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Provisions of Legal Protection for Terrorism Victim in Order to Realize Constitution Order

Article	Abstract
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INTRODUCTION

Legal protection is a right which every citizen has equally, and it can be realized by someone if he/she has been eligible. Legal protection is a provision to protect society from despotic acts which come from authority, in addition legal protection is a way to create peace and order. Many explanations, literature, information, and research relate the role of terrorist behavior by the time those research just to find answers regarding the correct formula how to prevent radicalism, but less of them analyze by taking victim perspective, how to give justice and protection for terrorism victim. By means of victim protection probably provides enormous effect to create resistance in order to deter and prevent terrorism.

At beginning of twenty-first century, the problem of terrorism has been one of five forms of threat to world peace and security. The crime of terrorism is a fairly old fact in history. Historical terrorism has become a frightening scourge, especially since terrorism as a movement that has always caused many victims from civilians that are not directly related.¹ Terrorism is not only a crime that threatens and undermines the security and integrity of a nation and state, but also undermines the order and peace of the international community. Global harmonization can be divided because distrust can rise among other countries, eventually denounce each other. It is because some of the suspects or perpetrators are from the country.² Terrorism is disturbed criminal act not only in Indonesia but also across the world. In every act of terrorism there are victims who often do not know what will happen to them. Based on Act No. 5 of 2018, terrorism is such as criminal that meets the elements of a criminal act in accordance with the provisions of this Law. meanwhile, terrorism is an act that uses violence or the threat of violence that creates an atmosphere of terror or widespread fear, which can cause mass casualties, and/or cause damage or destruction to strategic vital objects, living environments, public facilities, or international facilities with ideological, political, or security disturbance motives. Meanwhile, a victim of a terrorism crime is someone who experiences physical, mental, and/or economic loss caused by a criminal act.

Before this research was carried out, there was an earlier study entitled “Legal Protection of Victims of Terrorism Crimes: Between Desiderata and Reality” by Rani Hendriana, the results of research in the journal that the existence of legal protection for victims of terrorism crimes is the largest desiderata for victims, but this is not the case with the existing reality. An interesting issue to study, regarding the legal protection of victims of terrorism in Indonesia’s positive criminal law and the inhibiting factors for providing legal protection. The method used in this research is normative juridical. The results of this research show There are three regulations that are oriented towards victims of terrorism, but in reality, they do not get it also there are still weaknesses like both in the aspects of the components of legal substance, legal structure, and legal culture. In response to this, strengthening legal substances, structure and culture needs to be carried out.³ The difference between this research to the previous research is the focus of the study, this research focuses on how to protect victims of terrorism and to fulfill constitutional orders.

Terrorism can happen anytime, anywhere and to anyone. The cause of terrorism is enormous. The rise of terror that occurred with many victims has proven that terrorism is a crime against human values. Terror has proven as a matter of fact as a tragedy over human rights. The physical impact caused by terrorism is not only on those who are targeted but also on victims who do not know and are not related to the intended target of the terrorist. Because so familiar this act of terror is used as one of the human choices, eventually terror shifts itself as ‘terrorism’. It means terrorism takes part in the life of the nation, this is to show another portrait of and among the various types and varieties of crimes, especially violent crime, organized crime, and extraordinary crime and is called the crime of savagery in the era of civility because the crime sacrificed innocent people. Theoretical crimes in Indonesia always leave suffering and losses for their victims, both victims who

¹ Muh. Alfath Tauhidillah, “Korban Sebagai Dampak Dari Tindak Pidana Terorisme: Yang Anonim Dan Terlupakan,” *Jurnal Kriminologi Indonesia* 5, no. 2 (2009): 19.

² Aryos Nivada and Iqbal Ahmady, “Kerangka Regulasi Perlindungan Korban Tindakan Terorisme,” *Jurnal Of Political Sphere* 1, no. 1 (2020): 15.

³ Rani Hendriana, “Perlindungan Hukum Korban Tindak Pidana Terorisme: Antara Desiderata Dan Realita,” *Jurnal Kosmik Hukum* 16, no. 1 (2016): 30.

are terrorist targets and victims who are not terrorist targets. Victims of terrorism attacks experience a phenomenon of anonymity in which the fallen victims are random or randomly selected victims and are not guilty at all.

