



A LEGAL ANALYSIS OF CRIME VICTIM PROTECTION IN INDONESIA

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Abstract: *This study aimed at discovering the crime victim protection. This employed a normative legal research in which a review of library research was conducted. The growth of rehabilitative services for crime victims in different nations shows that protection is focused on the challenges that victims encounter as a result of the crime. The goal of recovery is to get the victim back to where he or she was before the accident. These efforts are carried out by offering various forms of protection aimed at restoring the financial, physical, and psychological well-being of the victims.*

Keywords: *terrorism, legal, crime, victim, protection.*

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Introduction

Terrorism is a type of criminal act in and of itself because it differs from other types of criminal acts (Sudikno, 1991). Terrorism is even considered an extraordinary crime and has become mankind's enemy (hostesshumanism generis). This is inextricably linked to the impact it has; the loss is not only property, life, physical, and psychological, but it also creates a fearful atmosphere that grips all levels of society. Because of his widespread and profound impact, his position has been linked to crimes against humanity (Nainggolan, 2002).

Terrorist crime has recently increased in both quantity and quality. This indicates that terrorism is no longer a minor issue (soft issue), but has evolved into a serious strategic problem (high politics). Terrorism is a crime whose movement is unaffected by political interests (Rahardjo, 1974). Post-cold war, the international terrorism movement is becoming increasingly concerning, because it challenges the unipolar society structure, which represents the global victory of capitalism and democracy represented by the power of the United States and its allies.

The development of Indonesian terrorism started from Darul Islam that was proclaimed on August 7th, 1949 by Sekarmadji Maridjan Kartosuwirjoat Cisampang Village, Ciawiligar District, Kawedanan Cisayong, Tasikmalaya, West Java. It was the starting point of Indonesian Islamist radical movement. This was followed by the case of Kahar Muzakar that joined Negara Islam Indonesia in South Sulawesi and Daud Beureuh that Joined Negara Islam Indonesia (NII) in Aceh. There were disunity and competition existence between NII members. Abdullah Sungkar and Abu Bakar Ba'asyir arrested for conducting subversive acts. Abdullah Sungkar and Abu Bakar Baasyir flee to Malaysia during cassation process. In Malaysia Sungkar and Ba'asyir mobilize the sending of jihadist forces to Afghanistan.

The international community is facing an adversary who can strike at any time and cause unforeseeable casualties (Arief, 2007). Victims of terrorism do not belong to any class, race, or gender, and do not recognize national borders (including transnational crime). This terror



movement is only concerned with achieving their goals, regardless of the consequences for their lives. Terrorists hope for a quick, precise attack and to inflict extraordinary conditions. Risking your life to do so isn't a problem; it's increasingly becoming ammunition to instill fear in society, and the media is always a loyal friend to be the mouthpiece of their struggle (Seminar on the Main Concepts of Completing Law No. 15 for the Year 2003).

Terrorism is thus a threat to humanity, and it must be addressed. Combating a crime through legal iscriminalization. Attempts to criminalize terrorism face obstacles because there is no agreement, or the acts considered terrorism are too broad, making it impossible to define. Similarly, in its efforts to combat terrorism through criminalization, Indonesia does not provide a definition of terrorism, but only states that the types of acts that are classified as terrorism in Article 1 number (1) of Law No. 15 of 2003 concerning Stipulation of Government Regulation Substitute Law No. 1 of 2002 concerning the Eradication of Crime Terrorism becomes law, stating, "

Terrorist acts are defined as actions that cause despair, suffering, poverty, violations of human rights, various forms of conflict, and social disorder. Terrorism clearly causes human suffering, based on this description. Terrorism results in the loss of life, property, psychological, and psychosocial well-being. The death toll from terrorism is undeniable; the Bali Bombing I killed 202 people and seriously injured 209 others, while property damage spread over a kilometer. Victims, too, suffer from psychological trauma, as well as psychosocial loss of work, loss of future, and so on. So far, not all of these victims have been overcome, or have been overcome but not maximized.

The condition of the victim, both direct and indirect victims of criminal acts of terrorism, must, of course, be addressed, because failure to do so can lead to additional problems, causing the victim, victims, and/or their families to suffer even more. Aside from that, the impact not only results in the loss of life, property, and property, but it is also possible that psychological or psychosocial problems will arise. Victims become apathetic, losing faith in society's existing systems, and losing faith in the state's ability to protect them from crime. Similarly, the desire for vengeance is very concerning. As a result, it may cause public disorder.

Efforts to solve the victim problem can be carried out in a variety of ways, but each method requires a legal foundation in order to be realized and not to create a new problem. As a result, several provisions were drafted in order to address the victim's issue. There are several laws that regulate the protection of victims of terrorism, such as on Combating Terrorism and the Act Protection of Witnesses and Victims. The Law on the Protection of Witnesses and Victims regulates institutions responsible for witness and victim protection, as well as the institution's working mechanism in order to provide protection. The Witness and Victim Protection Agency is one of the institutions tasked and authorized to protect victims of crime, including victims of terrorist acts.

