



Criminalization of Perpetrators of Spreading Radicalism Ideology Leading to Terrorism

Caleb Rainold Blesstian Marcellino^{a*}, Wiwik Afifah^b

**Corresponding author email: caleb11@gmail.com*

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Abstract

The development of radicalism in the modern era makes it easy for someone to be influenced and join a radical organization. For example, for someone who does not have in-depth knowledge about religion. This makes it easier for the perpetrators of terrorism to spread their teachings to others so that they gain new knowledge and eventually become involved in acts of terrorism. The research aims to find out the regulation of punishment against perpetrators of the spread of radical terrorism. This research uses a normative legal research method using a statutory approach and a conceptual approach. The results of the study show that the Eradication of Terrorism Crimes is currently appropriate and well implemented, as evidenced by the decreasing number of acts of terrorism that occur. However, it needs to be further clarified, especially Radicalism Terrorism which has not been expressly regulated in laws and regulations. Regulations regarding the Criminalization of Perpetrators of Spreading Radicalism of Terrorism are contained in Article 12B Paragraph (3) and Article 13A of the Terrorism Law and Article 45A Paragraph (2) of the Electronic Law which explains that anyone who spreads violent teachings to commit acts of terrorism can be charged and punished.

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^a Departement of Law, University 17 Agustus 1945, Surabaya, Indonesia

^b Departement of Law, University 17 Agustus 1945, Surabaya, Indonesia

Introduction

Money functions as a medium of exchange and a means of payment for goods and services essential to human life. In practice, money can originate from personal savings or from loans provided by financial institutions that facilitate financing. Financial institutions thus play an integral role in society, not only by managing capital but also by ensuring that individuals and businesses have access to the resources needed for survival and productivity. Access to credit allows individuals to sustain their livelihoods, while simultaneously enabling businesses to utilize working capital more effectively, thereby boosting productivity and overall economic growth (Ginting & Hutapea, 2018).

The development of Radicalism in the era of globalization is getting stronger. This is also accompanied by rapid technological advances that facilitate the emergence of various radical movements. A person's concept of thought toward a movement in a country is often a problem when the concept is considered contrary to the concept of Ideology that every country should uphold.

The term radicalism has become increasingly popular since the attacks on the Pentagon and World Trade Center on 11 September 2001. Al-Qaeda leader Osama Bin Laden was accused of being the mastermind responsible for the attacks. After the World Trade Center tragedy, there have been several suicide bomb attacks in Indonesia, from Bali Bombing I in 2002, Bali Bombing II in 2005, and Sarinah Bombing in 2016. The people involved in the action have been considered to have applied a wrong understanding of jihad so that they become radical, this causes misunderstanding in interpreting Radicalism (Usman, Hafrida, Rapik, Maryati, & Sabri, 2023).

The understanding of Radicalism in the current era differs from Radicalism in the Era of Colonialism. Radicalism in the era of colonialism has a positive meaning as explained by Soekarno, the first President of Indonesia in Purwati, that Radicalism aims to fight against the colonizers who torture the Indonesian people. Resistance is carried out thoroughly to the grassroots including aspects of the soul, quality of mind, and action (Purwati, Suryadi, Hakam, & Rakhmat, 2022). Radicalism in the current era is often associated with religion, so Islam is often the target of Radicalism. This happened since Afghanistan's victory over the Soviet Union and the World Trade Center incident which then continued with the development of the ISIS group that spread its terror acts in various countries so that it became a threat to the whole world. This makes people have a bad view of Islam (Iksan Bureni, Ismail, & Iryani, 2022).

In Indonesia, many acts of terrorism have occurred as a form of radicalism. For example, the Riau Police Headquarters was attacked by the Jamaah Ansharut Daulah (JAD) terrorist group affiliated with the Islamic State of Iraq and Sham (ISIS). In the incident, one policeman was killed, two policemen were injured, and two journalists were injured (Novitra, 2018). Then the Church Bomb Case in Surabaya some time ago. The terror act was carried out by one family and involved children who targeted houses of worship and police headquarters in Surabaya. The impact of the Suicide Bombing Incident killed 10 people and injured 41 others (Damarjati, 2018).

