

Implementation of Human Rights Protection against Victims of Severe Human Rights Violations in Indonesia's Criminal Justice System



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ABSTRACT: The study is back to back by seeing that legal protection against victims of severe human rights violations is necessary, as the weak should be effective in protecting the law. So the author was interested in doing this study that discussed how the implementation of human rights protection against victims of severe human rights violations in the criminal justice system in Indonesia, What is problematic in the study is how victims of major human rights violations are regulated in Indonesia and whether the implementation of legal protection against victims of severe human rights violations in existing regulations could provide legal protection against victims of human rights violations. The method of research used in this study is normatif juridical or search literature. Research has shown that the rights of victims of gross human rights violations in criminal justice systems are regulated in 190 penal code laws laws on criminal events, the rule 26 year 2000 on human rights on the next human rights court is governed by regulations granting protection to victims and witnesses in 2002 government regulation Number 2 year and government regulation Number 3 2002 on compensation ordinances, Restitution and rehabilitation, act Number 27 in 2004 on the commission of truth and reconciliation, and in the 2006 act Number 13 on the protection of witnesses and victims. The implementation of protection of law against victims of severe human rights violations in Indonesia has not been consistent with the current laws. Where victims' rights are not fully satisfied because of any legal obstacles such as his lack of success in proving a perpetrator in a severe human rights violation. The weakness of legal procedures that make compensating and rehabilitation to victims is difficult to realize.

KEYWORD: Criminal Justice System, Protection of Rights, Victims Of Severe Human Rights Violations.

INTRODUCTION

Human rights or the well-known rights of human rights are a duty of a country to ensure its constitution. Through the universal declaration of human rights, December 10, 1948, the milestone in its valiance regarding human rights. The history of ham begins at magna charta in England in 1252, which then continues at bill of rights and comes from the UN DUHAM.

Human rights issues never end, from judicial to legal protection against the victim. Where are the victims of the crime, which is essentially underrated by legislation in Indonesia. In human rights cases, it is often the center of attention towards the perpetrators. Emphasis is placed on how to catch, prosecute, and punish perpetrators. While the rights of mass victims tend to be ignored.

The protection of victims to the national legal system does not appear to be getting serious attention. This is seen from several national legislation that regulates the rights of victims of crime. The imbalance between the protection of the victims of crime and the abuser is actually an preremember as mandated by the constitution of the republic of Indonesia 1945, the constitution of the principle of the individual citizen and his position in law and government.

Many victims of crime lack protection are not uncommon to find victims who suffer (physical, mental, or material) asa result of a criminal act, not striving for the rights that he or she should receive for any number of reasons, such as refusing to make compensation because of anxiety that the process would become increasingly long and long that could result in prolonged suffering.¹

One form of protection against crime victims and it is the right of a crime victim to get compensation and restitution. Compensation is given by the state to victims of severe human rights violations, whereas restitution is compensated to victims of the crimes given by the perpetrators into a form of accountability.

There are some established established rules governing compensation and restitution. But in reality the rule is unimplemented. That we can look at the book of criminal law the book of penal code, and also the article Number 26 2000 of human rights courts that gave birth to 2002 government Number 3 regulations on compensation, restitution, and rehabilitation for victims

¹ Didik M, Arief Mansur dan Elisatris Gultom, 2006, *Urgensi Perlindungan Korban Kejahatan Antara Norma dan Realita*, PT. Raja Grafindo Persada, Jakarta, hlm

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of severe human rights violations.

Related to the above, one example is that legal and political solutions to human rights violations often do not take sides with the victim but, rather, protect the perpetrators. The court process is only used to find out who did it and punish him, but justice for the victim is obviously not a part of that. The rights to compensation, restitution and rehabilitation which are clearly defined by legislation cannot even run at all."²

One such example was that the human rights court AD hoc cape priok, the only court that ruled for compensation to the victim. But it has not been successfully implemented because there are still procedural obstacles. The victims of cape priok's human rights violations have finally gotten a ruling from the judges' chamber to get the compensation that will be received by the victims.³

The compensation ruling in the implementation was impeded because it was caused, since the normative execution of the verdict could only be carried out after a permanent judicial decision. It means that compensation will be received by the victim when the accused is found guilty on the Supreme Court level, but if the defendant is acquitted on the appeal level or the Supreme Court then the compensation will be forfeit. "This is because the concept of compensation to the victim depends on the error factor of the accused and not on the rights inherent to any victim's human rights violation.

