

PROTECTION OF VICTIMS OF HUMAN RIGHTS VIOLATIONS

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Abstract

The crime of genocide is often associated with crimes against humanity but when viewed in depth the crime of genocide is different from crimes against humanity, where the crime of genocide is aimed at groups such as nations, races, ethnicities or religions while crimes against humanity are aimed at citizens and civilians. The demand for the resolution of cases of human rights violations has prompted the birth of Law Number 39 of 1999 concerning Human Rights which was later followed by Law Number 26 of 2000 concerning the Human Rights Court which is intended to answer various problems of human rights violations, especially gross human rights violations. Article 7 of the Human Rights Court Law states that the crime of genocide is a crime that violates gross human rights because it is committed by killing, causing severe suffering, extermination, coercion by groups and even the forcible transfer of children from one group to another. Thus the human rights court law expressly provides threats to the perpetrators. The method used is normative legal research. Based on the results of the research, it is known that the Crime of Genocide and its Implications in Law Number 39 of 1999 concerning Human Rights that the crime of genocide is one of the most serious forms of human rights violations, involving systematic efforts to destroy certain groups based on ethnicity, religion, or race. Law No. 39/1999 on Human Rights has not specifically and in detail regulated the crime of genocide and the elements of the crime. This has led to a lack of a strong and comprehensive legal framework to prosecute perpetrators of genocide, as well as provide justice and legal certainty for victims.

Keywords: Genocide Crimes, Violations, Human Rights

INTRODUCTION

In the beginning, human rights were born out of the struggle to oppose state absolutism over the state's arbitrariness towards its citizens. Human rights are rights that are inherent in every person. This right must be protected by the state. The protection provided by the state is actually part of respect for human dignity. As stated in Article 1 of the Universal Declaration of Human Rights, "all human beings are born free and equal in rights and dignity. They are endowed with reason and conscience, and should behave towards one another in a spirit of brotherhood."

The Universal Declaration of Human Rights was proclaimed as a common standard of well-being for all people and all nations. The Declaration covers all rights in civil and political rights as well as economic, social and cultural rights. As its implementation, the state is required to make every effort to promote human rights, both normatively and administratively. The state is an abstract personification, and the government is the legal entity that represents the interests of the state. As a legal entity representing the interests of the state, the government performs an act through the mediation of people within it who act in the capacity as state apparatus.

Human Rights Violation is any act, action of an individual or group of people, including state apparatus, either intentionally or unintentionally, or because of the violation of human rights. negligence that legally reduces, hinders, limits, and revokes the Human Rights of individuals or groups of people guaranteed by law and not obtained or feared will not get a fair and correct legal settlement based on the applicable legal mechanism. Based on Law Number 39 of 1999, Human Rights are rights inherent in the nature and existence of humans as creatures of God Almighty and are a gift from Him that must be respected, and upheld and supported by the state, law, government, and everyone for the sake of honor and protection of human dignity. So, human rights are basic rights that humans have from birth that are related to their dignity and worth as creations of God Almighty that cannot be violated by anyone. Because human rights are basic rights that humans carry from birth as a gift from God Almighty, it is necessary to understand that human rights do not originate from the law but are a gift from God as the creator of nature and its contents.

In accordance with the provisions of Article 28l paragraph (4) of the 1945 Constitution, the state is present and responsible if Indonesian citizens are involved in gross human rights violations. Therefore, the provisions of Article 5 of the Human Rights Court Law are in line with the 1945 Constitution. Therefore, the Government states that the norms tested in this case are not contrary to the 1945 Constitution. In essence, the Human Rights Court has the authority to examine and decide on gross human rights cases outside the territorial limits of the Republic of Indonesia committed by Indonesian citizens. Based on this statement, the Government states that the norm provision of Article 5 of the Human Rights Court Law is not contrary to the 1945 Constitution. Therefore, the Government hopes that the Court will accept the Government's statement and reject the petition of the Plaintiffs in its entirety.

