

Legal Protection for Witnesses and Victims of Crimes of Terrorism

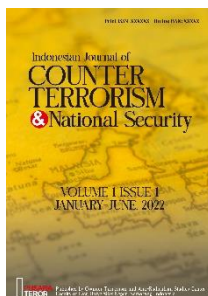
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ABSTRACT: Terrorism is a form of extraordinary crime that is an enemy to mankind. Terrorism throughout history has been a very frightening specter. This is inseparable from the impact it causes, the loss is not only property, life, physical, psychological, but also creates an atmosphere of terror that grips all levels of society. Therefore, victims and witnesses of acts of terrorism must receive protection in view of these various things. As a state of law, Indonesia has established several laws and regulations governing the protection of victims of terrorism, including Law No. 15 of 2003, as amended by Law no. 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism into Law, Law no. 13 of 2006, as amended by Law no. 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims and other regulations. With the existence of a legal footing that regulates, it is hoped that it can provide protection for witnesses and victims of acts of terrorism. In addition, various parties also play a role in the recovery of victims from acts of terrorism, including police institutions, social services, hospitals, Kesbangpol, PMI, NGOs, LPSK, and so on. However,

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witnesses and victims of criminal acts of terrorism in obtaining legal protection through the above regulations are not always in line with the existing reality. This is inseparable from the existence of inhibiting factors, both in the aspect of legal substance, legal structure, and legal culture components.

KEYWORDS: Counter Terrorism, Victim Protection, Witness Protection, Crime of Terrorism



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I. INTRODUCTION

The problem of terrorism entering the twenty-first century has been one of five forms of threat to world peace and security. The crime of terrorism is an old fact in history. Terrorism throughout history has been a frightening scourge, mainly because terrorism as a movement that has always caused many casualties from civilians that are not directly related. Terrorism is not only a crime that threatens and undermines the security and integrity of a nation and state, but also undermines the order and peace of the international community. Global harmonization can be torn apart because it could be that each country suspects and denounces the other. This is because some of the suspects or perpetrators are from the country. Terrorism is a form of criminal act that has different specifications from other criminal acts. Terrorism is considered part of extraordinary crime and an

enemy of mankind (*hostis humanis generis*).¹ This is inseparable from the impact it causes, losses not only property, life, physical,

¹ Iswanto, Wahyudi. "Perlindungan Hukum Terhadap Hak Korban Terorisme." *Lex Crimen* 4, No. 1 (2015). It is also emphasized that furthermore, many experts also emphasize that terrorism is an enemy of mankind (*hostis humanis generis*) which has created fear and threatens the peace and security of mankind and has endangered human values and has violated the principles of international law and international custom. international customary law). Related to this understanding, then implementation of International Criminal Law in the sense of the territorial scope of the National Criminal Law of an independent and sovereign country, it can be interpreted that law enforcement against international crimes within the territorial boundaries of a country can be carried out through the application of National Criminal Law sanctions of an independent and sovereign country. In this case an example can be put forward, related to the application of the provisions of Law Number 15 of 2003 concerning the Prevention and Eradication of Criminal Acts of Terrorism within the territory of the Indonesian state, which is used as a means to try the perpetrators of terrorism crimes, as a form of international crime. Likewise, the case related to the application of the provisions of Law No. 26 of 2000 concerning the Human Rights Court, is used as a means to try and punish the perpetrators of international crimes in the form of crimes of genocide and crimes against humanity which are also referred to as gross violations of human rights. Law enforcement against international crimes through the National Criminal Law of an independent and sovereign country, in practice countries in various parts of the world can be expanded by applying the extraterritorial principle, in the sense that the provisions of a country's National Criminal Law can be used to try crimes committed above ship or aircraft with the national flag of a country. *See also* Fisabillah, Ardken, Pujiyono Pujiyono, and Umi Rozah. "Kebijakan Pemberantasan Tindak Pidana Pendanaan Terorisme Sebagai Transnational Organized Crime dalam Perspektif Hukum Pidana di Indonesia." *Diponegoro Law Journal* 8, No. 4 (2019): 2462-2474; Hidayati, Melia Dwi Putri Heni, and Eko Soponyono. "Kajian Penanganan Tindak Pidana Terorisme dalam Prespektif Hukum Internasional." *Jurnal Ilmiah Dunia Hukum* 6, No. 2 (2022): 67-73; Erniyati, Tiya. "Tindakan Densus 88 terhadap Terduga Teroris sebagai Extrajudicial Killing." *Banua Law Review* 3, No. 1 (2021): 1-9; Nasution, Aulia Rosa. "Terorisme Sebagai 'Extraordinary Crime' dalam Perspektif Hukum dan Hak Asasi Manusia." *Jurnal Hukum Responsif* 5, No. 5 (2018): 87-99. In many cases

psychological, but also cause an atmosphere of terror that grips all levels of society.

