



Reconstruction of protection of severe human rights violations victim in Indonesia

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Abstract

Severe human rights violations always cause many victims. Settlement of human rights violations often does not side with the victims, the state's attention is more focused on the perpetrators. Various laws and regulations in Indonesia actually regulate the protection of victims of human rights violations, but there are some weaknesses contained in these laws as the system is currently unable to solve various human rights offense. Based on the matters described above, there must be a change to the current Human Right Protection in Indonesia as currently the system can not solve the many problems that rises therefore the author propose a research as presented in this article with the problems discussed to what are the Weaknesses in the Indonesia's Current Protection Policy for Victims of Human Rights Violations and How to Reconstruct Policies for Protection of Victims of Serious Human Rights Violations in Penal Law Based on Islamic Legal Values using Socio-Legal research approach and hermeneutics, which is based on legal norms and the theory of the existing legal enforceability. Thus in the writing of this article researchers used the approach of Socio-Legal by reviewing the juridical law from the standpoint of sociology and Hermeneutics.

Research shows that granting compensation and restitution to victims is given if there is a decision from the court which states the perpetrator are guilty of committing human rights violations first, even though the case is already recognized as a human rights violation. To solve this the current law on human rights in Indonesia must be reconstructed to accommodate, especially in restitution and compensation.

Keywords: reconstruction, human rights, Victim, Indonesia

Introduction

Human Rights, hereinafter abbreviated to Human Rights, are fundamental rights that humans have because of their humanity, Human Rights are natural rights and are a direct gift from God. Human rights are not given by regulations, regimes, laws or anyone else. Therefore, not one person or one party can take it ^[1].

In every violation event or case of violation of human rights, there must be a perpetrator and there are also victims. The absence of adequate handling or attention to victims of human rights violations has sunk the hope of victims of human right violations that there will be a responsibility from both the government and law enforcer for them.

In various cases of human rights violations, the resolution, both politically and legally, often does not favor the victims, but is instead to protect the perpetrators ^[2]. With many human rights instruments focusing more on the protection of perpetrators of crime while the attention of the victim becomes less, such protection should be carried out on the basis of compassion for the victim and respect for the dignity of the victim ^[3].

Human rights violations can be divided into two, namely Severe violations of human rights and non Severe violations

of human rights ^[4] Peter Baehr revealed that violations of human rights would involve many problems such as: *"the prohibition of slavery, the right to life, torture and cruel, inhuman or degrading treatment or punishment, genocide, disappearances and ethnic cleansing"* ^[5].

In the Explanation of Article 104 of Law Number 39 Year 1999 concerning Human Rights, a formula regarding serious human rights violations is given as

What is meant by "grave human rights violations is mass murder, (genocide), arbitrary or extrajudicial killing, torture, enforced disappearance, slavery, or discrimination committed in systematic (systematic discrimination).

With the many instruments of upholding human rights that are recognized in Indonesia as mentioned above, it might be said that upholding human rights in Indonesia is good enough, but the fact is not the case. cases such as the events of 1965, Trisakti, Semanggi 1, Semanggi 2, Mysterious Shooter (Peter), Wamena and Wasilor cases, kidnapping and enforced disappearance of activists, Talangsari events, and cases of witchcraft, ninja, and the madmen case in Banyuwangi from 1998 until now waiting for a solution that does not arrive and if the case is not resolved it will certainly lead to a negative stigma for the image of human rights enforcement in Indonesia.

Based on the matters described above, there must be a change to the current Human Right Protection in Indonesia as currently the system can not solve the many problem that

¹ Artidjo Alkostar, (2004), *Pengadilan HAM, Indonesia, dan Peradaban*. Pusham-UII. Yogyakarta, P.1.

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⁴ Suryadi Radjab.,(2002) *Pelanggaran Hak Asasi Manusia dan Kejahatan* (Jakarta: PBHI dan The Asia Foundation. 2002), P. 18

⁵ *Ibid*

rises therefore the author propose a research as presented in this article with the problems discussed as follows:

1. What are the Weaknesses of the Current Indonesian Law for Victims of Severe Human Rights Violations?
2. How to Reconstruct the Protection of Victims of Severe Human Rights Violations in Penal Law Based on the Values of Islamic Law ?