As state officials in this case, the defendants, Sergeant Two Ucok Tigor Simbolon (UTS), Sergeant Two Sugeng Sumaryanto (SS), and Corporal One Kodik (K), committed premeditated murder against the victims inside Cebongan Correctional Facility. The defendants were training on Mount Lawu, Central Java, when they committed the murders, using weapons they had brought with them during training.

This case began when the defendant UTS received information that Chief Sergeant Heru Santoso had died, and also learned that a fellow commando trainee, First Sergeant Sriyono, had been injured after being slashed by thugs from Deki and Marcel's group. Then on March 22, 2013 at approximately 17.00 WIB, UTS after completing his duties, with a state of emotion told SS and K, and then invited SS and K to go to Yogyakarta to look for thugs who hacked Sergeant Sriyono and who killed Serka Heru Santoso, and the plan if he met the group of thugs would be held accountable.

Using a car at approximately 17.45 WIB, the defendants took three AK 47 long-barreled firearms and live ammunition, two AK 47 replica guns, and a sig sower replica pistol that was placed in the back of the car. After arriving in Yogyakarta and circling around the Lempuyangan and Malioboro areas, the group of thugs they were looking for could not be found. The defendants rested near a police post located on the Ring Road in Yogyakarta. When the defendants and their colleagues were resting, one of the group members saw a group of people hanging out, so he approached and asked one of the people. "Mas, where was the stabbing of the TNI member yesterday?" One of the people answered, "Well, I don't know, sir." However, one of them said, "This afternoon I saw a prisoner's car escorted by many police officers heading towards Cebongan Prison." Arriving at Class IIB Cebongan Correctional Facility, the two cars driven by the defendants were parked on the side of the road in front of the Correctional Facility.

Armed with weapons, the defendants then forced their way into Cebongan Prison in the early hours of the morning. Once inside the prison, they coerced and assaulted the prison officers Indrawan

Tri Widrawan and Edi Prasetya to show them the cells of Hendrik Sahetapy (Deki), Juan Manbait, Adrianus Galaja, and Gamaliel Y Rohiruwu. After being shown the cell, the defendant then shot dead the four prisoners using an AK 47 weapon. And after shooting the defendants returned to their residence at the Solo Kopasus Dormitory in the early hours of the morning.

In his indictment the military prosecutor charged the three defendants with: first, primary violation of Article 340 of the Indonesian Penal Code jo. Article 55 paragraph (1) to 1 of the Criminal Code; subsidiarily Article 338 of the Criminal Code jo. Article 55 paragraph (1) to 1 of the Criminal Code; more subsidiarily Article 351 paragraph (1) jo. paragraph (3) of the Criminal Code jo. Article 55 paragraph (1) to 1 of the Criminal Code. Second, Article 103 paragraph (1) jo. paragraph (3) 3rd of the Military Criminal Code. The judge's decision then stated that the defendants were legally and convincingly proven to have violated Article 340 of the Criminal Code jo. Article 55 paragraph (1) to 1 of the Criminal Code, and Article 103 paragraph (1) jo. paragraph

(3) 3rd of the Military Criminal Code with imprisonment and additional punishment dismissed from military service. In its verdict the panel of judges handed down criminal penalties for the three defendants. UTS with imprisonment for 11 years and dismissed from military service; SS with imprisonment for eight years and dismissed from military service; K with imprisonment for six years and dismissed from military service.

The judge's consideration in this case stated that what the defendants had done had harmed the institution of the Indonesian Army, the community, the state, the government, as well as the victim's family, "That the actions of the defendants will result in a decline in the image and prestige of the Indonesian Army, show that what the defendants have done is a form of vigilantism, is a form of distrust of the rule of law and law enforcement institutions, and for the victim's family caused deep sadness and severe suffering because they have lost their life support, a beloved child, and a protector for the family" (vide decision: 529).

From the outset, this case was constructed using criminal law, so that those who examined, tried and decided this case were military prosecutors and military courts. However, there are important aspects that can be examined and analyzed in this decision that were not carried out by the panel of judges, namely related to human rights and state responsibility.