In carrying out the Eradication and Countermeasures of Terrorism Crimes within the country's territory, the Government of Indonesia has issued Law number 5 of 2018 concerning Amendments to Law number 15 of 2003 concerning the Stipulation of Regulations in Lieu of Law number 1 of 2002 concerning the Eradication of Terrorism Crimes (hereinafter referred to as Law No. 5/2018) as one of the government's strategies in eradicating terrorism crimes.

Based on a survey conducted by the Counter-Terrorism Agency (BNPT) in Indonesia, it is stated that the Radicalism Potential Index in 2023 has increased by 1.7% compared to 2022. The Radicalism Potential Index in 2023 reached 11.7%, higher than in 2022 which reached 10.0% but still lower than in 2020 which reached 12.2% (FKPT, 2024). From this data, it can be seen that Law No. 5/2018 is quite successful in suppressing the potential for Radicalism. However, the potential for the spread of Radicalism will also increase as the years go

by if it is not accompanied by proper prevention. This makes the perpetrators not deterred from spreading the idea of Radicalism which aims to commit acts of terrorism.

As far as the current Legal Development is concerned, Law No. 5/2018 does not explicitly state the Radical Ideology of terrorism either in terms of definition, characteristics, and elements of Radical. The regulation only mentions the phrase regarding people who are exposed to radicalism, through Article 43D paragraph (2) letter f which states "a person or group of people who have been exposed to radical terrorism ideas". Furthermore, through the explanation of the article, it is stated that people or groups who have radical ideas of Terrorism, have the potential to commit Terrorism Crimes.

Furthermore, there is a Criminal Article against people who commit acts of Terrorism in Article 13A of Law No. 5/2018 as it states that "Every person who has a relationship with a Terrorism organization and deliberately disseminates speech, attitude or behavior, writing, or display with the aim of inciting people or groups of people to commit Violence or Threats of Violence that can result in the Criminal Act of Terrorism shall be punished with a maximum imprisonment of 5 (five) years."

From the description of the problem above, it raises a question for the author. Does the Article also mean for someone who spreads the notion of Radicalism, and whether people who do not commit acts of terrorism but spread the teachings of terrorism are also included in the Radical category so that they can be subject to criminal sanctions? Therefore, the author needs to examine the Criminalization Arrangements for Perpetrators of Spreading Radicalism that Leads to Terrorism so that cases of terrorism caused by the existence of Radicalism do not recur.

Methods

This research applies a normative legal research method, which emphasizes a comprehensive examination of legal theories, doctrines, and the interpretation of existing legal norms. Normative legal research does not rely on empirical data, but rather focuses on the study of written law, scholarly opinions, and authoritative sources to construct logical arguments and legal reasoning. In this study, two main approaches are employed, namely the statutory approach and the conceptual approach.

The statutory approach is utilized to analyze relevant legislation, regulations, and formal legal instruments that govern the research problem. Through this method, the researcher seeks to identify the consistency, harmony, and applicability of the existing rules within the legal system. Meanwhile, the conceptual approach is adopted to explore and clarify legal concepts, principles, and doctrines developed by scholars, as well as to critically examine the theoretical foundation of the subject matter. By combining these two approaches, the study aims to build strong, coherent, and scientifically valid arguments.

The legal materials used consist of primary legal sources such as laws and regulations, secondary sources such as books, academic journals, and credible online publications, as well as tertiary sources that support legal interpretation. These materials are carefully selected based on their relevance and authority. The data analysis is conducted systematically using deductive reasoning, beginning with general legal principles and moving toward specific problem-solving. This process ultimately leads to prescriptive conclusions that provide normative recommendations for addressing the identified legal issues.

Results and Discussions

Radical ideology of terrorism

In interpreting the ideology of Radical Terrorism, it is necessary to first be given an understanding of the concept of radical ideology. In general, radicalism refers to an ideology or ideology that wants fundamental or

revolutionary change in a system, often in an extreme way. Radicalism can be defined as an attitude that supports or advocates drastic change, even using violence to achieve certain goals (Prasetiawati, 2017).

Radicalism is an attitude that encourages individuals or groups to take revolutionary action by refusing to compromise on different views. Radicalism often appears as a response to social, economic, or political dissatisfaction. The concept of radicalism is often associated with intolerance of differences and attempts to replace existing systems with certain ideologies in a revolutionary manner (Rahman, 2020).