Acts of terrorism can happen anytime, anywhere and happen to anyone indiscriminately. The harm caused by acts of terrorism is enormous. The rise of acts of terror that occurred with the fall of many victims has proven that terrorism is a crime against human values. Terror has shown its real movement as a tragedy over human rights. The physical impact caused by terrorism is not only on those who are targeted but also on victims who do not know and are not related to the intended target of the terrorist. Because so familiar this act of terror is used as one of human choices, eventually terror shifts itself as terrorism. This means that terrorism takes part in the life of the nation, this is to show another portrait of and among the various types and varieties of crimes, especially violent crime, organized crime, and *extraordinary* crime and is called the crime of savagery in the era of civility because the crime sacrificed innocent people/people.

In a joint meeting of Commission III of the House of Representatives at the MPR/DPR complex, Jakarta, the Chief of National Police, General Idham Aziz, said that in 2019, acts of terrorism in Indonesia had 8 cases, while in the previous year, namely 2018, there were 19 cases. Throughout 2019, the police managed to arrest 275 perpetrators

and studies also highlighted that economic factor become one of the triggers of terrorism act, *see also* Krieger, Tim, and Daniel Meierrieks. "Income inequality, redistribution and domestic terrorism." *World Development* 116 (2019): 125-136; Green, L. C. "The Legalization of Terrorism." In *Terrorism: Theory and Practice*. (London, Routledge, 2019), pp. 175-197; Darden, Jessica Trisko. *Tackling Terrorists' Exploitation of Youth*. (Washington, DC: American Enterprise Institute, 2019); Korotayev, Andrey, Ilya Vaskin, and Sergey Tsirel. "Economic growth, education, and terrorism: A re-analysis." *Terrorism and Political Violence* 33, No. 3 (2021): 572-595.

of terrorism crimes. One of the most notorious acts of terrorism in 2019 was the attack on the former Minister of Politics, Law, and Security, Wiranto in Menes square, Pandeglang, Banten and the act of terror in Medan's Mapolrestabes. Based on the results of the National Police investigation, the perpetrators of the Wiranto attack were a network of Isis-affiliated *Jamaah Anshor Daulah* (JAD). The perpetrators of the Wiranto attack were exposed to radicalism through social media, thus attacking the government which was considered thogut. Some of the lists of terrorist groups in Southeast Asia that are on the CIA list include ISIS-Associated Jemaah Anshorut Daulah (JAD), Islamic State of Iraq and ash-Sham Network (ISIS), Jemaah Islamiyah (JI), Abu Sayyad Group (ASG), Communist Party of The Philippines/New People's Army (CPP/NPA).²³

Terrorists are distinguished by criminals. Like terrorists, criminals also use violence as a means to achieve their end goal. Although the means used are almost the same, for example, kidnapping, shooting, arson, the purpose, and motivation are different. While criminals use violence to make money, to get things, or to injure or even kill for a ransom of money, they do that for themselves. Meanwhile, terrorism shows the following characteristics:

1. Shows political will in its goals and motives.
2. Using force or threatening with violence.

² CNN Indonesia, "257 Orang dicap Tersangka Teroris Sepanjang 2019", *Online News*, 2019. Available at <<https://www.cnnindonesia.com/nasional/20191120114933-12-449923/257-orang-dicap-tersangka-teroris-sepanjang-2019>>.

³ Anggit Setiani Dayana, "6 Kelompok Teroris Asia Tenggara di Daftar CIA: ISIS Hingga JAD", *Online News*, 2019. Available at <<https://tirto.id/6-kelompok-teroris-asia-tenggara-di-daftar-cia-isis-hingga-jad-elC8>>.

3. The goal he wants to achieve is far ahead or expects a real reflection beyond his target or victim.
4. Conducted by an organization that is not recognized by its chain of command or has an organizational structure through the *Cel System* is carried out by *subnational groups* or *non-state entities*⁴.