Method of Research

The paradigm used in this research is the paradigm of constructivism. Constructivism is a paradigm that is almost the antithesis of understanding that lays observation and objectivity in finding a reality or science. This paradigm of looking at social science as a systematic analysis of the socially meaningful action through direct observation and detailed on the relevant social actors create and maintain or manage their social world. The method of Research approach used in writing this article is a qualitative research. Writing aims to provide a snapshot of a society or a particular group of people or a picture of a symptom or between two or more symptoms. Further, this research seeks to explain postulates fully investigated in accordance with the findings in the field ^[6].

The approach in this study using the Socio-Legal approach and hermeneutics, which is based on legal norms and the theory of the existing legal enforceability. Thus in the writing of this article, researchers used the approach of Socio-Legal ^[7] reviewing the juridical law from the standpoint of sociology and Hermeneutics (in everyday terms is defined as the "Interpretation Understanding").

Research Result and Discussion

1. The Weaknesses of the Indonesia Current Protection Policy for Victims of Severe Human Rights Violations

Human Rights Protection Policy in Indonesia is inseparable from the Establishment of a Human Rights Court. it is mandated by Article 104 paragraph (1) of Law Number 39 of 1999 concerning Human Rights which reads: "To adjudicate Severe violations of human rights a Human Rights Court is established within the General Courts."

In Relation to human rights violations, The Explanation of Article 104 of the Human Rights Act formulates that: "What is meant by" Severe violations of human rights "is mass murder, (genocide), arbitrary killings or outside the court's decision (arbitrary / extra judicial killing), torture, forced disappearance, slavery, or systematic discrimination."

The weakness of the formulation of the article regarding Severe human rights violations is the absence of provisions regarding torture (torture) which is regulated independently. In accordance with international law, torture can be categorized as a Severe human rights violation even if it is not part of a widespread and systematic attack on the civilian population.

The procedural law for processing Severe human rights violations has been regulated separately in the Human Rights Court Law. This can be seen in Article 10 which states that in cases not specified in this law, the procedural law for cases of Severe human rights violations is carried

out based on the provisions of the criminal procedure law.

Investigations of Severe human rights violations are carried out by the National Human Rights Commission (Komnas HAM) as mandated in Article 18 (1). Furthermore paragraph (2) states that in conducting investigations Komnas HAM may form an ad hoc team consisting of Komnas HAM and elements of the community. Looking at this article, the role of the police as an investigative apparatus in a judicial institution is replaced by Komnas HAM. Furthermore Article 43 Paragraph (1) of the Human Rights Court Law is formulated: "Serious human rights violations that occurred before the enactment of this Law, were examined and decided by an ad hoc human rights court".

This article is a controversial article because the application of the principle applies retroactively. If we look at Article 1 paragraph (1) of the Criminal Code, Article 43 of the Human Rights Court Law is clearly contradictory. The use of the active retro principle also contradicts the provisions of Article 28 I of the second amendment of the 1945 Constitution which states: "Right to life, right not to be tortured, right to freedom of thought and conscience, right to religion, right to not be enslaved, right to be recognized as a person before law, and the right not to be prosecuted on the basis of a retroactive law is a human right that cannot be reduced under any circumstances".

Referring to Article 28 I of the 1945 Constitution that the right not to be prosecuted based on retroactive laws is a human right. Thus the retroactive principle in the Human Rights Court Law is contrary to the 1945 Constitution. Is not a lower level of statutory regulation (in the order of the law) must not contradict the higher level.

The same thing can be seen in Article 18 paragraph (2) of Law Number 39 of 1999 concerning Human Rights, namely: "Everyone must not be prosecuted for punishment or sentenced to criminal, except based on a statutory regulation that existed before a criminal act it is done".

The principle of retroactivity is contrary to the idea of human rights protection regulated in Article 11 of the Universal Declaration of Human Rights (UDHR), Article 15 paragraph (1) of the International Convention on Civil and Political Rights (ICCPR), Article 22 paragraph (1) and Article 24 paragraph (1) Rome Statute of the International Criminal Court. However, in this reform era, the principle of retroactivity appears in human rights crimes in the context of protecting human rights.

