
Implications of the Expansion of Criminal Jurisdiction for State Sovereignty in Counter-Terrorism under the Criminal Code

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Abstract

The transnational nature of terrorism poses significant challenges to the traditional territorial concept of criminal jurisdiction and directly affects the principle of state sovereignty. The expansion of criminal jurisdiction under Law Number 1 of 2023 concerning the Indonesian Criminal Code (KUHP) raises legal questions regarding the extent to which a state may exercise jurisdiction in combating terrorism without infringing upon the sovereignty of other states. This study aims to analyse the implications of the expansion of criminal jurisdiction on state sovereignty in the context of counter-terrorism based on the 2023 KUHP and its conformity with principles of international law. This research employs a normative juridical method, using statutory, conceptual, and case approaches through an examination of the 2023 KUHP, counter-terrorism legislation, and relevant doctrines and international legal instruments. The findings indicate that the expansion of criminal jurisdiction in the 2023 KUHP is not arbitrary but is grounded in the principles of active nationality, passive nationality, and the protection of state interests, all of which require the existence of a genuine legal link. Such expansion is primarily situated within the scope of jurisdiction to prescribe and is implemented subject to the principles of non-intervention and international legal cooperation. This study concludes that the expansion of criminal jurisdiction under the 2023 KUHP reconstructs the concept of state sovereignty in a functional and responsible manner, while simultaneously strengthening Indonesia's position within the global counter-terrorism legal regime without undermining state sovereignty or human rights.

INTRODUCTION

State sovereignty constitutes a fundamental pillar of both international and national legal systems, affirming the supreme authority of a state to regulate affairs within its territory without interference from external parties. Normatively, sovereignty is understood as the exclusive right of a state to determine its own national policies and regulations (Rusadi et al., 2025). Brown and Alexander emphasise that sovereignty is a right, not a capacity (Brown & Alexander, 1994), meaning that sovereignty represents a normative entitlement of a state to establish and enforce legal rules, rather than merely a factual ability to do so (Koesrianti, 2021). This conception implies that sovereignty may be limited or interact with international legal norms in the context of inter-state relations.

According to Mochtar Kusumaatmadja, the supreme power of a state is constrained by two factors: (1) it applies only within the territorial space of the state concerned, and (2) it ends where it encounters the power of another state (Kusumaatmadja, 1976). These limits demonstrate that state sovereignty is not absolute and must be mutually respected among states.

Within this context, Romli Atmasasmita implicitly opens the possibility for the expansion of criminal jurisdiction, provided that it does not contravene international law and does not conflict with the authority of other states—a view that is highly relevant to the development of contemporary criminal law (Atmasasmita, 1997).

The development of transnational crime, particularly terrorism, has challenged traditional concepts of jurisdiction that were previously confined to territorial boundaries. Crimes such as terrorism are inherently cross-border in nature and may involve perpetrators, victims, or legal consequences in more than one jurisdiction, thereby giving rise to jurisdictional conflicts and necessitating more flexible legal approaches. Studies on jurisdictional norms indicate that almost all forms of modern crime frequently involve more than one or two states, triggering jurisdictional conflicts that may disrupt international relations among the states concerned (Osak et al., 2023; Saputra et al., 2023).

In modern international criminal law, state jurisdiction is commonly divided into three principal dimensions: jurisdiction to prescribe (the authority to enact laws), jurisdiction to enforce (the authority to enforce laws), and jurisdiction to adjudicate (the authority to adjudicate cases) (Ryngaert, 2015). These three dimensions become particularly relevant when states extend their criminal jurisdiction to terrorist offences that do not occur solely within a single state's territory. In practice, the concept of extraterritorial jurisdiction is often applied by states to address crimes with cross-border impacts, albeit within the framework of international law that respects the principles of sovereignty and non-intervention (Saul, 2008; Shaw, 2017).

The expansion of jurisdiction has also become a central focus of academic discourse and international policy practice. For example, the International Centre for Counter-Terrorism has developed guidelines on criminal justice responses to the nexus between terrorism and other international crimes, with the aim of addressing complex jurisdictional challenges and enhancing the harmonisation of international and national legal norms (Rivanie, 2020).

The phenomenon of jurisdictional conflict is not limited to ordinary criminal offences but is particularly pronounced in the context of terrorism, which frequently involves transnational networks, cross-border financing, and modes of operation that exploit technological advances and cyberspace (Muladi & RS, 2016). Recent studies further highlight the need for harmonisation between national and international law in responding to contemporary terrorism, including through extradition cooperation, mutual legal assistance, and the exchange of intelligence among governments.