1. Method

This was a normative legal research. Normative legal research is research that employs a review of the literature (library research). The literature study in this research is used to discover legal materials, including primary legal materials, secondary legal materials, and tertiary legal materials. The legal materials obtained through this library research, both in the form of legislation and other materials, will be evaluated, selected, classified according to the legal material class, and described and arranged systematically.

2. Result and Discussion

Victims of Crime Recover

In English, the word "recovery," especially when referring to the recovery of crime victims, is frequently followed by "restoration," "recovery," or "repair." According to the Big Indonesian



Dictionary, the term "recovery" is derived from the word "recovered," which means "to return (good, healthy) as before; get well or good return; be good, or (new) come back." The term "recovery" refers to the process, method, or act of restoring; or it refers to the act of returning or repatriating (rights, property, and etc) (Echlos and Ahadily, 2008).

Recovery can be defined as an effort or process to restore the condition of something so that it can be restored to its original state. Efforts to heal or relieve the burden of suffering for victims with injuries or disabilities are included in the recovery of victims of crime. Similarly, an effort is made to restore the victim's loss crime that loses his property, or to repair damage to property damaged by crime. Meanwhile, if a life is lost, the crime victim's family must be assisted in arranging his funeral, as well as in overcoming psychological and psychosocial problems, so that the future can continue as it should.

According to Article 1 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,

a victim is someone who has suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, as a result of an act or commission that violates criminal laws in operation.

The victim in this case is someone who suffers as a result of someone else's actions related to their criminal offense, whether the suffering is physical or psychological, and whether the loss is in the form of property or loss of rights. The loss can be caused by someone's actions or by someone failing to perform an action that should be performed. Furthermore, for a victim, including close family members of the victim/persons with a direct relationship with the victim, as well as those who suffer losses because they attempt to rescue victims from danger or avoid victimization.

The 2002 Government Regulation No. 2 on Protection Procedures for Victims and Witnesses in Serious Human Rights Violations: Victims are individuals or groups of people who suffer as a result of gross human rights violations that necessitate physical and mental protection from any party's threats, disturbances, terror, and violence. Meanwhile, Article 1 point 3 of Law No. 31 of 2014 Concerning the Protection of Witnesses and Victims states that "victims are people who experience" physical, mental, and/or economic loss as a result of a criminal act."

According to the various definitions of victims of crime mentioned above, in general, victims are people or groups of people who suffer physically, psychologically, and economically, or lose rights as a result of a criminal act done or not done) against the law). Victims who are not directly (family or those who become victims because they help victims) from danger in order to avoid becoming a victim are included in this.

Types of Crime Victims

The development of the thought "Penal Victimology or Integrationist Victimology" as an early stage of the development of Victimology, influenced the development of the Criminal Justice System after the 1940s. Penal Victimology arose as a result of Von Hentig's (1941) and Mondelsohn's (1947) observations that the victim of crime is the party who determines a crime. "Victim is one of the participants in a crime/victim as coprecipitator of the crime," wrote Von Hentig in his book *The Criminal and His Victim* (Dijk at.el, 1999).

Mondelshon also developed this line of thought, observing that "victim precipitation was a mitigating circumstance in meeting out punishment of offender." His point of view is that criminals should be pardoned. Both perspectives show that the victim plays a critical role when a crime occurs. According to Von Hentig, victim typology is based on the role of victims associated with the occurrence of crimes, which will be considered in determining the perpetrator's guilt in the judicial



system, namely: 1. Victims who truly want the crime to occur; 2. Victims who wish to profit from the crime; 3. Victims who cooperate with perpetrators; and 4. Victims who provoke.

Meanwhile, Mendelsohn points out that there are six types of crime victims, namely: 1. The "perfect innocent victim" or "ideal victim" is not guilty; 2. The "victim with minor guilt and the victim as a result of his ignorance" as a result of negligence; 3. The "victim as guilty as the offender and the willing victim" (a victim as wrong as the perpetrator); 4. The "victim is more guilty than the offender: the victim who provoked the offender" (a victim more guilty than the perpetrator); 5. The "most culpable victim and the sole perpetrator"; 6. "The simulating victim and the fictitious victim" (Schafer, 1977).