The human rights court adhoc cape priok specifically perceives and understands the concept of compensation and restitution is misconstrued this is evident from the prerequisites that must be met in order for the victim to receive the compensation and restitution that is pronounced guilty and convicted or not convicted.

The above description shows that the management of victims' rights in Indonesian criminal law is not good enough. Legal developments that have occurred with legislation relating to the protection of victims and witnesses are expected to provide protection for the victims and ensure better victims' rights, but is this the case? Therefore, to learn more about the rights of victims of severe human rights violations requires an in-depth study of existing legislation (*Ius constitutum*).

Formulation of the Problem

Based on the above background, the authors identify the problem:

- 1) What about the rights of victims of severe human rights violations in Indonesian legislation?
- 2) Has the application of legal protection against victims of severe human rights violations within the existing regulations been able to provide legal protection against human rights violations?

RESEARCH METHODS

The research method used in this study is normative-judicial this method focuses on analysis of the legal texts and other legal sources, such as laws, regulations of legislation, judicial decisions, law doctrine, and legal literature. The methods in this journal involve an in-depth analysis of the implementation of human rights protection against victims of severe human rights violations in Indonesia's criminal justice system. Data is collected from various sources, such as court ruling, books, papers and other documents.

DISCUSSION

1. The Rights Of Victims Of Severe Human Rights Violations In Indonesian Legislation

Protection against victims according to *barda nawawi* can be seen from two meanings: legal protection to no longer falling victim to criminal ACTS (meaning human rights protection (human rights) or one's legal interest) and protection to secure legal benefits for the suffering/loss of a person who has been a victim of a crime). That form of benefit can be a vindication (rehabilitation) restoration of equanimity (among others with forgiveness), compensation (restitution, compensation, security/welfare benefits) and so on.⁴

Victims as individuals harmed by criminal ACTS are vital to protection. Criminal justice systems, therefore, must take concrete action to protect the victim, that is, by guaranteeing or conceding the victim's rights so that he can assist in the revealing of the case.

The rights of crime victims in the criminal justice system are generally regulated in penal code (kuhap), but as for the rights of victims of severe human rights violations in the criminal justice system are specifically regulated in the no. 2000 civil rights court. But when it comes to things not regulated in statute 26 of 2000, it still applies to the 1981 law on penal code (KUHAP)."

a) Victims' Rights To The 1981 Rule (KUHAP)

Based on kubah, there are three rights that allow a victim of crime to use in a criminal judicial process, the right to refuse an inquiry or prosecution, the victim's right to make reports and witnesses, and the right to make reports and witnesses, the right to

² Supriady Widodo Eddyono, Wahyu Wagiman, Zainal Abidin, 2005, *Perlindungan Saksi Dan Korban Pelanggaran HAM Berat*, Elsam. Jakarta, hlm 3

³ Satya Arinanto, 2005, *Hak Asasi Manusia dalam Transisi Politik di Indonesia*, Pusat studi hukum tata negara Fakultas Hukum Universitas Indonesia, Jakarta, hlm 292

⁴ <https://dspace.uui.ac.id/handle/123456789/8764> dilihat pada tanggal 03 Maret 2022 Pukul 01.04 Wib

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compensation.

1) The Right to Object To Questioning Or Prosecution Action.

Criminal investigation (police) on the basis of authority may stop the investigation on the grounds that there is no indication of action, but it does not constitute a criminal or investigation being stopped for legal reasons (article 7 verse (1) letter I Jo chapter 109 kuhap). Similarly, the prosecutor can stop criminal prosecution on his own authority (article 13 of the letter h Jo. Article 140 verses (2) the letter a kuhap) if three requirements are met, that is, because there is no evidence that the event is a criminal offense, a crime that ends under a legal basis.