In Indonesia, the legal basis for the expansion of criminal jurisdiction is regulated under Law Number 1 of 2023 concerning the Criminal Code (KUHP). Book I of the KUHP, particularly Articles 4 to 9, sets out the general principles of criminal law, including the territorial principle, active nationality, passive nationality, and universal jurisdiction. Article 4 of the KUHP affirms that Indonesian criminal law applies to any person who commits a criminal offence within the territory of Indonesia, thereby reaffirming the territorial principle. However, the other principles allow for the application of Indonesian criminal law to acts committed outside the national territory, including terrorist offences that affect national or international interests.

In the context of legal globalisation and the increasing threat of transnational terrorism, the expansion of criminal jurisdiction—while essential for the effective suppression of transnational crime—also has the potential to pose challenges to the principle of state sovereignty. On the one hand, states have an obligation to protect their citizens and enforce the law; on the other hand, the exercise of extraterritorial jurisdiction must remain consistent with international law and respect the sovereignty of other states. Accordingly, this study aims to analyse the implications of the expansion of national criminal jurisdiction in counter-terrorism efforts for state sovereignty, based on the Indonesian Criminal Code and the dynamics of contemporary international law.

METHODOLOGY

This study employs a normative juridical method, namely a form of legal research that conceptualises law as a set of norms or rules operating within the positive legal system. Normative legal research aims to examine legal principles, structures, and systematics through the analysis of legislation, legal doctrines, and court decisions. According to Soerjono Soekanto and Sri Mamudji, normative legal research positions law as a body of rules governing human behaviour in society, while Peter Mahmud Marzuki argues that such research seeks to discover the coherence between legal norms and the prevailing legal principles. Accordingly, this study focuses on analysing the regulatory framework and legal principles governing the expansion of criminal jurisdiction in the suppression of terrorist offences (Marzuki, 2021; Soekanto & Mamudji, 2011).

The approaches adopted in this research include the statute approach, the case approach, and the conceptual approach (Irwansyah, 2020). The statute approach is conducted by examining Law Number 1 of 2023 concerning the Criminal Code, legislation on the eradication of terrorism, as well as various international legal instruments, including United Nations conventions relating to terrorism and transnational crime. The case approach is used to analyse relevant national and international court decisions concerning the application of criminal jurisdiction to terrorist offences. Meanwhile, the conceptual approach is employed to explore and develop a theoretical understanding of state sovereignty, criminal jurisdiction, and extraterritorial jurisdiction based on doctrines of international law and international criminal law.

The types and sources of legal materials utilised in this research consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include legislation, international conventions, and court decisions related to criminal jurisdiction and terrorist offences. Secondary legal materials comprise textbooks, scholarly journals, and research findings relevant to international criminal law and terrorism, while tertiary legal materials include legal dictionaries and encyclopaedias used to clarify legal terms and concepts.

The collection of legal materials is carried out through library research by examining legislation, legal literature, and databases of academic journals and scholarly publications (Irwansyah, 2020). The analysis of legal materials is conducted using a qualitative normative approach, employing methods of systematic and authentic interpretation to interpret legal

norms, as well as comparative legal analysis to assess the regulation of criminal jurisdiction across different legal systems and its implications for the principle of state sovereignty.

RESULTS AND DISCUSSION

1. The Jurisdictional Regime of Terrorist Offences from the Perspective of National and International Criminal Law

Terrorism constitutes a form of crime that is inherently transnational in nature, both in terms of planning, financing, perpetrator networks, and the impacts it generates. This transnational character means that terrorism can no longer be addressed exclusively through a narrow territorial jurisdictional approach. Under modern international criminal law, states are encouraged to expand their criminal jurisdiction in order to prevent the emergence of safe havens for terrorist offenders (Aryudhanty et al., 2023; Masyhar et al., 2023). In this context, the expansion of criminal jurisdiction becomes one of the principal instruments available to states in safeguarding national security and international order.

Prior to the enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP), jurisdiction over terrorist offences in Indonesia was regulated sectorally through Law Number 15 of 2003, as amended by Law Number 5 of 2018. Article 3 of that legislation granted Indonesia the authority to adjudicate terrorist offences committed outside its territory on the basis of the principles of active nationality, passive nationality, protection of national interests, and the objective territorial principle (Putri, 2022; Sallata, 2023). However, this regulatory framework operated independently and was not systematically integrated into the general principles of criminal jurisdiction under the former Criminal Code (*Wetboek van Strafrecht*).