Similarly with the intention of the researcher above, there are several studies that discuss related to terrorism and the protection of terrorism victims, including research conducted by Heppy Hutajulu published through the journal Universitas Islam Kalimantan (UNISKA) with the title of the research “Legal Protection for Terrorism Victims of in Human Rights Studies” In this study, the author, Heppy Hutajulu, mentioned article 43 Act No. 5 of 2018 stated that terrorism victims are entitled to compensation from the state caused of terrorism conducted. Compensation is a claim such as goods or services indicating the situation of the completion of a receivable by providing goods that are worth. While compensation in general which means everything received can be both physical and non-physical and must be calculated and given to a person who is generally an object exempt from income tax, far from it, the author in this case does not discuss related to the provision of legal protection through legal policy and the application of the principle of justice in providing protection, so that the author sees a discrepancy in the article that the reviewer intends.

In addition to the research mentioned above, the author found a research that discusses also related to the legal protection of victims of terrorism crimes, namely an article written by Eprina Mawati in the *BeloVolume V Journal* No. 2 February 2020-July 2020 with the title “Criminal Law Policy Regarding Psychosocial Rehabilitation of Victims of Terrorism Crimes in the Criminal Justice System” states that the Protection of the rights of victims of criminal acts, It is the responsibility of the state to the victims, without exception. This is a form of state accountability for its inability to protect the community, resulting in victims. However, the effectiveness and accuracy of the targets and forms of protection provided by the government of Indonesia are considered inappropriate, especially for terrorism victims, the study has differences with the author’s statement entitled *Provision of Legal Protection for Terrorism Victims of in the Context of Realizing Constitutional Orders*. So based on the foregoing, the author conveys that the writing in this article is original and has never been researched by other researchers with the same title.

Thus far, victims are just only seen as the end of terrorism, and are not involved as efforts to prevent and deal with terrorism. When an act of terrorism occurred, the victim as a party suffered most and loss. This suffered such as physically; permanent body loss or disability that requires a long healing process or minor injuries, even to the worst is died. Psychologically; trauma, stay away from social life, labile emotions and so on. Economically; no longer able to support financially for the family, loss of a career and many more losses that must be borne by terrorism victims. There might be something needed or expected by the victims, but in reality they don’t. There is an adage “*res ipsa loquitur*” (the facts speak for themselves), terrorism victims felt suffered and loss, but legal protection for terrorism victims is not on the track. The problems come many factors to give legal protection, notably there is much reviewing or evaluation to these problems.

RESEARCH METHOD

The type of this research is descriptive analytical. This research is carried out by examining theories, concepts, legal principles, examining the systematics of regulations, legal comparisons and legal history, and also synchronization of regulations. The standard of a research should have methodology particular, in case this research used is normative juridical research methodology;

conducted by examining library materials or secondary data. Normative juridical research method is a kind of process for collecting and analyzing data carried out systematically, in a way to achieve a specific goal. Data collection and analysis are carried out naturally, both quantitative and qualitative, experimental and non-experimental, interactive and non-interactive.⁴

The procedure used for data collection is by collecting secondary data obtained from library research like guidelines used in the form of notes or citations, searching legal literature, books and others related to the identification of problems in this research by offline and online. Offline tracing is carried out by collecting library materials from books, articles, scientific journals and so on obtained from private collection libraries, campus libraries, regional libraries. Meanwhile, online literature searches are carried out by accessing the internet. To analyze the data collected from literature studies, this study uses quantitative analysis.