Based on the views of Turmudzi and Sihbudi in Prasetiawati, radicalism is not a problem as long as it only exists in the form of thoughts or ideologies in a person. However, this becomes a problem when radicalism begins to enter the realm of active movements, especially when the influence of certain political forces blocks the spirit from returning to the basics of religion. So, in these conditions, radicalism tends to be realized in the form of violence such as Terrorism (Prasetiawati, 2017).

Terrorism is an unlawful act that aims to spread widespread fear in society, either through threats or violence and organized or unorganized. In addition, it causes physical or psychological suffering over a long period and is therefore categorized as an extraordinary crime and a crime against humanity (Golose, 2009). Terrorism is interpreted as an act or action that comes from the wrong ideology of radicalism, so in this case, terrorism is interpreted as a form of response to the disappointment of those who misunderstand the ideology of the Indonesian state (Mahendra et al., 2023). In a nutshell, terrorism relies on violence or threats of violence to spread widespread fear and terror. Terrorism is used as a psychological weapon to create panic, insecurity, and distrust of the government's ability to act. The goal is to force certain societies or groups to submit to the will of terrorists.

Radicalism does not emerge on its own but through radicalization. Theoretically, there are several radicalization models put forward by experts. Radicalization, according to Borum in Asrori, begins when an individual or group realizes that there is a mistake under certain conditions. This condition is then considered an injustice caused by others. In the last stage, the person or group joins forces with another group to pursue their beliefs or goals (Asrori, 2019). According to Tambiah in Asrori, there are four stages of a person being radicalized through the environment of members or groups of radical movements (Asrori, 2019):

- 1) Pre-radicalization, interpreted as a stage for everyone who has a relatively moderate political perception related to fighting for state independence;
- 2) Self-identification, at this stage a person begins to actively analyze himself (open himself) to participate in the struggle for independence. This arises through several factors ranging from personal problems, and socio-economic problems to political problems;
- 3) Indoctrination, interpreted as a stage where a person begins to understand and learn about ideas about independence and how to fight for it. Then gradually he will become part of the organization. This can happen because a person is in direct contact with and joins a charismatic "spiritual leader" who shares the same thoughts and goals as other small groups;
- 4) Martyrdom or Syahid, is interpreted as a stage where a person considers himself chosen as a martyr who is ready to kill himself for the sake of the ideology he believes in.

The Limits of Radicalism

In assessing or determining how a person or group is included in the radical category, it is necessary to look at the characteristics of the person or group. Law No. 5/2018 does not explicitly regulate the limits of radicalism, so many researchers and institutions are trying to determine what the limits of radicalism are. This is very important to study because several researchers and institutions provide some of their respective criteria.

There are several characteristics of people who are exposed to radical ideas, including, rejecting state ceremonies, alienating themselves from their families, behaving anti-socially, liking heresy in the worship of others, feeling that they are the most right, considering others as infidels, intolerant of others with different beliefs, disliking moderate Islamic organizations, hating scholars who have different views, and supporting or joining extremist organizations (Widyaningsih, 2019).

The characteristics of people who are exposed to radicalism based on the views of Faiqah & Pransiska in Khoirunnissa & Syahidin are closing themselves off and not wanting to accept other people's opinions even though others are right, hostile to people who have different views and doing acts that are contrary to human principles (Khoirunnissa & Syahidin, 2022). Furthermore, according to Husaini in Laisa, there are four Radical Criteria in Islam, including (Laisa, 2014) :

- 1) Fanatics, namely having high ideological beliefs and trying to replace the values and systems that are running with their own systems;
- 2) Using harsh and sometimes abusive actions against other groups that are considered to conflict with their beliefs;
- 3) In terms of socio-cultural and socio-religious, the radical group shows a strong inner bond with each other and performs distinctive rituals and appearances;
- 4) radical Islamic groups generally carry out their activities behind closed doors, although many also move openly.

BNPT also provides characteristics of a person who can be recognized as an indication of Radicalism, including being intolerant (not wanting to respect the opinions and beliefs of others), being fanatical (always feeling right; always thinking that others are wrong), being exclusive (distinguishing oneself from the general public) and being revolutionary (using extremism in this case, violence in realizing its goals) (BNPT, 2016).