The world community faces an enemy that can attack at any time and inflict unpredictable casualties. Victims of these terrorism crimes do not know class, do not know race, do not know gender, do not know national borders (including transnational crime). These terror movements only want what they stand for to be achieved, regardless of the impact on life. Fast, precise attacks and creating extraordinary conditions are the hope of the spreaders of terror. The stakes of life to do the deed are not a problem, instead it is increasingly becoming ammunition to increase the sense of fear in society, and the media is a loyal comrade at all times to become the mouthpiece of their struggle.

Efforts to overcome the problem of victims can be done in various ways, but as a country of law, this method certainly requires a legal foothold so as not to cause other problems. For this reason, several provisions were formed that were needed to overcome the victim's problem. There are several laws that regulate the protection of victims of terrorism, including Law No. 15 of 2003, as amended by Law No. 5 of 2018 concerning Amendments to Law Number 15 of 2003

⁴ Irsan, Koesparmono. *Terorisme*. (Jakarta, STIK-PTIK, 2006). See also Irsan, Koesparmono. "Polisi, Kekerasan dan Senjata Api: Tantangan Pemolisian di Era Demokrasi." *Jurnal Keamanan Nasional* 1, No. 2 (2015): 297-310; Subagyo, Agus. "Implementasi Pancasila Dalam Menangkal Intoleransi, Radikalisme dan Terorisme." *Jurnal Rontal Keilmuan Pancasila dan Kewarganegaraan* 6, No. 1 (2020): 10-24.

concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law, and Law No. 13 of 2006, as amended by Law No. 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection, as well as various other regulations.

II. METHODS

This study used a comparative legal approach. The study used secondary data by analyzing the existing laws and regulation concerning terrorism, human rights, and the victim protection in Indonesia.

III. DEFINITION & CAUSES OF TERRORISM

Etymologically, 'terrorism' comes from the word *terrere* (Latin), which means 'to cause (people) to tremble'. Thus, terrorism is intended to make people fearful. Meanwhile, based on the term, the definition of 'terrorism' is still being debated by experts who are involved in this issue. As a result, *"there is not one generally accepted definition"*. John Horgan asserts that *"we are still far from understanding approved terrorism (in general)"*. People have different understandings of the term terrorism and the scope of its meaning. The people involved in such debates often try to come up with definitions that suit their needs and interests. Thus, the definition of terrorism given is generally a reflection of the political interests and moral judgments of the people who give the definition. In other words, the decision to refer to or label a particular person or organization as a 'terrorist' is

subjective, depending primarily on whether the person sympathizes with or opposes the person/group/purpose of the person concerned⁵.

The characteristics of terrorism based on the definition given by some terrorism experts are as follows:⁶

1. Violence is carried out with other political, religious, and ideological purposes and motives. Among these motives, it is the political motives that are most widely referred to by scientists researching terrorism. These motives are a separating factor from other forms of violence. Violence committed to gain financial gain is not terrorism even though these acts cause fear.
2. An act can be said to be terrorism if it involves violence or threats of violence. In addition, violence can be categorized as an act of terrorism if the act of violence is planned. In other words, terrorism is not an act that happens by chance, or a criminal act that suddenly occurs.
3. To be called an act of terrorism, violence must affect the target or *audience* outside the direct target (victim). Thus, the direct target or victim of an act of violence is not the main target.
4. Terrorism involves nonstate actors or actors who commit violence against people who are not involved in combat (*noncombatant*), that is, civilians and soldiers who are not in war.

⁵ Naharong, Abdul Muis. "Terorisme atas Nama Agama." *Refleksi* 13, No. 5 (2013): 593-622.

⁶ Naharong, 2013. *See also* Afifah, Wiwik. "Karakteristik Tindak Pidana Terorisme di Indonesia." *Jurnal Akrab Juara* 4, No. 5 (2019): 221-233; Winarto, Prisilla Octaviani, and Arfin Sudirman. "Penanggulangan Terorisme di ASEAN Melalui Our Eyes Initiatives." *Insignia: Journal of International Relations* 8, No. 1 (2021): 71-86; Respati, Rezeki Revi, A. Wahyurudhanto, and Surya Dharma. "Strategi Pemolisian Pencegahan Kejahatan Terorisme." *Jurnal Ilmu Kepolisian* 14, No. 3 (2020): 21.

