-terrorist prisoners and terrorist convicts are even a debate because it is deemed to strengthen radicalization. So it is better to put it together, and the potential spread of ideology becomes minimal. In contrast, others argue that it is more optimal if separated from forming groups.

The process of studying general convicts in terrorist convicts makes a person become confused between the knowledge that previously existed and the new knowledge taught by a terrorist convict (disorienting dilemma) that causes general convicts to gradually contract personal crises that change one's frame of mind in understanding religious values.[34]

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[32]   Abd Majid Najjar, *Maqāṣid Al-Shari'ah Bi Ab'ad Jadidah* (Beirut: Dar Garib al-Islami, 2008). 252-265.

[33]   Ahmad Al-Raysuni, *Naẓariyyat Al-Taqrīb Wa Al-Taghlīb Fī Al-Ulūm Al-Islāmiyyah* (Kairo: Dar al-Kalimah, 1997). 350-368.

[34]   Jack Mezirow, F. Sayilan, "Transformative Learning Theory," Journal of Faculty of Educational Sciences,

Pro and cons on the placement of terrorist convicts can be analyzed with *tarjīḥ maqāṣidīy* as follows:

1. **Quality *maṣlaḥah***

In prison terrorist, convicts usually have religious expertise, so often given trust and responsibility for the facilities of mosques in prison. It is hazardous because they benefit from the opportunity to interact becomes easier to approach and do the doctrine of radicalism in another convict, such as W M in Class I Prison Surabaya and S M in Prison Class II B Lamongan.

Preventing the doctrine of radicalism in the name of religion that is very potentially done by terrorist convicts when mingling with a non-terrorist convict, categorized in the *ḥifẓ al-din* keep religion or (*ḥifẓ al-Insan / ḥifẓ al-mujtama*) Nurture humanity in the level of *ḍaruriyah* that must be implemented immediately. Because the crime of the doctrine of extremism is very vulnerable to be transmitted to non-terrorist convicts with doctrinal approaches in a very supportive place and the lack of supervision will be very easy to develop.

One lesson that emerges from the deradicalization and disengagement programs is the importance of preparing prisoners for their release and – once they have been released–providing aftercare to facilitate their transition into stable environments and make them less vulnerable to being re-recruited into extremist activities. take care of all society, such as prisoners, as part of keeping the community alive. (*ḥifẓ al-mujtama'*).

While there is a fear to unite terrorist convicts in a particular prison with the threat and fear of the emergence of coordination and solidarity network of a terrorist convict (school of terrorist), which is very dangerous included in the *ḥajiyah* because with the identification of the classification of terrorist convict between ideologies, militant sympathizers and the existence of a model of prison.

As well as supervision following a standard operating procedure (SOP), competent employees focus on the deradicalization of terrorist convicts. The fears can be eliminated by the process of assessment and identification, reeducation, and systematic rehabilitation of extraordinary prison employees.

2. **Quantity *maṣlaḥah***

The characteristics of a terrorist convict in prisons are different from another convict. A radical understanding becomes an ideology for terrorist convicts as a basis for conducting terrorist, such as some prison recruitment cases. Therefore, when radicalization through socialization and validated terrorist convicts, their transformation is strengthened, and their new identity is maintained. Finally,

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the convict became abusive personals, convicting justifying their actions and supporting radical groups.[35]

BNPT has been trying to change the way convicts view terrorist cases to become nationalists and accept the ideology of Pancasila. However, in practice, not all terrorist convicts are willing to participate in deradicalization programs. Many factors make them reject the offer, but the main thing is that they do not want to admit the Unitary States of the Republic of Indonesia and believe Indonesia is an infidel country, terrorist convicts this model as a high-risk or dangerous inmate. Hence, it needs special handling so as not to disseminate his beliefs to another convict.[36]

The policy of special prisons for terrorist convicts is urgently realized to limit the communication space of terrorist convicts by categorizing the convict to several levels, according to the level of ideological restrictions to be accessible in coaching and supervision. The policy of placing terrorist convicts in prisons is a form of effort to realize the public benefit (*maṣlaḥah 'āmmah*) in avoiding the spread of radicalism or recruitment of terrorist networks within prisons.

3. **Accuracy** *maṣlaḥah*

The absence of a mechanism level tests of radicalism against terrorist convicts, besides the difficulty of measuring the cognitive level of radicalization of terrorist convicts through assessment, failing the policy of placement of terrorist convicts in public prisons and supported by the fact of the old members'. They re-engaged into the active network of terrorists after release from prison and some cases of radicalism that began from jail.