There is general agreement among scholars in defining human rights violations as a "violation of state obligations arising from international human rights instruments. The state's violation of its obligations can be committed either by its own actions (acts of commission) or by its own negligence (acts of omission)." Article 1 paragraph (6) of Law No. 39/1999 on Human Rights states "Human rights violations are every act of a person or group of people, including state apparatus, either intentionally or unintentionally or negligently, limiting, and or depriving a person or group of people of their human rights guaranteed by this Law, and not getting, or feared will not get a fair and correct legal settlement, based on the applicable legal mechanism".

In the above formulation, it is clear that the State is responsible for human rights violations. Thus, the emphasis in human rights violations is on state responsibility. The concept of state responsibility in international law is usually understood as "the responsibility that arises as a result of violations of international law by the state.

RESEARCH METHOD

The research to be conducted by the author is normative legal research, namely research based on applicable legal rules, in this case the research is carried out on the Protection of Victims of Human Rights Violations: A Review of Decision Number 46-K/Pm li- 11/Ad/Vi/2013. Furthermore, it is also explained that the research approach used to answer research problems is:

1. The Statute Approach is an approach used to examine all laws and regulations related to the problem or legal issue at hand. The approach used to review and analyze laws/regulations related to research problems.
2. Conceptual Approach is an approach used that departs from the views and doctrines that develop in legal science.

The data sources used in this normative legal research are secondary data which can be divided into 3 (three) parts, namely:

1. Primary Legal Materials, namely legal science materials that are closely related to the problem under study.
2. Secondary Legal Materials, namely legal materials that provide explanations or discuss more matters that have been examined in primary legal materials.
3. Tertiary Legal Materials, namely materials that provide explanations of Primary and Secondary legal materials, namely the Big Indonesian Dictionary, Legal Dictionary, and various other relevant dictionaries.

As for data collection techniques in normative legal research, only documentary / literature study techniques are used, namely by collecting literature data contained in literature studies which will later be correlated with the problems to be studied. And also nonstructured interviews that function as support rather than as a tool to obtain primary data.

Data collected from primary, secondary, and tertiary legal materials are then analyzed descriptively qualitatively. This analysis technique does not use numbers or statistics, but rather an explanation in the form of sentences that are presented in a straightforward manner. The data that has been analyzed and described is then concluded using the inductive method, namely concluding from specific statements into general statements.

Drawing conclusions using deductive thinking logic, namely reasoning (law) that applies generally to the individual and concrete cases (concrete factual legal issues) faced. The process that occurs in deduction is concretization (law), because legal findings in the form of values, principles, concepts, and legal norms that are formulated in general in positive legal rules, are then concretized (elaborated) and applied for the resolution of concrete legal issues faced, so that conclusions are obtained as answers to legal problems previously posed. Where in getting a conclusion starts with looking at real factors and ends with drawing a conclusion which is also a fact where the two facts are bridged by theories.

RESULTS AND DISCUSSION

Protection of Victims of Human Rights Violations: A Review of Decision Number 46- K/Pm li-11/Ad/Vi/2013

Human rights are rights that humans have simply because they are human. Humans have them not because they are given to them by society or based on positive law, but solely based on their dignity as human beings. In this case, even though everyone is born with a different background, be it ethnicity, religion, skin color, gender, he still has these rights and must be protected by anyone, especially by countries in the world.

In its current development, the state is not only required to maintain security, order and world peace but also human security wherever humans are. Human security is a form of respect for human rights and dignity so that humans have the right to live in freedom, the right to protection, free from fear, threats, torture, discrimination, and so on. Therefore, respect for human dignity is an obligation that must be carried out by the state, but there are still exceptions to the enforcement of human rights when a country is in a state of emergency, which is called an excludable right.

Human rights violations do not have a single definition. However, if the state does not respect, protect, and fulfill human rights, then it is certain that the state qualifies as a human rights violation. Because the state is considered to have ignored the principles of human rights that have been agreed upon by the international community. Therefore, any violations must be resolved both by legal and non-legal efforts, such as making legislation and other administrative efforts.