5. Terrorism is carried out by very rational people, not irrational or even insane. Also, acts of terrorism are not carried out indiscriminately and sporadically, but the targets to be attacked are chosen by the terrorists.

In choosing the targets to attack, the ideology espoused by terrorist groups plays a very important role, in addition to the resources owned by the terrorist group, the reaction of the community to the actions of the terrorists, and the level of environmental security that will be targeted. Among these four factors, it is ideology that is most important because ideology not only provides the initial power to act, but also explains the moral framework as a guide and reference for terrorists in carrying out operations. Ideology determines how terrorist members see the world around them and identifies the enemy by providing explanations and justifications for why a particular person or institution is a legitimate target for attack. In this case, religion also falls into the category of ideologies that, like other ideologies (nationalism, communism, separatism, etc.) provide motivation and justification for acts that are considered terrorism.⁷

⁷ Naharong, 2013. The government has also carried out various deradicalization efforts in various ways, including by involving various parties and community leaders. However, the challenge of terrorism today, especially in Indonesia, continues to grow along with the rapid development of technology and information. *See also* Simatupang, Kevin Timothy. "Upaya Deradikalisasi Sebagai Usaha Pencegahan Tindak Pidana Terorisme oleh Satuan Intelkam di Wilayah Hukum Polres Majalengka." *Advances in Police Science Research Journal* 4, No. 8 (2020); Haprabu, Bagas Satya. "The Role of Bhabinkamtibmas to Prevent the Dissemination of Radical Terrorism in the Jurisdiction of Polres Kudus." *Advances in Police Science Research Journal* 3, No. 4 (2019); Putra, Aprilianto Pratama. "Model Efektivitas Penggunaan Sistem Deteksi Telekomunikasi Taktis dalam Mengantisipasi Perkembangan Terorisme oleh Satintekam Polres Karawang." *Indonesian Journal of Police Studies* 5, No. 2

The increasing frequency of violent events of the last few decades categorized as acts of terrorism driven by religious teachings or in the name of God gave rise to 3 (three) types of opinions from scientists researching the symptoms of terrorism. Some scientists argue that there is no religious connection to acts of violence, including those categorized as terrorism. Others believe that religion can be a motivation and justification for all acts, including acts of terrorism. Some of these second groups say that acts of terrorism are motivated by religion and have religious purposes only. Others say that religious terrorism is motivated and aimed at politics and religion. Their main goals are religious, while their short-term goals are political. Viewed from another angle, religious teachings are the main cause or precondition (root cause or precondition) of sacred or religious acts of terrorism, while the triggering or motivating factors (*trigger cause* or *precipitant*) are special events, whether related to religious factors or not. Religious terrorism, because it occurs in various contexts, cannot be inevitably motivated by political factors and other factors. This must be acknowledged because in acting human beings are driven by a wide variety of motives. It's just that in religious terrorism, the dominant thing is the religious motive.⁸

(2021); Wibowo, Nazirwan Adji. "Terorisme: Deteksi dan Antisipasinya (dalam Perspektif Polisi Tugas Umum)." *Tanggon Kosala* 7, No. 1 (2018): 28-31; Haris, Rizaldi. "Peran Bhabinkamtibmas dalam Mencegah Penyebaran Paham Radikal di Wilayah Polres Cianjur." *Advances in Police Science Research Journal* 4, No. 4 (2020); Triananda, Rinal Krishna. "Bhabinkamtibmas Efforts in Preventing the Spread of Radical Understanding in the Legal Territory of the Tegal Resort Police." *Police Studies Review* 5, No. 3 (2021).

⁸ Naharong, 2013, pp. 615-616.

IV. LEGAL PROTECTION FOR VICTIMS OF ACTS OF TERRORISM IN INDONESIA

Efforts to address the problem of victims of acts of terrorism can be done in various ways, but that method requires a legal footing, so that it can be realized, so that it does not cause other problems. For this reason, several provisions were formed that were needed to overcome the victim's problem, including; Law No. 15 of 2003, as amended by Law No. 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law, & Law No. 13 of 2006, as amended by Law No. 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection, & Government Regulation No. 44 of 2008 concerning the Provision of Restitution Compensation and Assistance to Witnesses and Victims, and so on.