Schafer also provides an interesting classification of victims, compiling a typology based on functional responsibility in a crime (who is responsible for what and to what extent):

1. Victims who are unrelated to the perpetrator; there is no relationship between the perpetrator and the victim (a potential victim becomes a victim). Victims bear full responsibility (suicide, gambling, drug users);
2. Provocative victims; the victim as a catalyst for crime;
3. Both the victim and the perpetrator bear responsibility. (victims who started a fight, attempted to commit a crime but were met with opposition, and so on);
4. A victim who is biologically weak; the victim's physical characteristics encourage the perpetrator to commit a crime (people with mental infirmities, children, the disabled, the elderly). Because they are unable to provide protection, the community/state bears responsibility;
5. Victims who are socially weak; become victims because they do not receive enough attention/abandonment from the community/state (the homeless);
6. The community and the perpetrators of the crime bear responsibility.

Crime Victim Protection

The concept of victim can be traced back to a period in religious history that recognizes human or animal sacrifice as a form of ritual. According to Andrew Karmen, "a victim was a person or animal who was killed during the ceremony in order to appease some supernatural power or deity." (Andrew, 1992).

However, the meaning of victim has changed, and the concept of victim has become very broad, as evidenced by the expanding scope of the object of study of Victimology (Science that studies Victims). The object of study of Victimology is not only victims of crime (special victimology), but also victims in general (general) victimology), and finally victims of abuse of power, victims of economic power abuse (new victimology) (Andrew, 1992).

Victims of crime had no problems at the start of human life in society, before civilized society (uncivilized society), until the emergence of the state as a power that regulates people's lives. According to Jonathan Pray, "in the absence of central state authority, the victim/offender conflict was conceptualized as a private matter outside the immediate interest of the state."

Victims of crime or their groups are always attempting to solve the problem by retaliating. Revenge that continues with revenge "an eye for an eye, teeth for teeth," this condition is seen as tiring in development society. Finally, in line with people's increasingly stable lives (from nomadic society to agrarian), disputes between people, between groups, and in finally, the concept of the state emerged as a solution to create a better, more orderly, and orderly life. As a result of the existence of the state in human life, society has taken away victims' rights to take their own actions against criminals. According to Jonathan Doak, "the early state tended to concentrate on the eradication of blood feuds and the provision of a legal framework for victims to seek compensation for injuries through the courts."



The state regulates the compensation that must be paid by the perpetrator to the victim in countries that adhered to the Anglo-Saxon system in the first middle ages. This is referred to as "bot or wegild." Furthermore, if a crime is committed on purpose, the perpetrator must pay a fine "wite" paid to the king or a para nobleman by the perpetrator or his extended family. Later developments marginalize victim involvement in dealing with crime perpetrators even further because the state no longer places the problem of crime in the realm of private law, but rather in the realm of public law. This is what brings up the issue of victims. Victims (community) can no longer determine their own will to solve the problem of becoming a victim (victim cannot avenge his hurt, victim community cannot demand compensation loss or compensation to the perpetrator or his group for medical expenses or loss), while the state does not provide satisfaction to the victim (Jacob, 1979).

Victims' rights have been abandoned, victims are no longer important in criminal proceedings, crime is a state matter, and the victim's loss is considered a violation of personal rights, so it becomes a civil matter. This issue of victims was only revisited at the end of the nineteenth and beginning of the twentieth centuries. This occurs as a result of increased public attention being paid to communities that are vulnerable to crime, namely women and children. This has also resulted in the occurrence of reforms in criminal law that occurred after World War II, in which criminal law develops a greater emphasis on victims of crime.

The increased focus on victims cannot be separated from the writings of the scholars who eventually encouraged the emergence of a new science, namely Victimology. Hans Von Hentig, for example, demonstrated that in a crime, there is frequently a relationship between perpetrators and victims of the "Duet Freeme of Crime." According to his hypothesis in his book *The Criminal and His Victim* 1948, "...the victim shapes and molds the criminal and his crime, and that the relationship between perpetrator and victim may be more intricate than our criminal law..." Mondelsohn (1956) is credited with coining the term "victimology." Mondelsohn points out that in a crime, there is interaction between the perpetrator and the victim (Victim - offender) relationships. As a result, the existence of that relationship is used to determine the typology of crime victims. Furthermore, Wolfgang points out that homicides frequently occur due to the victim's own fault (Victim Participated homicide)(Dijk,1986).

In contrast to the initial movement of returning attention to victims, the emphasis on the relationship between the perpetrator and the victim of the crime gives rise to the assumption that attention to crime victims is solely due to the victim's fault (blaming the victim) or the victim's participation in a crime (victim precipitation, victim provocation). The next movement to emerge was one to protect victims of crime. The emergence of this movement, because it has been discovered that a victim's suffering is caused not only by crime, but also by the Criminal Justice System's refusal to side with the victim, has caused a crime victim to become a victim for the second time (secondary victimization).