This condition gave rise to doctrinal problems. Criminal jurisdiction over terrorism existed outside the general system of national criminal law and functioned as an exception. Consequently, normative tensions emerged between general criminal law and special criminal law, particularly with regard to the principle of legality, legal certainty, and the structure of criminal jurisdiction (Boister, 2025; Wei, 2024). With the entry into force of the 2023 Criminal Code, this situation has fundamentally changed. Through Articles 4 to 9, the KUHP 2023 explicitly regulates the principles of criminal jurisdiction, including the territorial principle, active nationality, passive nationality, the protective principle, and jurisdiction over certain crimes committed outside the territory of Indonesia.

The integration of these principles into the KUHP 2023 signifies an important shift in the paradigm of Indonesian criminal law. Jurisdiction over terrorism is no longer treated as a sectoral exception but has become an integral part of the systemic structure of national criminal law. From the perspective of international criminal law, this approach is consistent with the views of Ryngaert and Shaw, who argue that transnational crimes such as terrorism require states to exercise extraterritorial jurisdiction in a limited manner and on the basis of a legitimate legal nexus (Ryngaert, 2015; Shaw, 2017). Accordingly, the KUHP 2023 strengthens Indonesia's legitimacy in prosecuting cross-border terrorist offenders on a more robust normative foundation.

2. The Expansion of Jurisdiction and the Reconstruction of the Meaning of State Sovereignty

The expansion of criminal jurisdiction in relation to terrorism cannot be separated from debates concerning state sovereignty. In classical theory, sovereignty is understood as the supreme authority of a state within the limits of its territory. Mochtar Kusumaatmadja emphasises that sovereignty contains two boundaries: the territorial of the state itself and the point at which the sovereignty of another state begins (Kusumaatmadja, 1976). However, in the context of modern international society, sovereignty is no longer absolute or closed in nature. States voluntarily accept limitations on their sovereignty through international law in order to create global order and security.

In international law, state jurisdiction is divided into three dimensions, namely jurisdiction to prescribe, jurisdiction to enforce, and jurisdiction to adjudicate. States enjoy relatively broad discretion in prescribing criminal law in respect of acts committed outside their territory (jurisdiction to prescribe), provided that there exists a recognised connecting factor under international law, such as the nationality of the perpetrator or the victim, or a threat to the fundamental interests of the state (Ryngaert, 2015). Nevertheless, the exercise and enforcement of such jurisdiction remain constrained by the principles of non-intervention and respect for the sovereignty of other states.

Within the framework of the KUHP 2023, the expansion of jurisdiction over terrorism primarily operates in the realm of jurisdiction to prescribe. Indonesia determines that certain terrorist acts committed outside its territory nevertheless constitute criminal offences under Indonesian law (Osak et al., 2023). However, the application of such jurisdiction must still be carried out through mechanisms of international cooperation, such as extradition or mutual legal assistance. Accordingly, the expansion of jurisdiction does not imply that Indonesia may unilaterally enforce its laws within the territory of another state, as such action would violate the principles of sovereignty and non-intervention.

Normatively, this approach reflects a reconstruction of the meaning of sovereignty in the era of globalisation. Sovereignty is no longer understood as an untouchable right, but rather as a responsibility to protect the fundamental interests of the state and the international community from shared threats. Terrorism, as a crime that endangers international peace and security, requires states to move beyond territorial boundaries within the limits recognised by international law.

3. Jurisdictional Conflicts and the Principle of *Aut Dedere Aut Judicare*

Jurisdictional conflicts in terrorism cases arise from the multi-locus delicti character of this offence, which involves more than one state at various stages, including planning, financing, execution, and the resulting consequences (Fernández-Sánchez, 2018; Sucharitkul, 1987). In a single terrorist incident, the state where the attack occurs may exercise territorial jurisdiction, the state of the perpetrator's nationality may assert active nationality jurisdiction, and the state of the victims' nationality may invoke passive nationality jurisdiction. This situation creates overlapping jurisdictions which, in theory, may lead to legal uncertainty if not regulated through coordinating principles under international law.