Head of the Social Conflict Sub-Directorate of the BIN Analyst, Police Commissioner Barito Mulyo Ratmono provides criteria for people exposed to radicalism, among others, experiencing changes in emotions and behaviour, antisocial behaviour, having different attitudes and views from ordinary people, having relationships with covert groups (such as revolutionary groups), In realising their wishes they tend to use violence, commit mass destruction and replace the existing value order (Sukmono, 2019).

From some of the descriptions above, it can be seen that several criteria have similarities such as being intolerant (to those with different beliefs), fanaticism (assuming others are wrong and always feeling right), exclusively distinguishing oneself from society in general) and revolutionary (realizing one's goals by all means, including by acts of violence). However, some of these Limitations are also multiinterpretive, because they do not have a definite standard in determining the criteria for Radicalism. Regarding the absence of definite limits in Law No. 5/2018, it can cause social friction in the community. This results in the Labeling of Radical Criteria having the potential to be abused by a person or institution in determining other people and groups that are not necessarily included in the radical category.

Criminal Elements in the Spread of Radical Terrorism

In the theory of criminal law, there is the principle of no crime without fault or in Latin "actus non facit reum nisi mens rea or actus reus mens rea". This principle is the basis of criminal liability which means that an act cannot make a person guilty unless it is done with malicious intent (Huda, 2006). Actus reus is an element of a delict, while Mens rea is related to the accountability of the perpetrator. The Actus reus element demands that there be an action that occurs first after it is known that the act is a criminal act according to the formulation in the law, then an investigation is carried out on the inner attitude of the perpetrator or the Mens rea element.

Actus reus relates to unlawful acts, while Mens rea relates to the inner attitude of the perpetrator. In this case, it includes the elements of a person who commits a criminal act. A person cannot be subject to criminal punishment if the two elements do not complement each other. Thus, it can be known that every person who commits a criminal act cannot be sentenced to a criminal penalty. While a person who is sentenced to criminal punishment has certainly committed a crime so that he can be held accountable.

From the description above, it can be concluded that a criminal act is an act of a person who can be threatened with criminal punishment, meaning that the act committed is an act that has a criminal threat. In short, a criminal act is an act that can be punished. Meanwhile, in the implementation of the crime, the elements of the criminal act must be present or sufficient. Each criminal act has its own rules. However, in the elements of criminalization, some elements must be present in the criminal process. These elements are divided into two, namely the objective element which is also known as the Evil Deeds (Actus reus), and the subjective element known as the Evil Intention (Mens rea).

The spread of radical terrorism usually contains elements of intention or intentionality. The intention of the perpetrators to spread radical terrorism can be seen from their intentionality in organizing and carrying out propaganda activities. This includes actions taken to attract others into extremist ideologies, whether through lectures, social media, or other publications. When going to commit their malicious intentions, the perpetrator must have awareness that the actions taken can trigger violence or acts of terrorism.

The evil intention here (*Mens Rea*) can be seen in a systematic attempt to spread teachings that support the ideology of terrorism and invite others to participate in acts of violence. Propagators often have the intention to incite others to engage in acts of terrorism. This can be in the form of a direct invitation or the dissemination of material that contains elements of hatred and violence against certain groups.

For example, the perpetrator usually tries to attract the attention of an individual or someone who is dissatisfied with the socio-political conditions in his country. Such malicious intentions are reflected in their goal of inciting or influencing others in the hope that they will join radical groups and support acts of terror that could threaten the state. If it is connected with the context of the Spread of Radical Terrorism Ideology, then through the spread of radical ideology it will give birth to an evil act (*Actus reus*) that leads to Acts of Terrorism.

Terrorism crimes are characterized by the fact that the crime is planned and carried out in a structured manner, and involves more than two people in planning, producing weapons, propaganda, and carrying out acts of terror. The forms of terrorism are very diverse, including bombings, suicide attacks, spreading fear such as the bomb issue, kidnapping, and creating public opinion regarding the bomb issue (Afifah, 2019).

According to the author, Terrorism is an ideology that teaches hatred, violence, not being able to accept differences, feeling that oneself and the group are the most right, and considering others wrong so that they must be resisted, imposing the truth of their group on others accompanied by threats and even violence. Through the description of these elements, it can be seen that the *Actus Reus Element* and the *Mens rea element* are very important to pay attention to, especially regarding legal issues regarding the Spread of Radical Terrorism Ideas.