In the United Kingdom and the United States, a movement for the protection of crime victims, which sees victims as victims of the criminal justice system, began to emerge. Today's focus on the victim's problem is in the solutions to victim issues. Various forms of protection emerge as attempts to restore victims' rights before they were taken over by the state. Giving victims the right not to return to the uncivilized condition of the community, but supported by a good system and right regulations. As a reaction to retributive justice, this development has given rise to a movement known as Restorative Justice.

In Indonesia, the development of attention to victims of crime is moving at a snail's pace. Criminal law code, a source of criminal law material that has been taken over from *Wetboek van Strafrechtvoor Nederland Indische* (WvSNI), which still adheres, to a retributive understanding, pays little attention to victims. Victim protection that looks other than are threatened with



criminality, the perpetrators of the crime are also seen from the existence of a complaint offense, the existence of heavier penalties for perpetrators of crimes who commit crimes against minors, as well as the difference in punishment placed on the quality of a crime. The victim's protection comes in the form of recovery efforts. Protection in the form of victim recovery efforts appears to be seen also in Article 14 letter (c) of the Criminal Code, which in essence regulates the existence of provisions for the implementation of a criminal known as criminal law conditional with special conditions, namely compensation that must be given by a perpetrator to a victim of a crime.

Furthermore, it can be seen in formal criminal law from the existence of Articles 98 to 101 of the Criminal Law Code, which are related to providing opportunities for victims to sue for compensation to the perpetrators of the crime by combining the civil case into the criminal case. In contrast, there is no regulation regarding victim recovery in criminal implementation law.

3. The Protection of Terrorism Crime Victim in Indonesia

Terrorism prevention and eradication in Indonesia is not only a matter of law and law enforcement, but also a social, cultural, and economic problem related to the problem of a nation's resilience, so policies and measures to prevent and eradicate it must also aim to maintain a balance against the human rights of a person who is a victim who is directly affected. This can demonstrate that the Indonesian nation is a nation capable of upholding human rights, fostering peace, and desiring prosperity and safety, implying that the State of Indonesia has a strong commitment to maintaining the stability of national life on the territory of the Unitary State of the Republic of Indonesia. The protection process is governed by Law No. 15 of 2003, which states that compensation must be based on a court decision. If the victim is a witness during the court process, legal protection for victims of terrorism is provided. The victim will also be protected during the court process so that she is not intimidated by those with an interest in the trial. Aside from being a deciding factor in proving the defendant's actions, the victim is also a ballast reason. So that it catches the attention of the defendant and his legal counsel, as well as judges and public prosecutors. During the trial, he is required to obtain legal representation so that he can give a true and fair testimony based on the victim's experiences and feelings. Victims have the right to be heard in each stage of the judicial process, which is divided into three stages: pre-adjudication, adjudication, and post-adjudication.

The investigation and investigation process are carried out during the pre-trial stage. At this point, the investigator and investigation of the victim of a terrorism crime is handled by the police and prosecuted by the public prosecutor. In this process, the police will first deal with the victim as a law enforcement officer, and then the police will examine the victim as a witness regarding the crime of terrorism he has experienced. The adjudication stage is a stage in the trial court examination in which public prosecutors and judges participate. The stage of criminal prosecution is the post-adjudication stage. In criminal cases, the execution stage consists of admitting the convict to a correctional institution for imprisonment.

The protection and fulfillment of victims' rights in the judicial process is extremely important because the current system does not pay attention to victims' rights and interests, and victims frequently become victims of the criminal justice system as a result of law enforcement officers' unsympathetic attitude toward using authority at all stages of the judicial process. On the other hand, the level of enforcement is poor. The quality of victim participation in criminal cases heavily influences the law.

Handling victims of criminal acts of terrorism in terms of fulfilling a sense of justice against the victims includes mandated rights attached to the victims themselves in Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism and Law No. 13 of 2006 jo. Law Number 31 of 2014 concerning Protection of Witnesses and Victims, and these rights can be in the form of

givable compensation. Law No. 16 of 2006 jo. Law Number 31 of 2014 concerning the Protection of Witnesses and Victims. Article 7 Paragraph (1) states: "Every victim Serious violations of human rights and victims of criminal acts of terrorism other than obtain the rights as referred to in Article 5 and Article 6 are also entitled to compensation" then Article 7 Paragraph (4): "Compensation for victims of The crime of terrorism is carried out in accordance with the provisions of the law that regulates regarding the eradication of criminal acts of terrorism".

4. Conclusion

The evolution of rehabilitative services for victims of crime in various countries indicates that the protection is centered on the issues that victims face as a result of the crime. So the goal of the recovery is to return the victim to his or her pre-victim condition. These efforts are carried out by providing various forms of protection aimed at restoring victims' financial, physical, and psychological conditions. Recovery has even progressed by allowing victims to participate in the criminal justice system. In support of this, it appears that various institutions have been developed that can assist in organizing various forms of victim recovery.

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