ANALYSIS AND DISCUSSION

Regulation for Terrorism Victims

The constitution of the republic of Indonesia as the basis of the state precisely in the fourth paragraph of the preamble of the constitution :then to form a government of the state that protects the entire Indonesian nation and all Indonesian one's native land and to promote the general welfare, educate the life of the nation and participate in carrying out world order based on independence, lasting peace and social justice", then on that basis it is necessary to enforce law and order constitutionally and continuously. Terrorism incidents in the territory of the republic of Indonesia have caused fear to the public at large, resulted in the loss of hundreds of lives and property losses and caused unfavorable influences on the social, economic, political life, relations of the country with the international world. Some countries have issued travel warnings or bans on travel to Indonesia to their citizens on the grounds that the country's security situation is not conducive. Bomb blasting is one of the modes of terrorism that has become a common phenomenon in some countries, organized and has an extensive network that threatens national and international peace and security. The government of Indonesia, in line with the mandate of the fourth paragraph of the preamble to the 1945 constitution, especially on the function of protecting the entire nation and all Indonesian bloodshed, is obliged to protect its territory and citizens from any threat of crime both national and international. The government is also obliged to maintain sovereignty and maintain national integrity and integration from every form of threat both from outside and from within. For this reason, it is absolutely necessary to enforce law and order consistently and continuously. As a form of protection for all Indonesians from the threat of terrorism, the government continues to produce regulations related to the protection of victims of terrorism crimes, and continuously makes efforts to prevent terrorism crimes from happening again in Indonesia.

In everyday life, legal terms have relevance to terms from foreign languages, namely from the terms *alkas*, *recht*, *ius*, law, to be able to understand the meaning and meaning of these foreign language terms, presumably be able to follow the description of the legal science literature which among others is put forward by Soeroso, which is as follows:

⁴ Ismail Koto, "Kebijakan Hukum Terhadap Perbuatan Penggunaan Merek Yang Sama Pada Pokoknya," *SANKSI: Seminar Nasional Hukum, Sosial Dan Ekonomi*. 1, no. 1 (2022).

1. Law, the word “*hukum* (law)” comes from Arabic is the singular form. The plural word is “*alkas*”, which was subsequently taken over in Indonesian as “*hukum*”. In the legal sense, there is a sense that is closely related to the understanding that can carry out coercion.
2. *Recht, recht* comes from “*rectum*” (Latin) which means guidance or demand, or government. Related to *rectum* is known the word “*rex*” which is a person whose job is to provide guidance or rule. The word *rex* can also be interpreted as “king” which has a regimen which means kingdom. The word *rectum* can also be associated with the word “*directum*” which means a person who has a job guiding or directing. The words *directur* or *rector* have the same meaning. The word *rectum* or guidance or government is always supported by authority. A person who guides, governs must have authority. Authority has a close relationship with obedience, so that people who have authority will be obeyed by others. Thus, the word *recth* contains the notion of authority and law or that *recht* is obeyed by the person voluntarily. From the word *recht* also arises the term “*gerechtigdheid*” is Dutch or “*gerechtigkeit*” in German means justice, so the law also has a close relationship with justice. So, it can be concluded that the word *recht* is a law that has two important elements, namely “authority and justice”.
3. *Ius*, the word *ius* in Latin has the meaning of law, comes from the Latin “*lubere*” meaning to govern or rule. The word governs and rules contains and based on authority, and the term *ius* is closely related to “*iustitia*” or justice. In ancient times for the Greeks *iustitia* was the goddess of justice symbolized as a woman with both eyes closed with her left hand holding the balance sheet and her right hand holding a sword.
4. *Lex*, the word *lex* comes from Latin and comes from the word “*lesere*” meaning to gather is to gather people to give orders. So here is also contained the existence of law is authority and authority, so the word *lex* which means law is very closely related to orders and authority

There is no common opinion among scholars about the definition of law. It happens because they give a definition from a different point of view. Even those differences are growing more and more widespread. According to E. Utrecht the definition of law as quoted by Subiharta is “The set of life instructions that govern the order in a society and should be obeyed by the members of the society concerned, therefore violation of the instructions on life can give rise to the actions of that government/society”. According to Soedjono Dirdjosisworo, the meaning of law can be seen from eight meanings, namely law in the sense of rulers, law in the sense of officers, law in the sense of attitude of action, law in the sense of a system of rules, law in the sense of interweaving values, law in the sense of legal systems, law in the sense of legal science, law in the sense of legal discipline. Some of the meanings of the law from various points of view that have been put forward illustrate that the law is not solely written legislation and law enforcement officers as has been understood by the general public who do not know about the law. But the law also covers things that are actually already alive in the society.