The principle of *aut dedere aut judicare* functions as a normative mechanism for resolving such jurisdictional conflicts. As articulated by M. Cherif Bassiouni, this principle constitutes a central pillar of modern international criminal law aimed at preventing the creation of safe havens for perpetrators of serious crimes. A state in whose territory a suspect is found must not allow the individual to remain at liberty without legal process; it must choose either to extradite the suspect to a competent state or to prosecute the individual itself in a fair and effective manner (Colorio, 2024; Student & Law, 2024). Accordingly, this principle is not merely procedural in nature, but reflects a substantive obligation of states to protect the interests of the international community.

Within the framework of the KUHP 2023, the acceptance of extraterritorial jurisdiction over terrorist offences implicitly entails acceptance of the obligation *aut dedere aut judicare*. Indonesia can no longer rely solely on arguments of territorial sovereignty to refuse the prosecution of foreign terrorist suspects present within its territory. Where extradition is not feasible due to political, legal, or human rights considerations, Indonesia is required to provide effective domestic prosecutorial mechanisms. This demonstrates that the expansion of jurisdiction is not an empty entitlement, but one that carries international legal responsibility (Colorio, 2024).

Normatively, this development also has implications for the principle of due process of law. Should Indonesia elect to prosecute domestically, the judicial process must comply with fair trial standards, including guarantees of the right to defence, judicial independence, and lawful evidentiary procedures (Andrade & Calster, 2024). The principle of *aut dedere aut judicare* is not intended to legitimise sham trials or the politicisation of law, but rather to ensure that no perpetrator of serious crimes escapes accountability (Arnell & Faturoti, 2023). Consequently, the exercise of extraterritorial jurisdiction must always be accompanied by a firm commitment to the protection of human rights.

Furthermore, the principle of *aut dedere aut judicare* also serves as an instrument for harmonising state sovereignty with international solidarity (Colorio, 2024). States remain sovereign in choosing whether to extradite or prosecute, but they are no longer sovereign in choosing to do nothing. In the context of terrorism as *hostis humani generis* (an enemy of humankind), this principle affirms that state sovereignty must not be invoked as a shield to protect terrorist offenders. Thus, the expansion of terrorism-related jurisdiction under the KUHP 2023 positions Indonesia not only as a sovereign state, but also as an integral participant in the global responsibility regime for the suppression of terrorism.

4. Normative Limits on the Expansion of Terrorism Jurisdiction

In addition to the limitations inherent in universal jurisdiction, international law also recognises the principle of reasonableness in the exercise of extraterritorial jurisdiction. As articulated by Cedric Ryngaert, a state must not apply its jurisdiction arbitrarily where such application is disproportionate or lacks a sufficient connection to the state's interests (Ryngaert, 2015). Accordingly, the expansion of jurisdiction over terrorist offences must take into account a balance between law enforcement objectives and respect for the sovereignty of other states.

In this context, the concept of a genuine link functions as a normative filter on jurisdictional expansion (Resar, 2025; Shurson, 2025). It is insufficient for a state merely to

invoke abstract interests in global security; rather, it must demonstrate a concrete connection between the terrorist act and its own legal interests. Such connections may include the nationality of the perpetrator, the nationality of the victims, the location of the legal effects, or a direct threat to national security. In the absence of such a connection, jurisdictional claims risk violating the principles of non-intervention and the sovereign equality of states.

The KUHP 2023, by incorporating the principles of active nationality, passive nationality, and the protective principle, reflects an effort to maintain this balance. Indonesia does not position itself as a global criminal court claiming jurisdiction over all acts of terrorism worldwide, but instead limits its authority to cases that affect its own legal interests. This approach reflects a modern jurisdictional model that is functional and interest-based, rather than one grounded in political dominance (Ryngaert, 2015; Shaw, 2017).

From the perspective of constitutional law and human rights, such limitations are also essential to prevent the abuse of criminal jurisdiction. Unrestricted expansion of jurisdiction may create opportunities for selective criminalisation, forum shopping, and the politicisation of criminal justice. Consequently, the normative limitations embodied in the KUHP 2023 function as safeguards to ensure that the enforcement of terrorism-related offences remains within the framework of the rule of law and does not devolve into an instrument of power (Ryngaert, 2015).

Thus, the normative limits of terrorism jurisdiction should not be regarded as weaknesses in counter-terrorism efforts, but rather as prerequisites for legal legitimacy. A state that exercises jurisdiction in a restrained, reasonable manner, and on the basis of a genuine legal connection, is more likely to secure international recognition and inter-state cooperation. This is what renders the approach adopted in the KUHP 2023 more compatible with the international legal system while simultaneously strengthening the protection of Indonesia's sovereignty.