According to Muladi ^[8] There are two reasons for the inclusion of the retroactive principle in the Human Rights Court Law, namely: (1) long before the enactment of Law Number 26 of 2000, "genocide" and "crimes against humanity" are not yet known; (2) the principle of retroactivity in the Human Rights Court Law is a political wisdom (political policy) of the House Representatives (DPR) to recommend to the President on the basis that both types of crimes are extraordinary crimes which are condemned internationally as enemies of all mankind (hotis humani generis) and formulated as crimes international (international crimes) Since the historical approach of the retroactive principle is destructive in the criminal law system, the existence of the retroactive principle is actually

⁶Altherton & Klemmack dalam Irawan Soehartono,(1999), *Metode Penelitian Social Suatu Teknik Penelitian Bidang Kesejahteraan Social Lainnya*, Bandung, Remaja Rosda Karya, p. 63.

⁷ Alimuddin,(2018), *Aplikasi Pembaharuan Hukum dalam Teori Socio Legal Studies*, Dirjen Badan Peradilan,, www.badilag.net, Accessed December 26, 2018. (IIUM Malaysia)

⁸ Muladi, Dalam Susani Triwahyuningsih,(2018), *Perlindungan Dan Penegakan Hak Asasi Manusia (Ham) Di Indonesia*, Jurnal Hukum Legal Standing, Vol.2 No.2, September 2018.

not conducive, even though it was finally included in the Human Rights Court Law and academic studies, both in doctrine and law, the existence of the retroactive principle must meet rigid and limitative criteria, namely:

- a. There is a correlation between the statutory state emergency (*staatsnoodrecht*) with the penal law, meaning that the retroactive principle can only be applied if the state is in an emergency with the principle of emergency law so that retroactivity should be temporary and in a limited area of law.
- b. The emergency nature of the existence of the retroactive principle is not in a state that is detrimental to the suspect or defendant,
- c. Keep in mind the *lex certa* principle, namely the placement of a substance that does not cause multi-interpretation, so that it is not used as a means for the authorities to abuse of power.

The application of the principle of retroactivity which allows the reopening of cases of Severe human rights violations that occurred before the enactment of the Human Rights Court Law is a deviation from the principle of legality in terms of positive Indonesian law (penal code/KUHP). But from the other side, according to International Criminal Law, the application of the retroactive principle is very possible to achieve the justice that is possible with the establishment of tribunal courts such as the Nuremberg Court, ICTR and ICTY.

The problem in upholding the human rights system in Indonesia that needs to be studied is Compensation and restitution. In various international human rights instruments the term, compensation, restitution and rehabilitation is more often used the term "reparation". In the Civil and Political Rights Covenant, the state must ensure that everyone who has been violated will have an effective remedy, even if the perpetrators are people who act in an official capacity.

The Roman Statute, which is the basis of the International Criminal Court (ICC), determines that every victim who is the jurisdiction of the ICC is entitled to reparation. The court must develop principles related to reparation to each victim. The ICC, for its plea or for its own motion in exceptional circumstances, can determine the scope and extent of any damage, loss or injury, concerning or to the victims.

Based on the Basic Principles and guidelines for the Right to Settlement and Reparation for Victims of Serious Violations and International Human Rights Law and Humanitarian Law (Basic Principles and Guidelines on the Right to a Remediation and Reparation for Victims of Severe Violations of International Human Rights Law and Serious Violations of International Law), adequate, effective and prompt reparations are intended to advance justice by correcting Severe violations of international human rights and international humanitarian law. The reparation given to the victim must be proportional to the severity of the violation and the damage suffered. The state must provide reparations to victims for acts and omissions associated with the state. In addition, if a person, legal entity or other entity is proven responsible for reparation to the victim, that party must provide reparation to the victim or compensate for state losses, if the state has first provided reparations to the victim.

The definition of compensation, restitution and

rehabilitation in Government Regulation number 3 of 2002 is regulated in Article 1 whose formulation is as follows:

- a. Compensation is an indemnity provided by the state because the offender is unable to provide full compensation which is his responsibility
- b. Restitution is compensation given to the victim or his family by the perpetrator or a third party, which can be in the form of returning property, payment of compensation for loss or suffering, or reimbursement for certain acts.
- c. Rehabilitation is restoration to its original position such as honor, good name, position or other rights.