In Article 1 Number 6 of Law No. 13 of 2006, it is stated that: *"Protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims that must be carried out by the LPSK or witness and victim protection agencies or other institutions in accordance with the provisions of this Law"*. Meanwhile, what is meant by "witness" as referred to in Article 1 Number 1 of Law No. 13 of 2006 is "a person who can provide information for the purposes of investigation, investigation, prosecution, and examination at a court hearing about a criminal case that he hears himself, he sees for himself, and/or he experiences himself". The "victim" as mentioned in Article 1 Number 2 of Law No. 13 of 2006 is *"a person who experiences physical, mental, and/or economic loss caused by a criminal act"*.

In protecting witnesses and victims, they must pay attention to several principles as stated in Article 3 of the Witness and Victim Protection Law, namely:

1. Appreciation for human dignity and dignity
2. Feeling safe
3. Justice
4. Non-discriminatory, and
5. Legal certainty.

Based on Article 5 paragraph (1) of Law No. 31 of 2014, victims and witnesses obtain rights, among others:

1. Obtain protection for the safety of his personal, family, and property, and be free from threats relating to the testimony he will, is, or has given;
2. Take part in the process of selecting and determining the form of security protection and support;
3. Provide captions without pressure;
4. Got a translator;
5. Free from entanglement questions;
6. Be informed about the progress of the case;
7. Be informed of court decisions;
8. Be informed in the event that the convict is released;
9. Kept his identity secret;
10. Got a new identity;
11. Got a temporary residence;
12. Getting a new place of residence;
13. Obtaining reimbursement for transportation costs as needed;
14. Obtain legal advice;
15. Obtain temporary living expenses assistance until the protection deadline expires;
16. Got mentoring.

Victims of terrorism crimes based on Article 6 paragraph (1) of Law No. 31 of 2014 not only obtain the rights as above, but also medical assistance and psychosocial and psychological rehabilitation. This includes compensation as stipulated in Article 7 and restitution regulated in Article 7A. As for the stipulation in Article 9 that in the event that the victim is under great threat, then with the consent of the judge can give testimony without being present in person in court, therefore can give his testimony in writing which is delivered before the authorized official and can also be heard his testimony directly through electronic means accompanied by an authorized official.

Another interesting point of this law as stipulated in Article 10 is that the victim, perpetrator witness and/or complainant cannot be prosecuted legally either criminally or civilly, for testimony and/or report, which he will, is, or has given, unless the testimony/report is given not in good faith. This includes in the event that there is a lawsuit against a witness, victim, perpetrator witness, and/or complainant for testimony and/or a report that will, is, or has been given, the lawsuit must be postponed until the case he reports/ or testifies has been decided by the court and obtained permanent legal force.

V. THE ROLE AND COOPERATION OF VARIOUS INSTITUTIONS IN EFFORTS TO RECOVER VICTIMS OF TERRORISM CRIMES

Based on the report on the results of research conducted by the Research Team of the Faculty of Law, Udayana University (2016), there are various parties who participate in the recovery of victims

from terrorism crimes, including police institutions, social services, hospitals, kesbangpol, PMI, NGOS, LPSK.⁹

1. The Role and Cooperation of police institutions in Victim Recovery Efforts

The role of police institutions in handling the recovery of victims of terrorism crimes is the first handling after a terrorism incident. The police carried out direct security after the incident (securing the scene of terrorism and evacuating victims). The police also play a role in providing certificates of victims of terrorism in an effort to apply for assistance and compensation. In handling the recovery of victims of terrorism crimes, the police coordinate with various institutions in emergency management such as hospitals, TNI, BPBD, Health Services, Social Services, Kesbangpolinmas, Local Governments and State Intelligence Agencies (BIN). In addition, the police also cooperate with other countries in carrying out the victim identification process.¹⁰

2. The Role and Cooperation of Social Services in Victim Recovery Efforts

Based on the results of the study, not all Social Services play a role in the recovery of victims of terrorism crimes. Only the Social Service in Bali Province plays a role in the recovery of victims of terrorism crimes. Her role is in providing training in cooking, sewing, and other skills. The lack of role of the Social Service in handling the recovery of victims of terrorism crimes

⁹ Ida Bagus Surya Dharma Jaya, et. al. *Laporan Hasil Penelitian Pemulihan Korban Tindak Pidana Terorisme*. (Bali, Universitas Udayana dan LPSK, 2016). Available online at <
https://simdos.unud.ac.id/uploads/file_penelitian_1_dir/33d824b8c303e3e366c3042781f5aa8f.pdf>