Apart from the various opinions of legal experts regarding the definition of law, according to the author, the understanding that law is a coercive norm / rule in which there are sanctions. The conception that the law is one of the means of community renewal and development has been accepted in Indonesia. Law as a means of renewal in society is an absolute imperative. Legal protection is a right that can be obtained by all citizens equally, and that right is granted by the

government if the citizen meets certain conditions. Legal protection is an effort provided by law to protect society from despotic acts by authority which are not in accordance with the rule of law, to realize order and peace. The principles of legal protection in Indonesia itself are the foundation of Pancasila as a state ideology and philosophy based on the concept of *rechstaat* and “rule of the law”.⁵ Where the principle of Indonesian legal protection focuses on the principle of legal protection on human dignity and dignity which comes from *pancasila*. Meanwhile, the principle of legal protection against government actions rests and originates from the concept of recognition and protection of human rights.⁶

According to Satjipto Raharjo, quoted by Luthvi Febryka Nola legal protection is “An attempt to organize various interests in society so that there is no collision between interests and can enjoy all the rights granted by law”. Organizing is done by limiting a certain interest and giving power to others in a measurable way. This theory of legal protection from Satjipto Raharjo was inspired by Fitzgerald’s opinion about the purpose of the law, which is to integrate and coordinate various interests in society by regulating the protection and restriction of these various interests. Legal protection is divided into two, namely preventive and repressive legal protection. Preventive legal protection is legal protection that aims to prevent disputes from occurring, which directs government actions to be prudent in decision-making based on discretion, while repressive legal protection is legal protection that aims to resolve disputes.

The Code of Criminal Procedure turns out that legal protection for perpetrators gets a large portion. We can see that protection has begun to be provided since the perpetrator was about to be arrested where the perpetrator was shown a letter of duty and an arrest warrant in which the identity of the suspect was listed and stated the reason for the arrest along with a brief description of the crime alleged to him, then in the form of providing legal assistance by legal counsel and assistance during the examination. And this protection does not stop after the perpetrator has been examined at the level of investigation, the protection of the perpetrator continues until the stage to file various legal remedies such as appeal, cassation and review of a court decision.

Terrorism victims had a phenomenon of anonymity in which the victims are randomly selected and innocent at all.⁷ Providing protection to victims of terrorism crimes is very important because in reality that indeed victims of crime, any crime has not received adequate protection. The inadequate protection provided to victims of crime in this case includes victims of terrorism crimes. Article 1 paragraph 6 under Act No. 13 of 2006 stated that “Protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims that must be carried out by the witness and victim protection agency or other institutions in accordance with the provisions of this Law”. Under Act No. 13 of 2006, the promulgating of law has shifted a concept by thinking about providing maximum protection to victims, not only for perpetrators of crimes as stipulated in the Criminal Procedure Code. It is clear, Article 3 states that “witness and victim protection is based on:

1. appreciation of human dignity
2. a sense of security

⁵ Hariyanto Hariyanto, “Pembangunan Hukum Nasional Berdasarkan Nilai-Nilai Pancasila,” *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 1, no. 1 (June 7, 2018): 53–63.

⁶ Hariyanto Hariyanto, *Hak Asasi Manusia Dan Hukum Pidana Islam* (Yogyakarta: Mahameru Press, 2017), 47.

⁷ Muh. Alfath Tauhidillah, “Korban Sebagai Dampak Dari Tindak Pidana Terorisme: Yang Anonim Dan Terlupakan,” *Jurnal Kriminologi Indonesia* 5, no. 2 (2009): 1.

3. fairness;
4. non-discriminatory; and
5. legal certainty

Based on Article 3 under Act No. 13 of 2006, it is appropriate and important to provide protection for victims of crimes as well as terrorism victims, because the basic principles of protection refer to the violation of the victim's human rights. Other forms of protection that can be provided the victims with medical services/ assistance, legal assistance which is a form of assistance to victims whether requested or not requested by the victim then providing information that must be given to the victim or his family related to the investigation and examination process experienced by the victim.⁸