The actions of an investigator or a public prosecutor would be detrimental to the interests of the third party, including the victims of a criminal offense that was the informer or the informer. Therefore, a concerned third party has the right to object through pretrial (80-81 kuhap) bodies. The victim of the crime was not listed as a third party stakeholder on the grounds that the victims' rights were being violated and suffered loss, and the victim was also reporting or reporting criminal law to the police.

2) The Victim's Right To Report And Become A Witness

Article 160 verses (1) letter b kuhap, the witness victims of crime is the most qualified witness given because of hearing, seeing and experiencing in person. However, under article 168 kuhap, the victim may resign as a witness if there is a straight line up or down to a third degree with the defendant and the defendant's spouse (divorce or not).

3) The Right To Sue For Damages

Criminal law violations can inflict both material and nonmaterial harm on others. A person who suffers injury caused by the unlawful ACTS of another person, according to civil law, has the right to ask for compensation (chapters 1365 The civil code of law). As one of the victims of criminal offenses, the victims of criminal crimes have the right to insist for damages associated with criminal proceedings (98 verses (1) Legal statute of criminal proceedings KUHAP). It contained in the chapter its entirety: "If an act of indictments in a criminal hearing by the lower court causes harm to others, then the presiding judge of the congregation at the request of that one can assign a mixed compensation to the crime."

b) The Rights Of Human Rights Violations Under The 26 Year 2000 Bill On Human Rights Courts

The rights of every human being in the 1999 human rights act is also a victim's right, since human rights are to be treated as human beings, his rights should be protected. The victims of severe human rights violations according to act number 26 in 2000 on human rights courts have these rights:

1) The Right To Physical And Psychological Protection Against Threats, ACTS Of Terrorism And Violence Of Any Kind

The protection of victims in the sense of first victims' rights is that of a witness and of a witness in general, which is why the law speaks of the protection of the victim and the witness.

The provision for the protection of victims and witnesses in the invitation "article 26, 2000, of the human rights court is set out in article 34:

- (1) Every victim and witness in gross human rights violation is entitled to physical and mental protection from threats of terror and violence of any kind;
 - (2) Protection as referred to in the text (1) is bound together by law - enforcement and security forces;
 - (3) The terms for protection against victims and witnesses are further regulated by government regulations.⁵
- ### 2) The right to obtain compensation, restitution and rehabilitation

Victims of severe human rights violations are entitled to compensation, reparations and rehabilitation in addition to the rights of physical, mental and terrorist protection under the 2000 article 26 on human rights court. The compensation, restitution, and rehabilitation arrangements under the 2000 act on human rights are formulated in article 35, which is:

- (1) Each victim of a severe human rights violation and or its heirs may receive compensation, restitution and rehabilitation;
- (2) Compensation, retention and rehabilitation as referred to in verse (1) are included in amar the court of human rights;
- (3) The terms of compensation, restitution and rehabilitation are set further in government regulations.

c) The Rights Of Victims Of Severe Human Rights Violations In The 2004 Bill For Truth And Reconciliation (KKR)

Heavy human rights violations not resolved through criminal justice mechanisms can also be solved by the mechanism of the commission of truth and reconciliation (KKR), which is cases of severe human rights violations that occurred outside the court system before they could valid the court system, but before it was lodged it seems to be unjustifiable in settling cases outside the court, Because the heavy case of human rights violations that wasn't solved for the KKR mechanism could still be brought to trial through the mechanism of the ham adhoc court. Which means it's still relevant to the criminal justice system.

The purpose of the KKR mechanism is to bring about peace and unity of nations. Straighten history, pursue reconciliation. And set history straight by extending amnesty to the perpetrators who were making known cases of severe human rights abuses and willing to make amends by performing reparations to the victims and apologizing to the victims.

⁵ R. Wiyono. 2006. *Pengadilan Hak Asasi Manusia di Indonesia*. Kencana. Jakarta. Hlm 88

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So basically KKR is a vehicle to reunite both sides. Regarding the rights of victims of heavy human rights violations in KKR mechanisms is referential, since KKR is a tool for reunification of the parties, the victims' rights of heavy human rights include those of compensation, restitution and/or rehabilitation. Concerning restitution, compensation and rehabilitation, it has been mentioned in the previous description.

d) Victims' Rights To Act Number 13 In 2006 On Witness Protection And Victims

Under law no. 13 of 2006 it is the latest law protection act for victims, it was enacted on August 11, 2006, in the Indonesian republic of no. 64. With this law, it is expected that there will be more legal protection from witnesses and victims than ever before.