The Definition of Compensation, Restitution and Rehabilitation in the Government Regulation above raises the consequences for victims of Severe human rights violations.

First, compensation is compensation given by the state because the perpetrators are unable to provide compensation, this has the consequence that the perpetrators must be found guilty beforehand by the human rights court for their actions in the form of Severe human rights violations.

The victim's right to compensation is very dependent on the examination of the criminal case. If the defendant's criminal case is proven innocent, the defendant is less likely to get compensation. Compensation does not automatically become the right of victims of Severe human rights violations if the defendant is found not guilty by the court, even though the case is recognized as a Severe human rights violation. In the Timorese *ad hoc* court, the event was recognized as a Severe violation of human rights but the perpetrators were acquitted and there were no decisions related to compensation, restitution and rehabilitation.

In Article 3 paragraph (1) Government Regulation No. 3/2002 states that: " The relevant government agencies are tasked with carrying out compensation and rehabilitation based on court decisions that have obtained permanent legal force ".

This has the consequence that there is no clarity in the period of time for compensation and rehabilitation to victims because they have to wait for decisions that have permanent legal force.

This is certainly very detrimental to the victims especially if there is an appeal or cessation may takes years to get a decision of permanent legal force. Moreover, there is a possibility that the perpetrators will be found not guilty or acquitted of all lawsuits at both the appeal and cassation levels. If at the level of appeal and cessation that has legal force the defendant is pleaded not guilty even though in the first trial the defendant was found guilty then the victim is unlikely to receive compensation or rehabilitation.

Second, the panel of judges examining cases has the authority to determine for themselves how much compensation, retribution and rehabilitation is given to victims. This is because Government Regulation No. 3/2002 does not regulate how much compensation is given and who will be given compensation, restitution and rehabilitation.

Article 2 paragraph 1 reads: " Giving compensation, restitution and or rehabilitation must be carried out appropriately and quickly and feasible".

The word "feasible" in Article 2 paragraph (1) which determines the amount of compensation costs is a judge. The judge has the authority to determine for himself the

amount of compensation that will be given to the victim. It could be that the amount of compensation given to the victim does not match what the victim's needs are.

There are no clear rules regarding the exact calculation of compensation, because the provisions regarding compensation are not suitable in cases of Severe human rights violations. There should be a clearer formulation of the form in the calculation of the loss in the case of Severe human rights violations.

Furthermore, in the Witness and Victim Protection Act, there are a number of notes about some existing weaknesses which according to the writer need to be examined together. The weaknesses contained in this Act certainly do not cover everything contained in the Witness and Victim Protection Act but only limited to those related to the protection of the rights of victims, especially victims of Severe human rights violations. The disadvantages include:

a. Compensation

Compensation is compensation provided by the state because the perpetrator is unable to provide full compensation which is his responsibility to the victim or his family.

The definition of compensation can be detrimental to the victim because the victim can receive compensation if the offender is proven guilty. In other words the state through the public prosecutor must be able to prove that the defendant is guilty so the judge decides to sentence the defendant. What if the defendant is not proven guilty or acquitted of all lawsuits, then the compensation given by the state is null and void.

Basic Principles and Guidelines for the Right to Settlement and Reparation for Victims of Serious Violations and International Human Rights Law and Humanitarian Law and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power explains that each victim has the right to compensation without waiting whether the perpetrator is found guilty or no.

In the Witness and Victim Protection Act, compensation is given if the perpetrator is completely unable to provide compensation. In other words, a new state can provide compensation if it turns out that the perpetrators of Severe human rights violations are unable to provide compensation. This is very different as the definition of compensation in international instruments where compensation is the responsibility of the state, so do not see whether the perpetrators are able to provide compensation or not.

In the form of compensation as in the Basic Principles and Guidelines for the Right to Settlement and Reparation for Victims of Serious Violations and International Human Rights Law, compensation is given to victims for any damage that is economically predictable, as a result of a violation of human rights.

Article 7 states:

- 1) Every victim of Severe violations of human rights and victims of a criminal act of terrorism in addition to obtaining the same rights in Article 5 and Article 6, is also entitled to compensation
- 2) Compensation for victims of Severe human rights violations submitted by the victim, family or proxy to the Human Rights Court through LPSK
- 3) Payment of compensation as referred to in paragraph (2) is given by LPSK based on a court decision that has obtained permanent legal force

4) Providing compensation for victims of acts of terrorism carried out in accordance with the provisions of the Act governing the eradication of criminal acts of terrorism.