Human rights violations can be examined in two categories, namely: first, human rights violations as violations of the criminal laws applicable in member states, including violations of laws that make abuse of power a crime. The center of attention of such violations is the individual or collective harm and suffering inflicted on people, including physical or mental harm, emotional suffering, economic loss or substantial impairment of their fundamental rights due to acts or omissions that can be blamed on the state. Second, it relates to acts or omissions (attributable to the state) that are not yet violations of national criminal law but are internationally recognized rules in relation to human rights.

To distinguish between gross human rights violations and those that are not is based on the nature of the crime, namely systematic and widespread. Systematic is constructed as a policy or series of actions that have been planned. While widespread refers to the consequences of actions that cause many victims and severe damage on a widespread basis. To distinguish between violations of law and violations of human rights can be seen from the elements that occur in an event. It could be the same murder but the elements are different from one another. Most often found in human rights violations are the elements of widespread and systematic. These two elements are not found in criminal offenses. In addition, in criminal offenses responsibility is individual, while in human rights violations command responsibility can occur if there is evidence of orders or policies from field actors. In human rights violations, the perpetrator is a state apparatus who at the time of the incident has a certain position in the state.

Human rights violations have occurred in many countries, but until now there is no single understanding of the concept of human rights violations. Although among experts there is a general agreement that human rights violations are interpreted as violations of state obligations arising from

international human rights instruments. Violations of human rights can take the form of actions (by commission) and by omission.

Human rights violations by the state, both by commission and by omission, can be seen through the failure of the state to fulfill three different obligations, which are as follows:

1. The obligation to respect; this obligation requires the state, its organs and apparatus not to take any action that violates the integrity of individuals or groups or infringes on their freedom, such as; (a) extrajudicial killings; (b) arbitrary detention; (c) banning trade unions; (d) restrictions on the practice of certain religions.
2. Duty to protect; the obligation of the state and its officials to take adequate measures to protect against violations of the rights of individuals or groups, including the prevention or infringement of their enjoyment of freedoms, examples of this type of violation are by omission in the form of: (a) failure to act, when a group certain ethnic groups attack certain other ethnic groups; (b) failure to force companies to pay appropriate wages.
3. Duty to fulfill; the obligation of the state to take adequate measures to ensure that everyone within its jurisdiction has the opportunity to provide satisfaction to those in need, which has been recognized in human rights instruments and cannot be met by private efforts, examples of this type are by omission such as: (a) failure to provide a basic health care system; (b) failure to implement a system of free education at the primary level.

Article 1 paragraph (6) of Law No. 39/1999 states that human rights violations are "every act of a person or group of people, including state apparatus, whether intentionally or unintentionally, or negligence that unlawfully reduces, obstructs, limits, and or revokes the human rights of a person or group of people guaranteed by this law, and does not get, or is feared will not get a fair and correct legal settlement, based on the applicable legal mechanism." However, to arrive at enforcement efforts through human rights courts, only gross human rights violations can be resolved through the pro justitia route. This is contained in Article 104 paragraph (1) which reads: "To try gross human rights violations, human rights courts shall be established within the general courts."

This is in accordance with the consideration of the Constitutional Court in Decision Number 75/PUU- XIII/2015, which on the one hand also involves the interests of the wider community (social justice) by emphasizing the importance of efforts to uphold gross human rights as a criminal case with special characteristics, thus requiring special handling as well.

In Law No. 26/2000 on Human Rights Courts there are two categories used to qualify gross human rights violations, namely the crime of genocide and crimes against humanity. Gross human rights violations that occurred in Indonesia using Law No. 26/2000, including the East Timor, Tanjung Priok, and Abepura cases, all used charges based on Article 9, namely crimes against humanity. In the trials that have taken place against these human rights violations to date, none of the defendants have been convicted, and the victims have received compensation from the state.

The state's enforcement of the law in resolving this case by bringing it before a military court was an attempt to resolve the case fairly and punish the defendants who committed it, as well as protect the victims from further acts. From the outset this case was constructed as a criminal offense. In the decision of this case the defendants were found guilty of committing premeditated murder together. This shows that the elements charged and then prosecuted have fulfilled the formulation of articles in the Criminal Code and Military Criminal Code.