¹⁰ Jaya, et.al., 2016, pp. 114-115.

because the tupoksi does not cover the victims of terrorism. The scope of the Social Service is only for the poor and special needs. Dinas Sosial collaborates with government and private institutions under the coordination of the Governor.¹¹

3. The Role and Cooperation of hospitals in Victim Recovery Efforts
Hospitals play a very important role in handling and recovering victims of terrorism crimes, especially in providing treatment / treatment / healing (inpatient / outpatient). The hospital also played a role in dealing with the deceased through the body storage unit. Some hospitals are also referral centers for hospitals/clinics/health centers/other medical care centers. In emergency situations, the hospital provides medical assistance in the form of first aid and also plays a role in further healing. Treatment / healing / treatment from the Hospital is carried out not only on the victim's physique but also the victim's psychology, through psychologists to heal trauma (trauma healing). In this case, hospital officials also conducted home visits for victims of terrorism. The priority of handling victims of terrorism is equated with victims of natural disasters. Victims will be provided with proper and safe facilities, as well as free treatment/treatment. The hospital cooperates with the Regional Government in terms of financing victims of terrorism crimes and cooperates with the Regional Disaster Management Agency (BPBD). In addition, Sanglah Bali Hospital received assistance from the Australian Government in handling victims of terrorism crimes who suffered burns.¹²
4. The Role and Cooperation of Kesbangpol in Victim Recovery Efforts

¹¹ Jaya, 2016, p. 115.

¹² Jaya, 2016, pp. 116-117.

Kesbangpol plays a role in handling the first post-bomb explosion incident, namely, assisting the evacuation of victims and monitoring the location as well as conducting further detection of the possibility of further explosions, kesbangpol immediately conducts surveys, searches and collects information about the number of victims, monitors so that all infrastructure facilities are available so that the handling process runs well. Kesbangpol collaborates with BPBD (Regional Disaster Management Agency), Local Government, Dinsos, Dinkes, Police, all stake holders, and all other related agencies.¹³

5. Role and Cooperation of PMI in Victim Recovery Efforts
6. PMI plays a role in handling and recovering victims of terrorism. PMI has a 24-hour post to respond when disasters occur, including terrorism events. The role of PMI is the first handling after the occurrence of terrorism crimes. PMI was present as soon as possible at the scene to provide first aid to victims, evacuate victims, assist the forensic team at the hospital, record/identify victims. PMI also provides ambulance facilities, donates wheelchairs, assists in the provision of blood, medical devices, and medical personnel. In addition, PMI also assists in finding and finding family members who have been lost due to terrorism crimes. PMI also carries out further healing such as trauma healing for trauma healing for victims of terrorism crimes, by visiting victims, opening trauma centers, opening community service posts/posts in providing counseling, and also making FGDs. PMI collaborates with the International Red Cross, in collaboration with Foundations engaged in Humanity, Local

¹³ Jaya, 2016, p. 117.

Government, Hospitals, BPBD, Fire Department, Police, Health Service and Social Service.¹⁴

7. The Role and Cooperation of NGOs in Victim Recovery Efforts

NGOs actively participate in the handling and recovery of victims of terrorism. NGOs became institutions that facilitated the fulfillment of the rights of victims of terrorism crimes. NGOs champion their members who are victims of terrorism crimes for assistance and compensation, Advocacy, and trauma healing. In addition, NGOs also conducted reconciliation and mediation between victims and perpetrators of terrorism. NGOs cooperated with government and non-governmental organizations in handling and recovering victims of terrorism crimes. Cooperation with government agencies is carried out with the Social Service and the Manpower Office to provide training/job skills (psychosocial) for victims of terrorism crimes. NGOs also collaborated with lpsk to obtain psychological health and healing assistance. Meanwhile, NGO cooperation with non-governmental organizations is carried out with other NGOs engaged in the humanitarian sector and cooperates with the community as donors who provide assistance to victims of terrorism crimes. In addition, cooperation is also carried out with foreign parties who act as donors in providing assistance to victims of terrorism crimes.¹⁵

8. Role and Cooperation of LPSK in Efforts to Recover Victims

LPSK plays a role in facilitating the fulfillment of the rights of victims of terrorism crimes in collaboration with the National Police, Ministry of Social Affairs, local governments, NGOs, and foundations engaged in handling and recovering victims of

¹⁴ Jaya, 2016, pp. 117-118.

