

CHAPTER I

INTRODUCTION

1.1. Background

In this world, law is needed to regulate the people to maintain peace and justice. The function of the law itself according to Prof. Subekti S.H. is to carry out justice and order which is a condition for bringing prosperity and happiness.¹ Every citizen must "uphold the law". In everyday reality, a citizen who negligently/deliberately does not carry out his obligations that harm the society, it is said that the citizen is "breaking the law" because the obligation has been determined based on law.²

Indonesia is a state law based on Article 1 Paragraph (3) of the 1945 constitutions and one of the characteristics of state law is equality before the law principle.³ Article 27 paragraph (1) of the 1945 Constitution affirms all citizens of the same position in the law. The meaning of equality before the law is found in almost all state constitutions. This is the norm that protects the rights of citizens. Indonesia has a lot of laws starting from UUD 1945 as the basic law of all the laws, followed by People's Consultative Assembly Statute, Law, Government Regulations, President Decree, ministerial

¹ Zakky, "Tujuan Hukum Menurut Para Ahli Beserta Fungsi dan Penjelasannya", <<https://www.zonareferensi.com/tujuan-hukum/>>, accessed 17 February 2020.

² Leden Marpaung. *Proses Penanganan Perkara Pidana (Penyidikan dan Penyelidikan)*, Cetakan ke III, (Jakarta: Sinar Grafika, 2011), hal 22.

³ Article 1 paragraph (3) UUD 1945.

decree, and Local Regulation. In UUD 1945 the Indonesian basic law, there are articles that regulated rights to receive legal protection. They are stipulated in chapter XA about Human Rights:

1. Each person has the right to live and the right to defend his life and existence.
2. Each person has the right to recognition, security, protection and certainty under the law that shall be just and treat everybody as equal before the law.
3. Protecting, promoting, upholding, and the full realization of human rights are the responsibilities of the state, foremost of the government.⁴

One of the concrete example of legal protection is written in the Article 2 paragraph (1) Government regulation No. 7 year 2018 states that victims of gross human rights violations are entitled to compensation. Human rights violations is "every act of a person or group of people including state officials, whether intentional or unintentional or negligence that legally reduces, inhibits, limits and or revokes the human rights of a person or group of people guaranteed by law and does not obtain or it is feared that they will not get a legal remorse that is fair and true based on the applicable legal mechanism " according to Article 1 Paragraph (6) No. 39 year 1999.⁵ Based on this definition, terrorism's victims are people that their human rights are

⁴ Article 28A, Article 28D (1), Article 28I (4) UUD 1945.

⁵ Law No.39 year 1999.

violated. Terrorism based on Antiterrorism Law No. 5 year 2018 is an act that uses violence or threat of violence that generates an atmosphere of terror or widespread fear, which can cause mass victims, and / or cause damage or destruction to vital strategic objects, the environment, public facilities, or facilities international motives with ideological, political, or security disturbances.

For criminals, Indonesia has criminal code and criminal procedural code for the court procedure. Law No. 1 year 1960 or criminal code (KUHP (*Kitab Undang-Undang Hukum Pidana*)) regulates all the things that are connected to criminal, statutory regulations governing material criminal acts in Indonesia. While law No. 8 year 1981 or criminal procedural code (KUHP (*Kitab Undang-Undang Hukum Acara Pidana*)) is Indonesian law regulating the formal implementation of criminal law. In KUHP, there are chapter that regulates perpetrators rights in the court system, Chapter VI and Chapter VII. Also perpetrators have the rights to have rehabilitation. Rehabilitation based on Article 1 No. 23 KUHP is “Rehabilitation is the right of a person to have his rights restored to their capacity, status, dignity and integrity which is granted at the stage of investigation, prosecution or adjudication by virtue of having been arrested, detained, prosecuted or tried without any reason based on law or due to an error regarding his person or the law which is applied by means regulated in this law”. Rehabilitation in the context of KUHP is the right of criminal’s perpetrators to get their good names back if there is an error in the arrest process.

The rehabilitation is divided by 2, rehabilitation for suspects (tersangka) and rehabilitation for the defendant (terdakwa). Rehabilitation for defendants is regulated in article 97 paragraph (1) of the Criminal Procedure Code: "A Person shall be entitled to obtain rehabilitation if the court has acquitted him or dismissed all charges against him by a judgment which has become final and binding."