Criminalization of perpetrators of the Spread of Radical Terrorism

Radicalism can be interpreted as a thought that has the potential to cause terrorism crimes. The definition is contained in Article 43D paragraph (2) letter f of Law No. 5/2018, stating "a person or group of people who have been exposed to radicalism". So it can be seen that a person who has a radical view will have the potential to commit the crime of terrorism. However, in its implementation, the Law does not explicitly regulate the Radical Ideology of terrorism.

Article 13A of Law No.5/2018 is a legal provision that can punish perpetrators of the spread of radical terrorism. Article 13A states that "Every Person who has a relationship with a Terrorism organization and deliberately disseminates speech, attitude or behavior, writing, or display with the aim of inciting a person or group of people to commit Violence or Threat of Violence that can result in a Terrorism Crime shall be sentenced to imprisonment for a maximum of 5 (five) years". If the Article is described as its elements, it consists of:

- 1) Subjective Elements, namely
 - Having a Relationship with Terrorism Organizations
 - Deliberately
- 2) Objective Elements, namely
 - Spreading speech, attitude or behavior, writing, or display
 - Inciting
 - Committing violence or threat of violence
 - Resulting in a criminal act of terrorism

From some of the elements of the article, it can be seen that the article regulates criminality for people who spread ideas or ideologies that contain violence or incite to commit violence with the aim of participating in acts of terrorism. This is because Article 13A can be applied to perpetrators of spreading Radical Terrorism Ideas, where the spread is considered equivalent to individuals who have links with terrorist organizations. So it can be concluded that a person who spreads Radical Terrorism can be charged using this article.

Meanwhile, Article 12B paragraph (3) of Law No. 5/2018 states "Every person who deliberately creates, collects, and/or disseminates writings or documents, both electronic and non-electronic for use in training as referred to in paragraph (1) shall be sentenced to imprisonment for a minimum of 3 (three) years and a maximum of 12 (twelve) years". According to the author, the article regulates criminal penalties for every person involved in the spread of radical terrorism, either directly or indirectly, which refers to Article 12 paragraph 1 regarding the implementation of military, paramilitary training, or other activities that have the potential to be used in terrorism activities.

Furthermore, Internet technology and social media are usually often used by terrorism perpetrators as a means of propaganda in spreading violent-based radical ideologies. The Government of Indonesia through Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE) (hereinafter referred to as Law No. 1/2024) also regulates the Spread of Terrorism Propaganda.

Terrorism groups often use Social Media as a means of carrying out their actions by disseminating propaganda materials containing elements of hatred, threats, and invitations that can influence others to join radical groups and commit acts of terrorism. There are several terrorism incidents caused by the influence of Radical Terrorism which is sourced through social media, Including:

- 1) Attack on the National Police Headquarters, South Jakarta on Wednesday (31/03/2021). The attack was carried out by the perpetrator with the initials ZA using an airsoft gun. Based on the results of the investigation, it show that ZA has been radicalized through social media. Furthermore, the action was carried out to uphold Islamic law (Yahya & Galih, 2021).
- 2) Judi Novaldi bin Mulyadi is a young man from Jambi' who threatened his father (47) and abused his younger brother Maulana (6), Monday (23/03/2015). The police found 4 black flags with Arabic written on ISIS', 1 black striped sweater with Arabic written on it similar to ISIS' identity, 1 strip of clothes and a striped t-shirt and 1 red and black turban with Arabic inscribed. Judi admitted to buying attributes that ISIS usually uses through information on social networks (Gandhi, 2015).
- 3) Attack on the Wornokromo Police Station on Saturday (17/08/2019). The perpetrator with the initials IM attacked the officers using sharp weapons under the pretext of jihad to enforce Islamic law. The results of the investigation revealed that the IM learned about the ISIS group through social media (Meilisa, 2019).