By looking at the provisions of Article 7 there are weaknesses contained in it, namely in paragraph (3). The paragraph emphasizes that compensation payments can be made by LPSK after obtaining permanent legal force. This means that the victim or the victim's family cannot immediately get compensation after the district court judge decrees the verdict even though the defendant is found guilty, because there is a possibility that there may still be an appeal or an appeal.

The victim will wait a long time to get compensation, there is a possibility that the court's decision will actually release the defendant. This can decide the possibility of victims to get compensation so that victims' hopes for justice are uncertain.

The regulation on the provision of compensation to victims of Severe human rights violations is further elaborated in Government Regulation No. 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims. In Article 4 paragraph (1) letter c, the request for compensation must contain the identity of the perpetrators of Severe human rights violations. This shows that there must be a guilty offender who committed a Severe human rights violation before the victim can receive compensation.

In various international legal instruments, compensation which is the responsibility of the state can be given without a court ruling that states the offender is guilty of violating human rights. Compensation can be given if in fact there has been a Severe violation of human rights.

b. Restitution

Restitution is compensation given to the victim or his family by the perpetrator or a third party. The form of restitution in Government Regulation Number 7 of 2018 is in the form of:

- a. Compensation for loss of wealth or income
- b. Compensation for losses incurred due to suffering directly related as a result of criminal offenses
- c. Reimbursement of medical and / or psychological care costs

Submission of requests for restitution to perpetrators of Severe human rights violations can be submitted before or after a court decision that has obtained permanent legal force through the LPSK. there are some weaknesses related to restitution in this Government Regulation.

First, if the restitution is submitted after a court decision which has obtained permanent legal force. This shows that victims of Severe human rights violations can only get restitution after the perpetrators have been found guilty and have obtained permanent legal force. This is tantamount to compensation that must have been found guilty first. If in reality there has been a Severe violation of human rights and awaiting a court ruling that has permanent legal force, it will be too long for victims of Severe human rights violations to wait for the provision of restitution from the perpetrators, especially if later at the final level for example it turns out the perpetrators were found not guilty, then disappear opportunity for victims of Severe human rights violations to get restitution.

Submission of restitution in accordance with Article 20 paragraph (1) of Government Regulation No. 7 of 2018

should be submitted before a court decision which obtains permanent legal force. LPSK can apply for restitution to the public prosecutor to be included in the criminal suit. This will provide guarantees to victims of Severe human rights violations to get restitution as quickly as possible.

Second, if the perpetrators have been found guilty of Severe human rights violations and have obtained permanent legal force, in accordance with Government Regulation No. 7 of 20018, perpetrators of Severe human rights violations or third parties are given 30 days after the court's decision is accepted to carry out restitution. There is no mechanism that forces the perpetrators or third parties to carry out restitution, moreover the perpetrators who have already been executed are in prison.

Thus victims of Severe human rights violations will be more likely to choose to apply for compensation rather than restitution. Where there is involvement from the state to bear the losses suffered by victims.

2. Reconstruction of the Protection Policy for Victims of Severe Human Rights Violations in Indonesian Penal Law Based On Islamic Legal Values

In carrying out the reconstruction of the regulation of human rights in Indonesia, the writer uses the values of Islamic law because of its universal value^[9]. Based on the values of Islamic law as described previously, there are several articles in the legislation governing the protection of victims of Severe human rights violations which according to the author that need to be reconstructed namely:

1. Law Number 26 of 2000 concerning Human Rights Courts.

The Human Rights Court Law does not stipulate in full the protection of victims of Severe human rights violations. More complete arrangements are in the implementing regulations, namely Government Regulation No. 3/2002 concerning Compensation, Restitution and Rehabilitation of Victims of Serious Human Rights Violations. In the Human Rights Court Law and Government Regulation, there are several provisions which according to the author need to be reconstructed based on the values of Islamic law, namely in Article 35 paragraph (1)

Article 35 paragraph (1) states that: "Every victim of Severe human rights violations and or his heirs may obtain restitution, compensation and rehabilitation".