If a defendant is acquitted or is acquitted by a court decision that has permanent legal force, he / she is entitled to rehabilitation. This rehabilitation is included at the same time in the court's decision to release or release the defendant. This is regulated in article 97 paragraph (2) of the Criminal Procedure Code: "Said rehabilitation shall at once be granted and set forth in the court judgment as intended by Paragraph (1)". Rehabilitation for suspects is regulated in article 97 paragraph (3) of the Criminal Procedure Code: "Requests for rehabilitation by a suspect for arrest or detention without a reason based on the law or error regarding the person or law applied as referred to in Article 95 paragraph (1) whose case is not submitted to the district court is decided by the pretrial judge referred to in Article 77". Thus, a person who is a suspect has the right to demand rehabilitation, if an arrest, detention, search or seizure is carried out without legal reason.

As we can see from the article in KUHAP that Indonesia has an article for rehabilitation to the criminal perpetrators both the suspect and the

defendant. Legal protection for victims should be regulated explicitly in KUHP as well in the KUHP, KUHP mostly regulates protection of suspects. But there is no article for the victims and rehabilitation for the victim is not only their capacity, status, dignity, and integrity.⁶ In an integrated criminal justice system, the rights and interests of witnesses and victims should also be accommodated in a balanced manner with the rights and interests of the suspect. Criminal Procedure Code regulates the rights of suspect and defendant too much and it felt that in the implementation the 'pendulum has swung too far', it means that the criminal justice system is too pro-suspect and defendant.⁷ Victims also need to have rights like economical, psychological, and physical rehabilitation because often the victims are injured, and they have to spend money by themselves to medicate. One of the criminal acts that need to have the victims' rights fulfilled in Indonesia is terrorism, and terrorism is considered a special criminal act. Terrorism makes many people take losses because they weakened the economy and psychological capacity very much, because the victims often must pay for their own hospital bills and the trauma after the incident will take a long time to heal. In Indonesia, there is also a pattern that if there are no 'important' victims, all the attention will be on the perpetrator instead of victims. That makes no equality where perpetrator get

⁶ Siswanto Sunarso. *Viktimologi Dalam Sistem Peradilan Pidana*, (Jakarta: Sinar Grafika, 2012), hal. 93 – 97

⁷ A.I. Wisnubroto, "Problematika dan Prospek Perlindungan Saksi dan Korban di Indonesia", *Jurnal Hukum Pro Justisia* Vol. 25 No. 1 Januari 2007, hal. 74

legal protection guarantee while the victims don't get anything.⁸ A nation is required to protect terrorism victims within its authority, and it contained in international conventions.⁹

Terrorism act take away human rights from the people who are harmed, especially in the right to life, the right to security, and freedom from fear. Witness and victims in the criminal justice process are people that need to receive legal protection, especially witness and victims in a terrorism act, because their life is in stake and they lost a lot in the process.¹⁰ Based on the research of Udayana University, victims of terrorism suffer physical losses that are injuries caused by bomb fragments in the eye that cause visual disturbances, then injuries to other body parts such as stomach, hand that is almost broken. Hearing loss, nerve disorders, and experiencing prolonged trauma.¹¹ The trauma not only affected the direct victim, but also included the victim's family. In addition to physical losses, the victims also suffered economic losses related to the cost of prolonged wound healing treatment. As for the families of the victims, the loss of people who became the backbone of the family has weakened the economic capacity of the family. Tony Soemarno, one of the victims of 2003 JW Marriot Bombing stated that

⁸ Muhammad Alfath Tauhidillah, "Korban Sebagai Dampak dari Tindak Pidana Terorisme: Yang Anonim dan Terlupakan", *Jurnal Kriminologi Indonesia* Vol. V No. II Agustus 2009, hal. 19

⁹ *Ibid*, hal. 21.

¹⁰ Government Regulation No. 7 year 2018.

¹¹ Redaksi AIDA, "Pentingnya Jaminan Rehabilitasi Korban Terorisme", <<https://www.aida.or.id/2019/02/3341/pentingnya-jaminan-rehabilitasi-korban-terorisme>>, accessed 18 February 2020.

he was hospitalized for almost one year. The bomb burns many parts of his body and after one year hospitalized he lost his job, he got frustrated because he cannot work to send his kids to school. Until now, Tony have not get any compensation from the government, since the act happens in 2003 the compensation has not been provided from him.¹² It is important to have the law and its implementation working properly to prevent this kind of problem in the future.