In its consideration, the panel of judges stated that the defendants were legally and convincingly proven to have committed premeditated murder jointly and deliberately violated a service order committed by two or more military personnel together. This shows that the actions committed by the defendants have fulfilled the subjective elements and objective elements. Where the subjective element concerns the subject and the fulfillment of the element of guilt, while the objective element is related to the unlawful nature of the act. Similar to the subjective and objective elements in criminal law, human rights violations also have similar qualifications. This can be seen if the violation fulfills two elements, namely the objective element (*actus reus*), and the existence of a subjective element (*mens rea*).

Actus reus is the existence of an act that fulfills the formulation of the law (offense) and is against the law. Meanwhile, what is meant by *mens rea* is that it includes the elements of the offense.

fault in a broad sense and includes the ability to be held responsible, the existence of an element of intent or negligence and the absence of excuses. *Mens rea* thus relates to the state of mind or mental element, whether it is in the form of intention or knowledge, negligence or recklessness. If placed in the context of the concept of crimes against humanity, then both principles of the elements of crimes must also be included. The *actus reus* element of crimes against humanity is the act of attack that violates humanity and the law, resulting in severe suffering or serious injury to body or mental or physical health. The *mens rea* element, on the other hand, concerns the mental

element: the perpetrator deliberately (intention) or knows (knowledge) that his actions are part of a widespread or systematic attack.

The elements of *actus reus* and *mens rea* can be qualified by the actions of the defendants from the beginning, namely when the defendants received information that their colleagues were victims of murder and persecution. In fact, the defendants have sworn allegiance to the state and are obliged to protect all people from any disturbance. And when the incident occurred the defendants were carrying out training on Mount Lawu. From the information they obtained, one of the defendants became angry and then invited his other friends to take revenge for the incident. There was a plan by the defendants to invite their other friends.

In addition, the defendants brought long and short-barreled weapons that were loaded into the defendants' car and then went looking for the detainees in Yogyakarta. The victims had been detained at Cebongan Correctional Institution pending the legal process being investigated by the Yogyakarta Regional Police. When they arrived in Yogyakarta, the defendants had received information from residents that the defendants had been transferred to the correctional facility.

This should have deterred the defendants from continuing their actions to *apas* because the law had already been executed, but the defendants continued to leave. Based on information from the community, the defendants and their colleagues came to Cebongan Prison in the early hours of the morning, and once there the defendants and their colleagues, wearing face coverings and weapons, forced their way into the prison to the prisoners who had killed and assaulted their colleagues.

The state detention center is a place where detainees are kept in the process of investigation, prosecution, and examination in court. This means that no one can interfere with the process because it is protected by legislation, and if anyone violates it, especially parties from outside, it is considered against the law. In this case, the judges did not consider the defendant's actions that violated the laws and regulations related to the detention center. The judges only gave consideration: "the actions of the defendants seem to have undermined the credibility and distrust of the law, because the victims are already in the process of being handled by the Yogyakarta Police and are in Cebongan IIB Prison."

What happened before the killing, during the killing, and after the killing is linked to Article 9 of Law No. 26/2000, which reads: "Crimes against humanity is one of the acts committed as part of a widespread or systematic attack, knowing that the attack is directed against the civilian population." Where in Article 9 one of the acts is killing prisoners in correctional institutions.

This shows that the elements of Article 9 from planning to execution have been fulfilled, because from the beginning there were efforts made by the defendants. The first attack was on prison officers working under the law, and the second attack was on civilians (prisoners) who were shot dead without being able to save themselves.

In generally accepted international jurisprudence (Nuremberg Trials), the word *widespread* refers to the number of victims. There are four numbers of victims

dead and several detention center staff who were mistreated. In addition, the word *systematic* refers to a policy or plan that is prepared in advance. This means that the attack on the victim was planned, coordinated, and was the policy of the defendants (policy does not have to be in the context of the state) in a planned manner that caused the victim's harm and death. Therefore, it is certain that in this case the defendants can indeed be qualified as having committed human rights violations because they fulfill the elements of *actus reus* and *mens rea*.