The spread of Radical Terrorism is a very serious concern. Especially the pattern of its spread which can also be through cyber technology such as Social Media. So if associated with Law No. 1/2024, the perpetrators of the spread of Radical Terrorism can be charged with criminal threats using Article 45A paragraph (2). The article states "Any person who intentionally and without rights distributes and/or transmits Electronic Information and/or Electronic Documents that are inciting, inviting, or other people so as to cause hatred or hostility towards certain individuals and/or groups of society based on race, nationality, ethnicity, skin color, religion, belief, gender, mental disability, or physical disability. as referred to in Article 28 paragraph (2) is punishable by imprisonment for a maximum of 6 years (six years and a maximum fine of Rp1,000,000,000.00 (one billion rupiah). If the article is described in each element, it consists of:

- 1) Subjective Element (Mens Rea)
 - Intentionally;
 - Without Rights
- 2) Objective Element (Actus Reus)
 - Distribute and/or transmit Electronic Information and/or Electronic Documents;
 - inciting, inviting, or influence others;
 - Causing hatred or hostility

From several elements mentioned earlier, it can be concluded that in addition to being criminalized using Law No. 5/2018, perpetrators of spreading radicalism through digital technology such as social media can also be charged using Law No. 1/2024. The regulation can be used as a basis for law enforcement in combating radical content through cyberspace carried out by terrorist groups. So that law enforcement, in this case the National Police, could have arrested the owner of the radical social media account and followed up with appropriate criminal procedures.

According to the author, the two regulations can ensnare the perpetrators of the spread of radical terrorism with criminal articles that support and match each other. However, the two laws have a weakness, namely by not explicitly regulating the Radical Terrorism Ideology. So there is a potential for abuse of investigator authority in determining and following up on a person or group involved in spreading Radical Terrorism.

Meanwhile, the Regulations regarding Radical Terrorism in Law No. 1 of 2023 concerning the National Criminal Code are also not explicitly explained. This is contained in Article 188 paragraph (1) which states that "Anyone who spreads the teachings of communism/Marxism-Leninism or other beliefs that are contrary

to Pancasila in Public orally or in writing, including spreading or developing through any media, shall be punished with a maximum imprisonment of four (4) years". Therefore, it can be seen that the Article only regulates criminal sanctions against the Spread and Development of Communism/Marxism-Leninism or Other Understandings that Contradict Pancasila. Meanwhile, in the explanation of the article, it is stated that "other understandings that are contrary to Pancasila" are ideological understandings that manifest in the form of political movements against Pancasila.

According to the author, Terrorism is an ideology that teaches hatred, and violence, against the legitimate government, imposing its opinion on others, and causing terror to cause fear in society. This is very contrary to Pancasila so the author argues that the Radical Terrorism ideology is included in crimes against state ideology. If this understanding falls into the category of other understandings that are contrary to Pancasila, then in this case everyone who spreads the Radical Terrorism Ideology can be charged and punished using this article.

Acts of terrorism are born from the existence of radical ideologies spread by the terrorist group. The victims are people who do not have enough understanding of religion, so they finally fall into acts of terrorism. In taking action against perpetrators of spreading radical terrorism, law enforcement officials need to collect sufficient evidence or evidence, in addition to that, a thorough analysis and assessment is also needed to determine whether a person who does not commit acts of terrorism but spreads the teachings of terrorism is also included in the Radical category so that he can be subject to certain criminal articles.

It is important to note that Law No. 5/2018 as a legal umbrella in handling the Crime of Terrorism should explicitly regulate Radicalism Terrorism. This also aims to create legal certainty through the punishment of perpetrators of the spread of radical ideas to eradicate the crime of terrorism. In addition, it is also to ensure and guarantee public security from the threat of terrorism..

Conclusion

Radicalism is one of the roots that can cause acts of terrorism, so in overcoming and eradicating terrorism crimes, it is necessary to carry out efforts to enforce criminal law. Legal arrangements related to the Criminalization of perpetrators of the spread of radical terrorism have been regulated in Law No. 5/2018. Article 12B paragraph (3) and Article 13A of Law No. 5/2018 are legal provisions that can punish perpetrators of the spread of radical terrorism. In addition, the criminalization of perpetrators of the spread of radical terrorism through social media is also contained in Article 45A paragraph (2) of Law No. 1/2024. In this case, the two regulations can ensnare the perpetrators of spreading radical ideas of terrorism with criminal penalties. However, both regulations have weaknesses, namely by not explicitly regulating Radical Terrorism Ideas, so that there is potential for law enforcement to abuse their authority in determining and following up on a person or group involved in spreading Radical Ideology of Terrorism.

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