From 2010 – 2019, there are 157 terrorism cases in Indonesia with 130 cases in the 2010 – 2017 (with 896 perpetrators)¹³ and 27 cases in 2018 – 2019¹⁴. One of the famous terrorism cases in Indonesia, the bombing terror in Surabaya takes 14 fatalities and many wounded victims. In only one terrorism case, we have dozens of victims, we can imagine if there were 157 terrorism cases in the period of 9 years. The urgency of law to save the victims is increasingly important and to compensate the losses that the victims have.

There is a law in Indonesia that answer the problem of terrorism victims, Law No. 15 year 2003, Law No. 13 year 2006, Law No. 31 year 2014 regarding amendment to Law No. 13 year 2006 and lastly, Government

¹² BBC, “Kompensasi untuk Korban aksi terorisme: ‘Sejak saya kena bom tahun 2003, sudah tiga presiden ganti, dan kompensasi belum ada sampai sekarang’”, <<https://www.bbc.com/indonesia/indonesia-53906525>>, accessed 30 September 2020

¹³ Admin, “Menelaah Tren Terorisme di Indonesia dari Masa ke Masa”, <<https://www.ui.ac.id/menelaah-tren-terorisme-di-indonesia-dari-masa-ke-masa/>>, accessed 28 September 2020

¹⁴ Bayu Septianto, “Kapolri Klaim Jumlah Aksi Terorisme Sepanjang 2019 Berkurang”, <<https://tirto.id/kapolri-klaim-jumlah-aksi-terorisme-sepanjang-2019-berkurang-el1v>>, accessed 28 September 2020

Regulation No. 7 year 2018. Law No. 15 year 2003 stipulates that victims of terrorism are entitled to compensation. Law No. 13 year 2006 and Law No. 31 year 2014 governs witness and victim protection, the protection includes providing compensation, restitution, and providing assistance (psychosocial and psychological rehabilitation) to the victims. Government regulation No. 7 year 2018 was made to help the implementation of Law No. 15 year 2003, Law No. 13 year 2006, and Law No. 31 year 2014 in the compensation fields. In the law, it regulates that the law gives authority to the LPSK (*Lembaga Perlindungan Saksi dan Korban*) to provide protection to terrorism victims in the form of compensation. Government regulation No. 7 year 2018 mainly talks about the procedures to provide compensation, restitution, and assistance to witnesses and victims. Victim according to the Government Regulation is someone who experiences physical, mental, and / or loss suffering economy caused by a crime¹⁵, and victims here also cover the family of the victims.

Law No. 15 year 2003, Law No. 13 year 2006, Law No. 31 year 2014, and Government Regulation No. 7 year 2018 answers the problem to provide compensation for terrorism victims but, the implementation of this laws is very bad because usually prosecutor and judges ignore these laws. Thamrin bombing in 2016 resulted in 8 fatalities and dozens of people wounded. Most of the victims in this case accessed the medical and psychological and

¹⁵ Government Regulation No. 7 year 2018 Article 1 Paragraph (2).

psychosocial assistance facilitated by the State. But when the victims applied their rights for restitution and compensation, there's a problem occurred. No perpetrator wants to pay them, and the right of compensation is ignored by the West Jakarta District Court. Public prosecutor only read pleas from the victims without putting in the charges, also no single verdict from judge that provide compensation to the victims. This trial was conducted in 2016, The victims apply for the compensation through official institutions which is LPSK but still none of the court decisions provided compensation to the victims.¹⁶ Finally in 2018, the court grant the right of victims' compensation in this case. Since 2018, although cases still use the Law No. 15 year 2003, the implementation of the law is getting better, the victims from other terrorism case such as Samarinda bombing (November 2016), Kampung Melayu Bombing (May 2017), Surabaya Bombing (May 2018) also gets their right of compensation.¹⁷ Law No. 5 year 2018 which enacted in June 2018 then regulated about compensation for past terrorism victims, but it have not solve the problem. Because, in Law No. 5 year 2018, the compensation provide for past terrorism victims are regulated but it needed a new government regulation, the old Government Regulation (Government Regulation No. 7 year 2018) did not regulates about terrorism

¹⁶ Institute for Criminal Justice Reform, "Hak Korban Masih Terabaikan, Pengakuan Negara Atas Korban Masih Minim", <<https://icjr.or.id/hak-korban-masih-terabaikan-pengakuan-negara-atas-korban-masih-minim/>>, accessed 28 September 2020

¹⁷ Redaksi Aida, "Mendorong Terobosan Pemenuhan Hak Korban Lama", <<https://www.aida.or.id/2020/06/7065/mendorong-terobosan-pemenuhan-hak-korban-lama>>, accessed 10 October 2020

victims. The victims of old terrorism cases like Bali Bombing I, II (2002,2005), JW Marriot Bombing (2003), Kuningan Bombing (2004) cannot fight for their rights because the trial is ended.¹⁸ Their compensation cannot be provided because of that. There is a *Rechtsvacuum* (legal vacuum) in this law because one of the causes of legal vacuum is because things or circumstances that occur have not been regulated in the law / regulation, or even if it has been regulated, it is still unclear or even incomplete.¹⁹ Therefore, Indonesia made a new Government Regulation to amend the old Government Regulation.