5. Implications for the Indonesian Criminal Law System

The integration of extraterritorial jurisdiction into the KUHP 2023 carries significant implications for the Indonesian criminal law system. First, national criminal law becomes more responsive to transnational crime. Second, the Indonesian legal system becomes more closely integrated with the international criminal law regime. Third, Indonesia's position in international cooperation for counter-terrorism efforts becomes stronger and more consistent.

Accordingly, the expansion of criminal jurisdiction under the KUHP 2023 does not merely constitute a technical amendment, but also reflects a paradigmatic shift in understanding the relationship between sovereignty, national law, and international law. Sovereignty is no longer preserved through isolation, but rather through active participation in the global legal regime to combat shared crimes.

First, from the perspective of criminal law dogmatics, the expansion of jurisdiction transforms the understanding of the spatial applicability of Indonesian criminal law. Criminal law is no longer purely territorial in nature, but also personal and protective. This means that Indonesian criminal law may follow legal subjects (nationals) beyond the national territory and protect national legal interests from threats originating abroad. Such an approach requires more precise legislative formulation in order to avoid legal uncertainty in its application.

Second, the expansion of jurisdiction has direct implications for the authority and capacity of law enforcement agencies. The police, prosecutors, and courts must be capable of handling cases in which the *locus delicti* lies outside Indonesia, including in relation to the collection of evidence, the examination of witnesses, and coordination with foreign authorities. This necessitates the strengthening of international cooperation frameworks, such as mutual legal assistance and extradition, so that the normatively expanded jurisdiction can be implemented effectively.

Third, from a human rights protection perspective, the application of extraterritorial jurisdiction also presents particular challenges. Suspects or defendants brought within the Indonesian criminal justice system for acts committed abroad must continue to be guaranteed their rights, including the right to a fair trial, legal assistance, and protection against arbitrary prosecution (Andrade & Calster, 2024). Therefore, the expansion of jurisdiction must be balanced by robust judicial control mechanisms to prevent abuse.

Fourth, the expansion of jurisdiction also affects sentencing policy. Indonesian judges may impose criminal sanctions for acts committed outside the territory of Indonesia, thereby requiring consistency between national sentencing standards and international practice. Differences in values, legal cultures, and sanctioning systems among states must be managed carefully to ensure that Indonesian court decisions continue to reflect a sense of justice and proportionality.

Fifth, in the long term, the regulation of extraterritorial jurisdiction under the KUHP 2023 promotes the modernisation of the Indonesian criminal law system. Indonesia is no longer positioned as a state with a closed legal system, but rather as part of a global legal community that shares responsibility for combating serious crimes such as terrorism. This development strengthens the legitimacy of national criminal law while simultaneously enhancing international confidence in the Indonesian criminal justice system.

CONCLUSION AND SUGGESTION

This study finds that the KUHP 2023 has established a clear normative foundation through the integration of the principles of active nationality, passive nationality, and the protective principle. This construction demonstrates that Indonesia's jurisdiction over terrorist offences committed outside its territory is not arbitrary, but is instead based on a genuine legal connection between the state and the criminal event. Accordingly, extraterritorial jurisdiction under the KUHP 2023 is not intended as an unlimited assertion of sovereignty, but rather as a legal mechanism to ensure that perpetrators of terrorism who have a connection with Indonesia can still be held criminally accountable.

Terrorism is positioned as a serious crime with a transnational dimension; however, the exercise of jurisdiction remains conditional upon the existence of a genuine link, whether in the form of the nationality of the perpetrator or the victim, or a threat to Indonesia's national interests and security. This approach is consistent with principles of international law that restrict extraterritorial jurisdiction in order to prevent sovereignty conflicts and unilateral or excessive law enforcement practices.

The integration of extraterritorial jurisdiction into the KUHP 2023 has shifted the paradigm of Indonesian criminal law from a purely territorial model towards one that is more

cooperative and oriented towards international responsibility. Indonesia not only acquires the authority to prosecute or extradite perpetrators of cross-border terrorism, but also assumes the obligation to exercise that authority responsibly within the framework of the principle *aut dedere aut judicare*. Consequently, this expansion of jurisdiction strengthens Indonesia's position within the global counter-terrorism regime while maintaining a balance between effective law enforcement and respect for the sovereignty of other states.

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