Based on the interview with a Lecturer in Criminal Law, Mr. Rajarif Simatupang said that the rule of law related to legal protection for terrorism victims in Indonesia is good, along with the dynamics of life also emerging new rules that are considered to be able to reduce terrorism in Indonesia, it remains only how law enforcement implements what has been regulated, of course, to achieve the goal of protection for all people as wish mandated by the 1945 Constitution.⁹

Legal Protection for Terrorism Victims Under Act Number 5 of 2018

Terrorism throughout history has been a frightening thing, especially because terrorism as a form that has always caused many victims especially to civilians. Terrorism is against human rights as a basic right that is naturally inherent in human beings, namely the right to feel comfortable and safe or the right to life. In addition, terrorism also causes victims and losses to property, also disturbs the stability of the country, especially in terms of economy, defense, security. The physical impact of terrorism not only on those targeted by terrorism but also on victims who are ignorant and unrelated to the intended targets of terrorists or innocent victims.¹⁰

Victims are people both individually and collectively who have suffered, including physical or mental, emotional, economic loss or substantial impairment of their fundamental rights, through acts or omisi that violate the criminal law in each country, including abuse of power. As for terrorism itself, it can be interpreted as the unauthorized use of force or violence against people or property to intimidate or suppress the government, civil society, or any part thereof, to coerce social and political goals. Perpetrators can be individuals, groups, or countries. Meanwhile, the expected outcome is the emergence of fear, extortion, political radical change, demands for human rights, and basic freedoms for the innocent as well as the satisfaction of other political demands.¹¹

The existence of legal protection is something that is considered necessary and desirable (*desiderata*) by terrorism victims as a logical consequence of the suffering and losses. Legal protection for the community can be realized through the rules and policies that are in accordance

⁸ Wahyudi Iswanto, "Perlindungan Hukum Terhadap Hak Korban Terorisme," *Lex Crimen* 4, no. 1 (2015): 238.

⁹ Hasil Wawancara dengan Bapak Rajarif Simatupang selaku Dosen Hukum Pidana, Senin 6 Desember 2022.

¹⁰ Muhammad Poldung and Subekti, "Pelaksanaan Perlindungan Korban Tindak Pidana Terorisme Berdasarkan Undang-Undang Nomor 15 Tahun 2003 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2002 Tentang Pemberantasan Tindak Pidana Terorisme (Studi Kasus Bom Bali)," *Recidive* 6, no. 3 (2017): 460.

¹¹ Rani Hendriana, "Perlindungan Hukum Korban Tindak Pidana Terorisme: Antara Desiderata Dan Realita," *Jurnal Kosmik Hukum* 16, no. 1 (2016): 33.

with needs, based on the basic rights mandated by the Constitution.¹² Victim protection in positive law is an abstract protection or indirect protection. It is said that because a criminal act according to positive law does not see it as an act of attacking or violating the legal interests of the victim personally and concretely, but only as a violation of legal norms or order *in abstracto*. As a result, victim protection is not directly and *in concreto*.¹³ The development of law is carried out through legal renewal while still paying attention to the plurality of the prevailing legal order and the influence of globalization.¹⁴

Act No. 5 of 2018 states that “Victims are the responsibility of the state”. With the participation of the state in countering victims of terrorism, it is hoped that more targeted and equitable rights of all victims affected by an act of terrorism.

The forms of state responsibility for the legal protection for victims of terrorism crimes are mentioned in article 35A paragraph (4) under Act Number 5 of 2018 are:

1. Medical assistance provided to restore the physical health of the Victim, including carrying out management in the event of the Victim’s death.
2. Psychosocial and psychological rehabilitation:
 - a. Psychosocial rehabilitation is all forms of psychological and social services and assistance shown to help alleviate, protect, and restore the physical, psychological, social, and spritual condition of the victim so that they are able to carry out their social functions again reasonably, including LPSK seeks to improve the quality of life of victims by cooperating with relevant authorized agencies in the form of clothing fulfillment assistance, food, boards, help obtaining employment, or educational continuity assistance.¹⁵
 - b. Psychological rehabilitation is the help given by psychologists to victims who have suffered trauma or other psychiatric problems to recover back the victim’s psychiatric condition.
3. Compensation for the family in the event of the death of the victim;
4. Compensation can be given in the form of non-money/natura which is carried out in stages, among others, in the form of scholarships or job grants.