The law states that witness protection and victims are intended to provide security to witnesses and/or victims in any criminal proceedings. Next in "chapter ii chapter 5 of verse (1) the law mentions a witness and a victim of the right:

- 1) Finds protection for personal, family, and material security and is free of threats concerning the testimony to be, moderate or given;
- 2) Sharing in the process of selecting and determining forms of protection and security support;
- 3) Offering information without pressure;
- 4) Get an interpreter;
- 5) Free from entangling questions;
- 6) Obtained information regarding a developing case
- 7) Get information on judicial decisions;
- 8) Knowing when to be offended and set free;
- 9) Obtaining new identification;
- 10) Found a new residence;
- 11) To obtain transport costs according to need;
- 12) get legal counsel and or
- 13) Get temporary life-support.

2. The Implementation Of Legal Protection Against Victims Of Severe Human Rights Violations In The Regulations Of

The Constitution Each country is obligated to provide recovery if there is a violation of obligations based on international law to honor and guarantee respect for human rights, including the obligation to prevent breaches, the obligation to investigate violations, the obligation to take appropriate action against offenders, the obligation to make legal efforts for victims.

In various cases of human rights abuses, it is often not in favor of the victim, but rather is carried out to protect the perpetrators. The court process is only used to find out who did it and punish him, but justice for the victim is obviously not a part of that. The rights to compensation, restitution and rehabilitation which are clearly defined by legislation cannot even run at all.

The arrangement in 2006's law on witness protection and sacrifice is little different than the human rights law on human rights which also gives victims severe human rights compensation (compensation & restitutions). In order to implement the rights of victims, the government issued the 2002 government rule number 3 on compensation, restitution and rehabilitation of victims of severe human rights violations.

However, these heavy compensation and blessings of human rights violations are placed within the framework of "making amends." This is clearly included in the sense of compensation and restitution in the human rights court act as well as in pp no. 3 of 2002: Compensation is made for the losses of the state as a perpetrator is unable to make up for the full losses that are his responsibility."

Under the conditions above, damages for human rights violations are heavy with both crimes and the state. A perpetrator or third party is required to compensate the victim, which is defined as "recovery." While the compensation fee is imposed on victims by the government when the perpetrator or third party cannot make full compensation to the victim. With this provision comes the concept of a national responsibility toward victims of crime (victims of heavy human rights violations).

However, the 2002 government regulation number 3 has not explained how to apply for compensation, restitution and rehabilitation, only this has to be done well, quickly and adequately. Because in the government ordinance number 3 of 2002 does not set the ordinance of filing for damages, restitution and rehabilitation, the application of restitution, restitution, and rehabilitation to the human rights court is performed according to the rules of restitution and rehabilitation in the legal proceedings of criminal events.

Severe human rights violations in Indonesia

a) Case of east timor

"The case of east timor begins with the Indonesian government's policy on January 27, 1999, to give two options to the people of east timor, which is to accept or reject special autonomy. Violence starts after a poll won by pro-independence groups. The international community views this violence asa crime of human rights. Of the 18 defendants, 13 were acquitted and 5 others were found guilty.

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In timor-east cases of severe human rights violations, yet these are accountable for the differences between the decisions taken by the house of justice. In general decisions indicate that the perpetrators of human crime were militias or civil groups, while the question of those who were brought to justice was associated more with the current positions and positions who should have authority to try to stop the crime, and not as participants in the crime itself. As a result, interfacing one decision with another often has no equal margin of error, and is highly dependent on the appropriations of each panel of judges, when the case is directly related to each other.