With the restitution, compensation and rehabilitation given to the victim, there is hope from the victim to get a sense of justice. Islamic law is very protective of victims of Severe human rights violations. Protection can be given to victims by providing compensation given by the perpetrators or other parties to the victim or the victim's family. Compensation as a form of victim protection can directly be equated with compensation or restitution in the Human Rights Court Law or the Witness and Victim Protection Act. In that verse, there is the word "can" obtain restitution, compensation and rehabilitation. The word "can" is a word that can be interpreted redactively capable; able; can; may; maybe^[10]. The judge may decide not to provide restitution, compensation or rehabilitation to the victim even though in the judge's decision the perpetrator was found guilty.

The word "can" is more precisely replaced with the word "mandatory". Thus, there is a requirement of the judge when giving a decision must include the provision of restitution, compensation and rehabilitation to the victim.

1. Government Regulation No. 3/2002 concerning Compensation, Restitution and Rehabilitation of Victims of Serious Human Rights Violations
2. Article 2 paragraph (2): "Giving compensation, restitution and or rehabilitation must be carried out appropriately, quickly and appropriately.

The word "right" in Article 2 paragraph (2), must be given to the victim. What is meant by victims in this case are individuals or groups of people who suffer physical, mental or emotional suffering, economic loss or experience neglect, reduction or deprivation of their basic rights, as a result of Severe violations of human rights, including the victim is his heir.

The word "fast" in that Article, do not exceed the provisions stipulated in Article 7, that is 30 (thirty) working days since the minutes of the minutes made by the attorney general in terms of implementing a court decision to the relevant governmental institutions to provide compensation and or rehabilitation and to the perpetrator or a third party to carry out the granting of restitution received by the victim or his heirs.

While the word "feasible" in Article 2 paragraph (2), is compensation and / or restoration of other rights granted to victims appropriately based on a sense of justice. However, there are no specific criteria or limitations in the Government Regulation which is the basis for granting compensation or restitution which is the victim's right.

The sense of justice the judge has as the basis for decisions to provide compensation and restitution is not necessarily the same as the victim's sense of justice, because the determination of the amount of compensation and restitution is the judge's authority. Even judges can or may not even provide compensation or substitutions to victims.

This is different from the values in Islamic law. In Islamic law, the existing provisions regarding limitations payer a n indemnity (*diyat*) given to the victim as the author described in the foregoing discussion. So the judge will be able to decide on the granting of compensation and restitution according to the applicable provisions^[11].

Therefore, Article 2 of Government Regulation Number 3 of 2002 needs to be added 1 (one) paragraph regarding the provisions of the amount or value of compensation and restitution granted to victims or their heirs.

- b. Article 3 (1) reads: "the government in charge of implementing the compensation and rehabilitation under a court decision obtained permanent legal force".

From Article 3 paragraph (1), that the provision of compensation in the form of compensation and restitution to the victim or the victim's family can be carried out after a court ruling has permanent legal force. Thus the perpetrators who will provide restitution and the government that will provide compensation must wait in advance for the decision of the judge who is *in kracht*. To be able to carry out decisions that have been *in kracht* need to wait a long time

⁹ Anas Urbaningrum, 2011, *Islam dan Hak Asasi Manusia dalam Pandangan Nurcholis Madjid*, Gramedia Pustaka Utama, Jakarta.

¹⁰ <https://kbbi.web.id/dapat.html>. Accessed on 25 November 2019.

¹¹ Nur Aksin, (2018), *Syariat Islam dan Hukum Negara: Sebuah Kontemplasi*, Jurnal Meta-Yuridis, Vol.1 No.1 (2018), <http://dx.doi.org/10.26877/m-y.v1i1.2863>

especially if there is an appeal and cassation in this case can take months. Then what if the court's decision which decided the defendant was free because he was innocent, this will certainly cut off the hope of the victim to get restitution and compensation.

In Government Regulation No. 3/2002, there is no provision regarding who has the right to apply for restitution or compensation. The public prosecutor should have the sensitivity to represent the victim to carry out prosecutions in which there are claims about compensation to victims in the form of a constitution or rehabilitation.