Dissatisfaction with the government and conditions in prison so can not argue everything presented about jihad, let alone the extraordinary ability of the wording of the ideologists of terrorists. With the provision of little religious knowledge, the results slowly but surely exposed to radicalism and involved acts of terrorist in prison, convicts prone to exposure to radicalism, especially for those interested in religious science. Moreover, the current prison policy of mixing general convicts with a terrorist convict in one public prison will make it easier for network recruiters to identify people who are likely to be like-minded and who appear to be potentially able to continue the movement.[37]

In this case, the government is the possibility of developing radical teachings in each Indonesian prison. Terror perpetrators who have been sentenced to prison

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[35] Dubouloz C. Wilner A, "Transformative Radicalization: Applying Learning Theory to Islamic Radicalization," *Studies in Conflict & Terroris* vol 34, no. 1 (April 2011): 418–438. https://doi.org/10.108 0/1057610X.2011.561472

[36] *Bambang Sugianto, Interview, Sidoarjo, 12 Juli 2019.*

[37] Randy Borum, "Radicalization into Violent Extremism I: A Review of Social Science Theories," *Journal of Strategic Security* vol 4, no 4, (winter 2011): 17. http://dx.doi.org/10.5038/1944-0472.4.4.1

can still move and not stand still, even write and spread radical thoughts behind bars and still get support and a network of sympathizers from inside and outside prison.[38]

In the prison context, most difficulties dealing with terrorists are caused precisely because they do not see themselves as criminals. Rather than quietly serving their sentence, many regard their time in prison as an opportunity to continue the struggle and involve themselves in activities ranging from passive resistance to turning the jail into a battleground to support the more comprehensive campaign.

Preventing the spread of radicalism in prisons becomes a problem that must be anticipated with effective and targeted policies, likes to stop the placement of terrorist convicts in public prisons, by gathering terrorist convicts with general convicts in which there must be contact and interaction, even doctrine is an excellent potential of radicalism that is very easy to realize in prisons.

4. Effectiveness *maṣlaḥah*

Ideally, the guidance of terrorist convicts should eliminate the opportunity to engage in terrorist activities both inside and outside prisons. It should be possible to foster terrorist convicts to turn the radical understanding into a moderate version and recognize the Republic of Indonesia.

Terrorist convicts have radical characteristics inherent in their ideology. The majority of them are people trained as combatants who follow several times *tadrīb askarī* They have the ability and skills to fight under any circumstances. Several times they dare to clash with another convict. Even able to paralyze the actual police officers who are also highly trained in dealing with criminals.

Prisons can provide an environment to continue the confrontation with the state, especially by highlighting or exaggerating grievances and injustices that are also fuelling the movement's campaigns on the outside. Prisons also involve allegations of discrimination, mistreatment, and torture and result in negative media coverage, protests, and even dramatic confrontations such as hunger strikes.

There have been many attempts to arrest suspected terrorists that Densus 88 and The National Police are doing to combat terror efforts in Indonesia. However, during the placement of terrorists, convicts are still mixed with general convicts as it is now. It will be counterproductive and ineffective with the spirit of fighting radicals and terrorists. It is the same as providing facilities to terrorist figures to spread radical doctrine in prisons.

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[38] Anggi Kusumadewi, "Kisah Aman Abdurrahman Dan Kantornya Di Nusakambangan," last modified 2020, accessed April 9, 2020, https://kumparan.com/kumparannews/kisah-aman-abdurrahman-dan-kantornya-di-nusakambangan.

Special prisons will identify the specific violent extremism elements that are of concern and measure their severity will include details of (a) beliefs and attitudes (ideology-narrative), (b) the social context and intention of the individual, and includes family connections and kinship, groups and networks with whom the individual is associated that can influence intention and promote ideological violence, (c) the capacity of the individual in terms of background and training and skills) and (d) the personal and ideological needs that are driving the violent extremism.

Genuinely effective policy is to conduct an assessment and place all convicts of terrorist crimes in a particular place is special guarding insufficient time, so that the placement of terrorist convicts does not become counterproductive to the efforts of deradicalization, there must be certainty through the assessment team/identification that the post of a terrorist convict in some public prisons and also associating with non-terrorist convict have gone through several strict stages of identification including certainty of re-admitting the NKRI, cooperative and can join the Justice collaborator when placed in public prisons.

5. Duration *maṣlaḥah*

Terrorist cases in Indonesia have primarily been successfully uncovered and arrested perpetrators. Preventions have been relatively successful with significant evidence—the crackdown by BNPT or Densus 88 despite the controversy for certain parties. Efforts made by parties who want to weaken BNPT or Densus 88 must be prevented because it will be a loophole for the occurrence of acts of terror.

For a long time, poorly managed and overcrowded public prisons can be a factor leading to increased radicalization. The grievances, moral outrage, and frustration resulting from inhumane treatment may exacerbate the influence of violent extremist recruiters in the prison setting. Extremist ideologies may be easier to transfer in a hostile and overcrowded environment.