From the perspective of human rights violations, this decision does not show that the judge's consideration reflects an explanation of what human rights violations have been committed by the defendants. Law No. 39/1999 states that: "human rights are a set of rights inherent in the nature and existence of human beings as creatures of God Almighty and are His gifts that must be respected, upheld, and protected by the state, law, government, and every person for the sake of honor and protection of human dignity." As state officials who at the time of committing the acts were still bound by active service ties as Army soldiers, the defendants did not carry out their obligations to respect, protect and uphold the human rights of the murder victims. Instead, the defendants committed murder using weapons used for training on Mount Lawu, and against correctional officers whose work is protected by law.

The panel of judges also failed to consider the right to life, which is an absolute right of every person and is included in the category of rights that cannot be reduced. This right to life includes the right to live, to survive, and to improve one's standard of living, including the right to a safe, peaceful, and quiet life. Whereas in its consideration the panel of judges stated that it used progressive law, namely: "that according to the view of the progressive school, it is argued that progressive courts follow the maxim, the law is for the people not the other way around, if the people are the law whatever the people think and feel will be dismissed because what is read is the words in the law. In

this connection the work of the judge becomes complex, a judge is not a technical law but also a social being, therefore the work of the judge is truly noble because he not only racks his brain but also his conscience."

By using progressive flow, the model of consideration built by judges should not only reflect normative aspects, but go beyond normative aspects that are carried out thoroughly by using many considerations, one of which is human rights considerations. The judges must be able to get out of the habit of deciding only with criminal law, but also build their considerations with a more appropriate human rights perspective to illustrate the state's responsibility in resolving this case for victims and their families. By not using considerations related to human rights violations, this case will stop at the individual's responsibility to accept the criminal sentence imposed by the panel of judges. Meanwhile, the state's responsibility towards the victims will never be given.

In contrast to general criminal offenses where the state's responsibility is limited to bringing the perpetrator to justice, while the state is not responsible for the victim. Because criminal offenses are individual and limited to the perpetrator only, while gross human rights violations are related to the status of the perpetrator as a state apparatus and state policy and have an impact on indirect victims who must be restored. State responsibility for victims is mandatory when human rights violations occur. This is in accordance with the principles of the United Nations (UN), putting forward important principles for the resolution of human rights violations in order to resolve past human rights violations, as well as eliminate impunity in countries in the world.

The obligation to protect and serve citizens is the purpose and function of the state's existence. Citizen-citizen relations give birth to certain obligations that the state must fulfill. The obligations that arise as a consequence of the relationship between the state and citizens are very broad and diverse, one of which is the legal obligation born from the state's relationship with citizens.

human rights claims. The purpose and function of the state in relation to citizens is essentially organized by the government as a legal entity personifying the state.

The state as an obligation holder must realize the fulfillment of human rights to all citizens without exception. The realization of the fulfillment of human rights will create a just and prosperous society so as to reduce all forms of human rights discrimination problems that occur.

The fulfillment of human rights that is not carried out by the state has consequences for the state, which is then known as state responsibility. State responsibility is a fundamental principle in international law that stems from the doctrine of sovereignty and equal rights between states. State responsibility arises when there is a violation of an international obligation to do something or not do something, whether the obligation is based on an international treaty or customary international law.

In resolving human rights violations, there are principles that cover all aspects and dimensions as well as important mechanisms for resolving human rights violations, with four important pillars, namely: a) right to justice; b) right to truth; c) right to reparation; and d) guarantees of non-recurrence.

One of the principles embraced by the UN is the right to reparation, as Ian Brownlie said, reparation has a meaning that relates to the overall action in the form of payment of compensation or restitution, apologies for the punishment of those responsible, measures to prevent the recurrence of violations of obligations and other forms of responsibility that are non-material (satisfaction). Thus, compensation and restitution is one form of reparation that must be carried out by the state when its apparatus has committed gross human rights violations. The provision of compensation, restitution and rehabilitation has been regulated in Government Regulation Number 3 of 2002, which in Article 3 paragraph (2) states: "in the case of compensation and rehabilitation concerning the financing and calculation of state finances, the implementation is carried out by the finance department."