The decision regarding the granting of restitution and rehabilitation all depends on the judge handling a serious human rights violation case. If the public prosecutor submits a claim for the provision of restitution or compensation, but it all depends on the panel of judges concerning the case, whether the statement from the public prosecutor will be granted or not.

Thus, the victim's right of compensation from the perpetrator or from the state may not be acceptable to the victim. Because it all depends on the court that hears cases of Severe human rights violations. The victims' right to compensation is unclear so justice which is the victim's right is also unclear.

In Islamic law, the authority to obtain compensation all depends on the victim. The victim can choose whether the offender will be *qishash* or the victim will forgive the offender's obligation to pay *diyāt*. This is as the word of God in the verse Al Baqarah verse 187. Even for the murder does not plan God immediately ordered to give *diyāt* to the victim without *qishash* as said by God in the letter An-Nisa 'verse 92. In terms of injury, the victim can also choose to forgive the offender with the obligation of the perpetrator to pay *diyāt* or give *qishash*.

Based on the values of Islamic law, in Government Regulation No. 3/2002, the reconstruction of Article 3 paragraph (1) should provide restitution and compensation to victims not to wait for the decision of a judge who has obtained permanent legal force, but restitution and compensation can be given as soon as possible. If there is a clear violation of human rights, the compensation can be given at the time of the investigation before the case is brought to court.

3. Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

Article 7 paragraph (3) states that: "Payment of compensation as referred to in paragraph (2) is given by LPSK based on a court decision that has obtained permanent legal force".

These provisions are the same as the provisions in Article 3 paragraph (1) of Government Regulation Number 3 of 2002. LPSK cannot directly provide compensation to the victim or the victim's family before a court decision has permanent legal force. It will take a long time for the victim to get compensation especially if there is an appeal or appeal.

Islamic law provides guarantees of justice to victims, namely in the case of *diyāt* that can help for the survival of victims and victims' families so that there is no mutual revenge between them.

Murder or ill-treatment is carried out unintentionally, the perpetrator's family is burdened with the obligation to pay *diyāt* to the victim or the victim's family, and also the state

through his *baitul maal* is burdened with *diyāt* payment if the *diyāt* money from the offender or his family is insufficient. In Islamic law, a person does not bear the sins of others, but between the maker and the victim together want the exception, even the exception must be realized for the sake of justice and equality to guarantee the rights of victims.

Article 7 paragraph (3) of Law Number 31 of 2014 needs to be changed to the payment of compensation as referred to in paragraph (2) given by LPSK based on a court decision of the first instance.

Conclusion

1. The current weaknesses in the implementation of the policy to protect victims of Severe human rights violations include:
 - a. Providing compensation and restitution to victims is given if there is a decision from the court which states that the perpetrator is guilty of committing Severe human rights violations first even though his case is recognized as a Severe human rights violation.
 - b. There are no provisions regarding the amount of compensation and restitution given to victims.
2. The Reconstruction of law protection of victims of human rights violations based on the values of Islamic law, are as follows:
 - a) Amending the provisions of Article 35 paragraph (1) of Law Number 26 of 2000 concerning the Human Rights Court, so that it reads as follows: "Every victim of severe human rights violations and or his heirs must obtain restitution, compensation and rehabilitation.
 - b) Adding one paragraph in Article 2 of Government Regulation Number 3 of 2002 concerning Compensation, Restitution and Rehabilitation of Victims of Serious Human Rights Violations namely Article 2 paragraph (3), which reads: "The state and perpetrators of Severe human rights violations must provide compensation, restitution and rehabilitation to victims of Severe human rights violations that are regulated in a Presidential Regulation.
 - c) Amending the provisions of Article 3 paragraph (1) of Government Regulation Number 3 of 2002 so that it reads as follows: "Government agencies tasked with carrying out the provision of compensation and rehabilitation based on the instructions listed in the first instance of a Human Rights court decision.
 - d) Add one paragraph in Article 3, namely Article 3 paragraph (2) of Government Regulation Number 3 of 2002 so that it reads as follows: "Public prosecutors must include requests for compensation in their claims for victims of Severe human rights violations.
 - e) Amending the provisions of Article 7 paragraph (3) of Law Number 31 of 2014 so that it reads as follows: "Payment of compensation as referred to in paragraph (2) is given by LPSK based on a court decision of the first instance.

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