The provision of compensation is regulated in article 36 under Act No. 5 of 2018, the mechanism is as follows:

1. The application is submitted by the victim of a terrorism crime, his family or heirs in writing in a Indonesian on stamped paper to the LPSK where the application letter is completed with the identity of the victim, the identity of his family and heirs (if the application is not submitted by the victim) which is completed with a description of the

¹² Sri Hartini, Tedi Sudrajat, and Rahadi Wasi Bintoro, “Model Perlindungan Hukum Terhadap Kebijakan Pelayanan Kesehatan Masyarakat Miskin Di Kabupaten Banyumas,” *Jurnal Dinamika Hukum* 12, no. 3 (2012): 9.

¹³ J. Hattu, “Perlindungan Hukum Terhadap Korban Kejahatan Ekonomi Di Bidang Perbankan,” *Jurnal Sasi* 16, no. 4 (2010): 39.

¹⁴ Hibnu Nugroho, “Paradigma Penegakan Hukum Indonesia Dalam Era Global,” *Jurnal Pro Justicia* 26, no. 4 (2008): 320.

¹⁵ Eprina Mawati, Lies Sulistiani, and Agus Takariawan, “Kebijakan Hukum Pidana Mengenai Rehabilitasi Psikososial Korban Tindak Pidana Terorisme Dalam Sistem Peradilan Pidana, Program Studi Magister Hukum Universitas Padjadjaran,” *Jurnal Belo* 5, no. 2 (2020): 36.

event of the occurrence of the criminal act of terrorism, a description of the real losses suffered, along with its attachments.

2. After that, the LPSK checks the completeness within a period of no more than 7 days from the date the compensation application is received. If there is a lack of completeness of the application, the LPSK shall make a notice in writing to the applicant to complete the application. If the applicant within a period of not more than 14 days from the time the applicant receives notification from the LPSK does not also complete the application, then the application is followed up by the LPSK by conducting a substantive assessment. The substantive examination in question LPSK asks for information from the applicant, ministries/institutions, and other related parties.
3. The results of the substantive examination shall be determined by a decision of the LPSK accompanied by its consideration. The consideration is accompanied by a recommendation to grant or reject the compensation application and the LPSK submits the compensation application along with the LPSK's decision and its consideration to the investigator.
4. Upon receipt of the application for compensation, the investigator attaches the application for compensation in the case file to the public prosecutor at the latest before the examination of the accused.
5. The public prosecutor lists the amount of compensation based on the amount of loss in his claim.
6. The prosecutor carries out a court decision containing the award of Compensation by submitting a copy of the court decision that has obtained permanent legal force unless the court determines otherwise related to the payment of compensation to the LPSK within a maximum of 7 days from the date the copy of the court decision is received.

Based on the results of an interview with Rajarif Simatupang, he said that the effort to provide protection for terrorism victims in Indonesia is to prevent terrorism crimes before they occur. Preventive measures can be taken with the initiative of law enforcement to tighten supervision of every movement of people entering and leaving the Territory of the Republic of Indonesia, conducting routine checks on legal subjects suspected of committing criminal acts of terrorism, and providing sanctions that can have a deterrent effect on the wider community.¹⁶

CONCLUSION

Providing protection for terrorism victims is urgent because in reality that indeed victims, any crime has not received adequate protection. The inadequate protection provided for terrorism victims. Act No. 13 of 2006 stated that "Protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims that must be carried out by the Witness and Victim Protection Agency or other institutions in accordance with the provisions of this Law". Based on Act No. 13 of 2006, it is clear that the promulgating of law has shifted the concept by thinking about providing maximum protection to victims not only for perpetrators of crimes as stipulated in the Criminal Procedure Code (KUHAP). Act Number 5 of 2018 regulated in article 35A paragraph (1) "Victims are the responsibility of the state". With the participation of the state

¹⁶ Hasil Wawancara dengan Bapak Rajarif Simatupang selaku Dosen Hukum Pidana, Senin 6 Desember 2022.

in countering victims of terrorism, it is hoped that more targeted and equitable rights of all victims affected by an act of terrorism.

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