In addition, the inherent obligation of the state that caused the harm to pay compensation is regulated in Article 2 paragraph (3) of the International Covenant on Civil and Political Rights, in which victims of human rights violations must obtain effective remedies even if the violations were committed by official state officials. This obliges the state to allow civil action in the form of compensating for the violations committed. Under this covenant, the state guarantees under the laws of the country to fulfill compensation either by judicial, administrative, legislative or other institutions.

There are two kinds of state responsibility: responsibility towards the perpetrators by bringing the perpetrators before a human rights court for trial, this aims to create justice for all parties and break the impunity that often occurs against perpetrators of gross human rights violations. On the other hand, providing compensation and rehabilitation to victims of human rights violations. Even though in this decision the panel of judges often used the term victim, the victims referred to were those who died as a result of murder by the defendants, as considered by the panel of judges, namely: "that the victims in this case are those who have been considered to be very troubling to the people of Yogyakarta, as evidenced by the existence of several elements of society that provide

support for the defendants." This shows that the perspective of the victims considered by the judges was only partial and limited, whereas in human rights the victims include many actors.

From a human rights perspective, victims are not only those who have died but also their heirs and those who have suffered from the actions of the perpetrators. As Teo Van Boven said, victims are people who individually or in groups have suffered losses, including physical or mental injury, emotional suffering, economic loss or real deprivation of basic rights, either by act or by omission.

The definition of victims in human rights encompasses almost all types of suffering experienced by victims, suffering here is not only limited to economic loss, physical or mental injury but also includes suffering experienced emotionally by victims, such as experiencing trauma. The term victim also includes families or people who depend on others who are victims. Thus, the victim is not only the one who suffers directly, but also the family or person who suffers as a result of the victim's suffering.

While in other considerations the panel of judges also stated: "that the actions of the defendants in committing the murder of Dikki, Juan, Dedy, and Ade together with the actions of the defendants who disobeyed the orders of their service/superiors could result in the murder of Dikki, Juan, Dedy, and Ade.

..., For the families of the victims Dikki, Juan, Dedy and Ade caused deep sadness and severe suffering, because they have lost the backbone of life, a beloved child, and a protector for the family." The panel's consideration of other victims was not elaborated at length regarding the state's responsibility. This consideration does not provide a strong perspective on the judges' willingness to provide further protection to other victims that can show that the state is responsible for other victims.

Dikki, Juan, Dedy and Ade were direct victims who died as a result of the defendants' actions, and there were also indirect victims who suffered emotionally from the defendants' actions. The condition of these indirect victims should also be taken into consideration, as to how the state is responsible for helping these indirect victims. In its decision the panel of judges said: "the aspect of imposing punishment based on the daad-dader strafrecht model, refers to the existence of a balance of interests in the case that the decision to impose sanctions is oriented towards protecting the interests of the state, the interests of society, the interests of individuals, the interests of the perpetrators of crime, and the interests of victims of crime." If the balance carried out by the judge in this decision, then the balance model is not clearly illustrated. Where for indirect victims, trauma and grief need to be proven in a decision that is more favorable and protects these victims.

In the consideration of this decision there are at least three things that are not clearly illustrated about the state's responsibility towards victims. First, the absence of a mechanism for justice and immediate compensation for the victims, which could have been provided by the judge or demanded by the prosecutor (combining it with a claim for compensation). Secondly, assistance for the psychological process (trauma) suffered by victims, even though it was clear in the judge's consideration that there was deep sadness from the families of the victims. Third, protection against harassment and intimidation of their families.

According to Shaw, the important characteristics of (state) responsibility depend on the following basic factors, including the existence of an international legal obligation that applies between two specific states, the existence of an act or omission that violates international law giving rise to state responsibility, the existence of damage or loss as a result of the unlawful act or omission.

Therefore, efforts to resolve human rights violations and hold perpetrators accountable must be seen as part of the overall effort to promote and protect human rights. No matter how small the settlement, it must still be seen as a concrete step against impunity. Impunity arises because of the failure of The State has fulfilled its obligation to investigate, take appropriate measures to ensure that perpetrators are prosecuted and brought to justice and punished, provide redress for victims, ensure victims' inalienable right to truth is fulfilled and take measures to ensure non-repetition.