¹⁵ Jaya, 2016, pp. 118-119.

terrorism crimes. In addition, LPSK also collaborates with universities to conduct socialization about LPSK, especially in efforts to recover victims of terrorism crimes. In an effort to recover victims of terrorism crimes, LPSK provides medical, psychological, and psychosocial assistance for victims of terrorism victims.¹⁶

VI. FACTORS INHIBITING THE PROVISION OF LEGAL PROTECTION TO WITNESSES & VICTIMS OF ACTS OF TERRORISM

Something that is deemed necessary and desirable or expected by victims of criminal acts of terrorism, actually clashes with the existing reality. There is an adagium "*res ipsa loquitur*" (the facts speak for themselves), where in reality victims of terrorism crimes experience suffering and loss, but in reality, legal protection for victims is difficult. This is inseparable from the existence of inhibiting factors in providing legal protection for victims, both in the aspects of legal substance, legal *structure*, and *legal culture*. The assessment of a good law can then be sorted out from several approaches, including through the components that must be contained in the legal system. The three components that must be contained in the legal system according to Lawrence Meir Friedman include structural, substantive, and cultural components.¹⁷

1. *Weaknesses in Substantive Components (legal substance)*

¹⁶ Jaya, 2016, p. 119.

¹⁷ Hendriana, Rani. "Perlindungan Hukum Korban Tindak Pidana Terorisme: Antara Desiderata dan Realita." *Kosmik Hukum* 16, No. 1 (2016).

With regard to victims of terrorism crimes, that there are at least weaknesses in the substantive component (*legal substance*), including the following:¹⁸

First, Law No. 15 of 2003 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism, became law:

- 1) Does not provide an understanding or definition of victims of terrorism crimes, so that no limit on the scope of victims of terrorism crimes is obtained;
- 2) The absence of sanctions for perpetrators who do not want to carry out restitution to victims;
- 3) The absence of government or implementing regulations specifically regulating the provision of compensation, restitution and rehabilitation to victims of terrorism crimes;
- 4) It does not specifically regulate medical assistance and psychosocial and psychological rehabilitation of victims of terrorism crimes. This is in contrast to the circumstances of suffering and real loss of victims, where victims of terrorism in general are in dire need of medical assistance and psychosocial and psychological rehabilitation.

Second, Government Regulation No. 44 of 2008 concerning the Provision of Restitution Compensation and Assistance to Witnesses and Victims, where the submission procedure up to the implementation of compensation and restitution is too long and bureaucratic, so it is far from the principle of effective and efficient in providing assistance. *Third*, other regulations related to terrorism

¹⁸ Hendriana, 2016, pp. 36-37

crimes, namely Presidential Regulation No. 46 of 2010 concerning the National Agency for Countering Terrorism and Law No. 9 of 2013 concerning the Prevention and Eradication of Terrorism Financing Crimes, are not oriented towards the interests of victims of terrorism crimes. *Fourth*, Law No. 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection, where the Implementing Regulation of Law No. 31 of 2014 does not yet exist (still using the old implementing regulation, namely PP No. 44 of 2008).

This is certainly contrary to the purpose of legal protection for victims. In essence, the law can be used to realize protection that is not only adaptive and flexible, but also prescriptive and antipathic. Therefore, the weaknesses in the positive criminal law above have shown its inability to provide legal protection ¹⁹*in a predictive manner*.

2. *Inhibiting Factors in Structural Components*

As for the inhibitory factors in the components of the structure, among others, they are as follows:²⁰

First, the tendency in the criminal justice system to be more oriented towards proof than the granting of victims' rights, so that new victims have vital value if they become whistleblowers or witnesses of criminal acts of terrorism. *Second*, the lack of commitment of the government and law enforcement officials in providing victims' rights. This should be understood and realized by the government that the establishment of a law on the criminal act of terrorism is inseparable from urgent circumstances, so it is quite far from juridical

¹⁹ Lili Rasjidi and I.B Wysa Putra. *Hukum Sebagai Suatu Sistem*. (Bandung, Remaja Rosdakarya, 1993), pp. 118-120.