The court has also given no decision regarding compensation, restitution or rehabilitation to the victim. Whereas a court ruling recognizes a crime against humanity and a victim in the crime itself. It is thought that the absence of a compensation decision to the victim is due more to the lack of compensation application, restitution or rehabilitation which was brought to the court by both the prosecutor and the victim."

b) Cape priok case

The case of cape priok in September 1984 was ultimately brought to the court of ham after a lengthy inquiry by the human rights committee. The results of the examination by the human rights committee concluded that there has been a presumed high incidence of human rights violations in the case. The human rights report also shows background on events that were not independent of the current social and political conditions. There are 23 names recommended for accountability from the event.⁶

At appeals, the verdict will be in contrast with the first-degree ruling in which all the accused are declared innocent and have no consideration for compensation to the victims. The same is true of the human rights ruling ruling that claims not to accept claims from the public prosecutor, although in this ruling there are distinct opinions from members of the court for example in the case of the accused pranowo.⁷

A key factor in this first-degree ruling is that the verdict compensates the victim, though under different circumstances, but still base on the defendant's guilt. The verdict of the accused ra ra butar the council of judges compensated to the victims without mentioning the amount of compensation and to anyone the compensation was made. While the verdict of the accused sutrisno mascung and friends is given with the names of the compensation recipients and compensation."

c) The abepura case

The trial for the abepura case began on May 7, 2004 and took place in makassar. Before the trial, the abemock case was investigated by the human rights committee stating that there has been a suspected severe human rights violation in the case. According to the human rights committee's report, the number of people who could be suspected in the case was divided into three groups including the direct perpetrators, the operational control and the management of the current security and order policies.

Of the three cases heard and tried by human rights courts, the verdict could not fully rule out that there was a severe human rights violation of the crimes against humanity involved. Only the east timor case suggests that crimes against humanity took place in the form of murder and persecution, and others, both cape priok and abepura, found in his verdict that the prosecution's allegations were not proven.

Based on the verdict in the above three cases, the major drawback is that systematic and widespread crime has not been detected, including evidence of elements of state policy. Almost all court ruling on human rights cannot prove that crimes committed are part of state policy. The east timor case capable of proving a severe human rights violation until the end of the trial only proves that the crime was committed by a group of people and had nothing to do with the state's politics at the time.

Human rights victims were heavy in ruling all three cases, but there were victims in all cases, regardless of whether the alleged crimes against humanity had been proven or not. Evidence of heavy human rights violations is important to point out that the victims are major human rights violations. Article 35 of act number 26 in 2000 on human rights courts states that victims of severe human rights violations can gain compensation, compensation, and rehabilitation.

Compensation, compensation, and rehabilitation in severe human rights violations are still a problem, especially in the implementation. Almost no victims obtained the right, even though 3(3) times had passed the trial. Some important questions in assessing a victim's right regarding his status have not been proved to involve a severe violation of human rights. Another matter is the compensation, which "seems to" depend on an aspect of the accused's guilt.

CONCLUSION

Legal protection against victims of severe human rights violations is necessary, as weaker ones should be effective in protecting the law. The rights of victims of gross human rights violations in the criminal justice system are regulated in 190 penal code laws, penal code 26 year 2000 on human rights courts, and the next rule of human rights is governed by the provision of protection against victims and witnesses in 2002 government regulations number 2 and government regulation 3 year 2002 on compensation, restitution

⁶ Suparman Marzuki, 2012, *Pengadilan HAM di Indonesia Melanggengkan Impunity*. Erlangga. Jakarta, hlm 137

⁷ Muladi, *Pengadilan Pidana bagi Pelanggar HAM Berat di Era Demokrasi*, (Jurnal Demokrasi dan HAM, 2000) Jakarta, hlm. 54.

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and rehabilitation regulations, The 2004 27th law on the commission of truth and reconciliation, and in 2006 the number 13 law on witness protection and sacrifice.

The implementation of protection of law against victims of severe human rights violations in Indonesia is not yet consistent with the current laws. Where victims' rights are not fully satisfied because of any legal obstacles such as his lack of success in proving a perpetrator in a severe human rights violation. The weakness of legal procedures that make compensating and rehabilitation to victims is difficult to realize.

Based on the issues outlined in the foregoing we can see how important legal protection of the human rights victim is, so that future demand for an immediate fulfillment of the rights of the victim should be greater, since protection of the rights of the victim is a form of national accountability in upholding and respecting human rights.

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