In Indonesian law, the concept of state responsibility for the fulfillment, respect, and protection of human rights is embodied in the form of arrangements in the constitution, specifically Article 28A to Article 28J, and several other articles related to the protection and fulfillment of human rights, namely Article 29, Article 31, Article 33, and Article 34. This has implied that the state has an obligation to provide guarantees for the recognition and enforcement of the human rights of every citizen. Article 2 of Law No. 39/1999 states: "The State of the Republic of Indonesia recognizes and upholds human rights and basic human freedoms that are inherent in and inseparable from human beings, which must be protected, respected and upheld for the sake of improving human dignity, welfare, happiness, intelligence and justice." This means that all state administrators both at the central and regional levels have an obligation to fulfill the human rights of citizens.

The fulfillment, respect and protection are also very important to be given to victims. This is because it not only expedites the human rights judicial process in order to achieve material truth, but also maintains the dignity of citizens from psychological and social deterioration. Internationally, the protection of victims is contained in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power based on UN General Assembly Resolution No. 40/34 of November 29, 1985 or the Declaration of Basic Principles for Victims of Crime and Abuse of Power. In addition, there are also rules of procedure and evidence at the International Criminal Court (ICC) which strengthen the concept of victims in gross human rights violations. In addition, state responsibility must also be given to victims of human rights violations.

In the victims' declaration (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power), it is stated that the main rights of victims must be guaranteed and protected by the state, namely:

1. victims' rights to the availability of justice mechanisms and to obtain immediate redress (either in the form of compensation or restitution);
2. right to information about their rights to seek redress and to obtain information on the progress of the legal process, including redress;
3. the right to express views and give opinions;
4. the right to assistance during the sentencing process;
5. the right to protection/intimidation/retaliation from perpetrators, protection of personal freedom, and safety of personal and family rights;
6. the right to a speedy and simple justice mechanism/process with no delays.

In Indonesia, there is a government regulation on the protection of victims of gross human rights violations, namely Government Regulation Number 2 of 2002 concerning Procedures for the Protection of Victims and Witnesses in Serious Human Rights Violations. Article 4 states that there are three models of victim and witness protection, namely: protection of the personal security of victims and witnesses from physical and mental threats; confidentiality of the identity of victims and witnesses; and the provision of testimony during the examination at the court session without deliberately meeting face to face. In addition, the government also issued Government Regulation No. 3/2002 on Compensation, Restitution and Rehabilitation for Victims of Gross Human Rights Violations, which provides opportunities for victims to obtain their rights as victims and it is the responsibility of the state and third parties to fulfill and restore them.

These two government regulations show that legal efforts to protect victims are still carried out by the government as a form of responsibility.

must be fulfilled by the state, as an actor that is obliged to protect and respect the existence of human rights as expressly stated in the 1945 Constitution. However, the regulation on the protection of victims is only intended for victims of gross human rights violations, and even then it is not very clear in what category the responsibility can be carried out, whether after the decision has permanent legal force or when the investigation and investigation begins. On the other hand, for those who are not gross human rights violations, it is not so clear in the positive legal arrangements in Indonesia.

CONCLUSION

Protection of Victims of Human Rights Violations: A Review of Decision No. 46-K/Pm li-11/Ad/Vi/2013 that the decision affirms the importance of human rights protection and shows the seriousness of the state in responding to human rights violations. There is an urgent need to improve protection mechanisms for victims of human rights violations in order to provide better justice. Indirect victims were not provided by the panel of judges, even though the description of victims was included in the consideration, but it was not further explained what responsibilities the state should take towards the victims. The panel of judges assumed that victims were only those who were killed, whereas victims from a human rights perspective include many people.

Advice

The suggestions given by the author after conducting research include:

Build a stronger and more effective legal system in dealing with cases of human rights violations, and strengthen the role of law enforcement agencies and ensure their independence in dealing with cases of human rights violations.

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