²⁰ Hendriana, 2016, pp. 37-38.

perfection. The lack of regulation regarding the rights of victims should be a reference for the government to be able to act initiatively and profactively in mobilizing victims to fight for their rights, so as to eliminate all procedures that are ineffective and efficient for victims. Based on this, it is not surprising that victims tend to talk more about foundations or institutions outside the government that have helped, because it has a more devastating effect on victims. *Third*, the lack of massive socialization from both the government and law enforcement officials regarding the rights of victims, especially the rights of victims in Law No. 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection.

3. *Inhibiting Factors of the Culture Component*

Related to the cultural component, legal culture is one of the factors that contributes enough to inhibit the provision of legal protection for victims of terrorism crimes, including:²¹

First, there is a civilized tendency that the attention of the government or other relevant agencies, law enforcement officials, the public, to victims of terrorism crimes tends to be instantaneous after a terrorism crime occurs. *Second*, personally victims of terrorism crimes do not know their rights as stipulated in the laws and regulations. This includes the apathy of the victim in fighting for his rights (the quality of economic conditions and the social environment may also affect him). In response to this, the government also seems to turn a blind eye to victims' ignorance of their rights and rather considers that the

²¹ Hendriana, 2016, p. 38.

public (including victims) is obliged and aware of positive criminal law in Indonesia.

So far, victim protection arrangements have not shown a clear pattern, in the positive criminal law in force at this time victim protection is more of an "abstract protection" or "indirect protection". This means that various formulations of criminal acts in the laws and regulations so far have essentially been protected *in abstracto* directly against the legal interests and human rights of victims. Indirect protection in positive legal regulations has not been able to provide maximum protection, because the reality in Indonesia shows that the law that applies definitively has not been able to guarantee certainty and a sense of justice. This is certainly inseparable from the existence of inhibiting factors as explained above.²²

In response to this, it should be necessary to refer to a progressive law. The application of progressive law, which is essentially directed towards these lawmakers, is expected to be able to direct the laws produced by the legislative process, which tends to be elitist, to lead to the interests of justice and the welfare of the masses. To borrow Nonet and Selznick's terms, progressive law has a responsive type. Such a type, the law is always attributed to goals beyond the textual narrative of the law itself. Embodying a responsive nature that can be

²² Arief, Barda Nawawi. "Perlindungan Korban Kejahatan dalam Proses Peradilan Pidana." *Jurnal Hukum Pidana dan Kriminologi* 1, No. 1 (1998): 17-18.

interpreted as serving the needs and social interests experienced and discovered, not by officials but by the people.²³²⁴²⁵

VII. CONCLUSION

This study concluded and highlighted that as a country of law, Indonesia has established several laws and regulations governing the protection of victims of terrorism, including Law No. 15 of 2003, as amended by Law No. 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law, Law No. 13 of 2006, as amended by Law No. 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection and other regulations. In addition, various parties also participate in the recovery of victims from terrorism crimes, including police institutions, social services, hospitals, kesbangpol, PMI, NGOs, LPSK, and so on. However, witnesses and victims of terrorism crimes in obtaining legal protection through the above regulations are not always in line with existing realities. This is inseparable from the existence of inhibiting factors, both in the aspects of the legal substance component, legal structure, and legal culture. Therefore, there is a commitment from the government and other relevant

²³ Sufriadi, Yanto. "Penerapan Hukum Progresif dalam Penegakan Hukum di tengah Krisis Demokrasi." *Jurnal Hukum Ius Quia Iustum* 17, No. 2 (2010): 233-248.

²⁴ Rondonuwu, Diana Esther. "Hukum Progresif: Upaya Untuk Mewujudkan Ilmu Hukum Menjadi Sebenar Ilmu Pengetahuan Hukum." *Lex Administratum* 2, No. 2 (2014).

²⁵ Arianto, Henry. "Hukum Responsif dan Penegakan Hukum di Indonesia." *Lex Jurnalica* 7, No. 2 (2010): 115-123.

agencies that are authorized to provide legal protection for witnesses and victims of terrorism crimes, especially their ability to act responsively and proactively. There is no exception to the synergy of the protection provision system between the protection providers, starting in terms of identifying the needs of victims, coordination, supervision of the implementation of protection, to evaluating the provision of protection, so that legal protection of victims can be carried out on an ongoing basis in accordance with the needs and interests of victims.

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COMPETING INTERESTS

The Authors declared that they have no competing interests.

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“Everyone’s worried about stopping terrorism. Well, there’s really an easy way: Stop participating in it.”

Noam Chomsky