In the pattern of recruitment of terrorists, each member covertly recruits new members to convict who are considered potential to support the success of the terrorist movement. Prospective members can be recruited from various backgrounds and social statuses, such as family, relatives, friends, or even individuals they did not know before. The method and pattern of preaching terrorist convicts are hazardous. A long time of mixing terrorist convicts and general convicts in one prison often interacts with each other daily, with conditions that do not equate to feeling the absence of justice in prison. Global symbols of injustice are part of the master frame of radical Islam, focusing on the conflict of oppression between the West and the Islamic world. The framework of thought

in this master frame emphasizes a global Muslim community (*ummah*) responsible for fighting injustice against Muslims everywhere. [39]

Not all violent extremists have the same characteristics. As noted above, some may have been lone actors, while others may have been members of an extremist group. Some may have had a history of previous training and engagement in violent extremist acts. In contrast, others may have been arrested due to planning to engage in some violent action at home or abroad, having had no prior experience or capacity in terms of violent acts. Some violent extremists are charismatic leaders. Others are followers. Understanding these individual characteristics is essential for effectively responding to individual violent extremist offenders. Classification and understanding of each character of terrorist prisoners during detention will be more straightforward and optimal if their placement is united in one particular prison.

The process of communication and interaction between convicts for a long time and the quite frequent intensity in prisons is a possible learning process of radicalism-extremism doctrine that must be prevented immediately by not waiting for new terrorists' emergence of imprisonment.

Figure 3: Aplication *Tarjīḥ maqāṣidīy*

Tarjih Aspects	Aplication *Tarjīḥ maqāṣidīy*	
	Mafsadah Public Prison for terrorist convicts	*Mafsadah* Prison For Terrorist convict
Quality	the doctrine of radicalism in the name of religion is potentially carried out by terrorist convicts when mingling with a general convict. The practice of radicalism in prisons is categorized in the *mafsadah ḥifẓ din in the d}aruriyah level*.	Fear of uniting terrorist convicts with the threat of the emergence of coordination and solidarity included in *ḥifẓ din level ḥajiyah* means there are other options with supervision according to standard operating procedure (SOP) competent officers and focus on deradicalization of terrorist convicts.
Quantity	The policy of placement of terrorist convict with the general convict to be socialized and integrated with available convict *maṣ laḥah khassah* typical form for a terrorist convict.	Prison policy for terrorist convicts. The aim for *maṣlaḥah 'āmmah* is to avoid the spread of radicalism or the recruitment of terrorist networks in prisons.

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[39] Tim Setara, *Dari Radikalisme Menuju Terorisme: Studi Relasi Dan Transformasi Organisasi Islam Radikal Di Jawa Tengah Dan DI Yogyakarta*, ed. Ismail Hasani (Jakarta: Pustaka Masyarakat Setara, 2012).

Accuracy	Terrorist convict continuously reproduces radicalization, recruiting others to participate in the spirit of ideology. They always reject deradicalization programs from a prison officer. And this is the fact (*qotiy*) always hold their struggle.	In special prisons, terrorist convicts will always be united, including the disintegration of terrorist networks in jails due to dissent in some cases.
Effectiveness	Terrorist convicts have the skills to fight under any conditions. Against anyone, it becomes very urgent for them to be separated from non-terrorist convicts to prevent riot conflicts as in some cases so far.	Concerns about the existence of a school of terrorists will not be realized by the supervision of disciplinary cooperation of officers. These terrorist convicts have participated in deradicalization programs and oppose radicalization efforts in prisons.
Duration	So far, most terrorist convicts in public prisons are not seen back in terrorist activities because of the shackles of imprisonment. Still, it does not indicate whether they have been deradicalized to their cognitive level.	The solidity of a terrorist convict in large numbers in special prisons terrorist convict can be handled with a solid number of trained officers with more and competence to combat radicalism.

CONCLUSION

Special prisons for terrorist convicts are urgently realized. It aims for stricter supervision and more focused deradicalization implementation. Recovery needs to be also done to the families of terrorist convicts. Management and coaching are essential to be carried out to not create new cells due to the intensity of family gatherings of terrorists who are also radicalized with a convict in prisons that will significantly thicken the understanding of radicalism.

A great benefit (maslahah a'dham) for special prisons is can identify the specific violent extremism elements that are of concern and measure their severity. These special prisons will include details of (a) education and training beliefs and attitudes (ideology-narrative) for terrorist convicts (maslahah al insan) (b) the social context and intention of the individual, and includes family connections and kinship privately or groups and networks can support terrorist convict to

reintegration with society (*maslahah mujtama'*), (c) the capacity of the individual special officer in terms of background and training and skills) and (d) the personal and ideological needs driving the violent extremism will also be reduced gradually (*hifz al-din*).

After paying attention to the aspects of each mafsadah of terrorist convicts placement and high consideration of the low application of *maqasid shariah* in five elements *tarjih maqāṣidiy,* then it can be concluded that the arrangement of terrorist convict along with non-terrorist convict in public prisons contains a vital damage mafsadah (*arjaḥ*) than gathering terrorist convict in particular prison by taking the lightest *mafsadah* between two *mafsadah, mafsadah* routinization and recruitment network and *mafsadah* consolidation of terrorist convicts.

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