In July 2020, Indonesia has released a new law, which is Government Regulation No. 35 year 2020 regarding amendment to the Government Regulation No. 7 year 2018. Government Regulation is statutory regulations made by the president to carry out the laws (*undang-undang*) properly.²⁰ This Government Regulation helps the terrorism victims in the past case to get the compensation they wanted. Because in this law, the provide of the compensation to the past victims can be done through LSPK only, not through court decision.²¹ This new law is interesting to research about because the purpose of this law is to prevent the problem happen again in

¹⁸ Redaksi Aida, “Kompensasi Korban Lama Dinanti”, <<https://www.aida.or.id/2018/09/3067/kompensasi-korban-lama-dinanti>>, accessed 10 October 2020

¹⁹ Gamal Abdul Nasir, “Kekosongan Hukum & Percepatan Perkembangan Masyarakat”, Jurnal Hukum Replik Vol. 5 No. 2 September 2017, hal. 173.

²⁰ Article 1 Paragraph (5) Law No. 12 year 2011

²¹ Andrian Pratama Taher, “Presiden Jokowi Teken PP Soal Kompensasi Korban Aksi Terorisme”, <<https://tirto.id/presiden-jokowi-teken-pp-soal-kompensasi-korban-aksi-terorisme-ftUY>>, accessed 28 September 2020

the future and this has made LPSK more vital to this problem. In these laws, LPSK has become a very important institutions for victims.

Implementation of the new regulation, Government Regulation No. 35 year 2020 are worth researching furthermore, and therefore the author take the application of Government Regulation No. 35 year 2020 in providing compensation to the terrorism victims to become a thesis.

1.2. Formulation of Issue

1. How the Government Regulation No. 35 year 2020 regulates the compensation for victims of terrorism?
2. Whether the enforcement of Government regulation No. 35 year 2020 sufficient to tackle the issue of compensation for the terrorism victims before the enactment of Government Regulation No. 35 year 2020?

1.3. Research Purpose

1. To know the legal approach from the Government Regulation No. 35 year 2020 when it comes to compensation for the terrorism victims.
2. To know whether the implementation and enforcement of Government Regulation No. 35 year 2020 have been enough to tackle the terrorism victims' compensation problems in Indonesia before the enactment of Government Regulation No. 35 year 2020.

1.4. Benefit of Research

This research contributes to the society to provide general information so the society may understand better about the rights protection of criminal's victims. In Indonesia, victims often did not know what to do and they often don't know that they have the rights as a criminal victim. With this thesis, the author hopes that terrorism victims all across Indonesia can have their economical loss compensated by the LPSK and the government.

1.5. Framework of Writing

CHAPTER I: Introduction

Chapter I consist of background, formulation of issue, research purpose, benefit of research, and framework of writing. The background discusses about the general review of the topic and why the author wants to take this topic as a thesis. Formulation of issue discuss about the issues that are going to be studied. Research Purpose discussed about the objectives of this thesis. Benefit of research discussed about the benefit of the thesis for the people who read this thesis. Lastly, the framework of writing discussed about the structure of this thesis.

CHAPTER II: Literature Review

Chapter II consist of the basis that will be used to analyze this issue and answer the formulation of issue. The basis consists of theoretical framework and conceptual framework.

CHAPTER III: Research Methods

Chapter III consist of how the research of this thesis will be conducted and what type of research will be used. This chapter also discussed where the research will be done.

CHAPTER IV: Discussion and Analysis

Chapter IV consist of the analysis of the data that have been gathered. This chapter discussed about the issues and the analysis based on the data that has been gathered. The discussion and analysis will be made based on the theoretical basis that occurred in chapter II.

CHAPTER V: Conclusion and Recommendation

Chapter V consist of conclusion and recommendation. This chapter discussed about the summary of this thesis and the recommendation for the problem that used for research in this topic.