

THE JUSTICE ASPECT OF JUDICIAL CONSIDERATIONS ON THE FULFILLMENT OF VICTIMS' RIGHTS IN PAST ACTS OF TERRORISM

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Abstract

The Constitutional Court Decision Number 103/PUU-XXI/2023 marks a pivotal turning point in the protection of the rights of victims of terrorism, particularly those affected prior to the enactment of Law Number 5 of 2018, who have not yet received adequate legal protection. This paper analyzes the aspect of justice considered by the Constitutional Court judges in fulfilling the rights of past victims of terrorism as reflected in Decision Number 103/PUU-XXI/2023, as well as the conceptual framework for the realization of such rights within the Indonesian criminal justice system. The findings of this study reveal that the element of justice in the Court's reasoning is embodied in a substantive and humanistic approach, which reinforces the state's responsibility to fulfill the constitutional rights of victims of past terrorism acts as a manifestation of human rights protection and the principle of equality before the law. The ideal concept of fulfilling the rights of victims of past acts of terrorism emphasizes restorative justice through recognition, protection, and recovery, supported by a comprehensive legal framework and equitable, implementable policies.

Keywords: *Terrorism; Justice; Victims' Rights; Criminal Justice*

INTRODUCTION

Terrorism is an extraordinary crime that poses severe consequences for the state and society, particularly due to its systematic and deliberate nature, aimed at instilling fear through acts of violence that often claim the lives of innocent people (Hendropriyono, 2009). Acts of terror not only threaten national stability but also inflict profound physical, psychological, and social suffering on both direct and indirect victims (Widiartama, 2014). In Indonesia's historical context, various acts of terrorism since 1981 have left lasting scars, ranging from aircraft hijackings to the 2002 Bali bombings, which garnered international attention due to the high number of foreign casualties (Soeharto, 2007). Beyond the humanitarian impact, such incidents also trigger significant economic repercussions, particularly in the tourism sector and public trust in national security. In response to these events, the Indonesian government issued an emergency regulation, namely Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism, which was later approved by the House of Representatives and enacted as Law Number 15 of 2003 (Ratri & Wahyudi, 2024).

Although acts of terrorism have occurred for decades, legal recognition of victims' rights only gained substantial reinforcement with the enactment of Law Number 5 of 2018 on the Eradication of Criminal Acts of Terrorism and Law Number 31 of 2014 on the Protection of Witnesses and Victims (Suhasril, 2016). These two laws provide the legal foundation for protecting victims of terrorism, including provisions for compensation, medical and psychological rehabilitation, as well as financial support for victims' families. However, in practice, many past victims of terrorism have not yet received adequate access to their entitlements, either due to lack of information or because of the time limitation imposed by Article 43L paragraph (4) of Law Number 5 of 2018, which allows only a three-year window from the enactment of the law to submit claims. This provision creates legal uncertainty and discrimination against long-standing victims who were unable to apply within the prescribed timeframe, despite the severe impacts they have endured. In response to these issues, a judicial review was submitted to the Constitutional Court in 2023 challenging the time limitation provision. The petition was granted through Constitutional Court Decision Number 103/PUU-XXI/2023, which marked a paradigm shift in the protection of victims of terrorism, particularly those affected by acts of terrorism prior to the enactment of Law Number 5 of 2018. The Constitutional

Court emphasized that the state bears responsibility to provide protection for past victims of terrorism as part of restoring the constitutional rights inherent to every citizen. A critical element of this decision is the extension of the submission period for victims' claims from three (3) years to ten (10) years, thereby broadening access to justice for those who were previously excluded. This legal development, however, brings significant challenges for the state, including the need for regulatory adjustments, effective policy implementation to reach all affected victims, and adequate funding to ensure the realization of victims' rights. Furthermore, a shift in institutional perspectives particularly among law enforcement and other state agencies is necessary to ensure that protection for past victims of terrorism in Indonesia is achieved comprehensively and effectively.

Based on the aforementioned explanation, the issue of legal protection and fulfillment of justice for victims of past acts of terrorism emerges as a critical subject for in-depth analysis, particularly within the constitutional framework. Constitutional Court Decision Number 103/PUU-XXI/2023, which extends the time limit for victims to file claims, has had a significant impact on the legal system, both normatively and in terms of practical implementation. This decision not only represents a corrective measure addressing the past absence of justice but also serves as a pivotal moment for assessing the extent to which the Court's considerations reflect a commitment to substantive justice. In light of this urgency and its academic relevance, the researcher is compelled to explore the issue further in a journal entitled "*The Justice Aspects of Judicial Consideration on the Fulfillment of Rights for Victims of Past Acts of Terrorism*", aiming to examine how justice considerations were applied by the Constitutional Court in Decision Number 103/PUU-XXI/2023, and to conceptualize the ideal fulfillment of victims' rights within the future development of Indonesia's criminal justice system.

LITERATURE REVIEW

This study possesses a strong degree of originality as it focuses on the aspect of justice within the constitutional judges' reasoning concerning the fulfillment of rights for victims of past acts of terrorism—an area that has not been the primary focus of previous research. The work of Sarah et al. (2024) primarily examines the implementation of victims' rights under Law No. 5 of 2018, using the Bali Bombings I and II as case studies, while Saputra et al. (2024) explores compensation mechanisms in similar contexts, without addressing the constitutional issue of time limitations for victims' claims, which forms the central concern of this study. Similarly, Alexandra (2021) discusses the regulatory framework surrounding restitution and compensation more broadly, but does not delve into the specific conditions of past terrorism victims or the constitutional reasoning underpinning the Constitutional Court's decisions. Meidina (2020), on the other hand, concentrates on first-instance court rulings regarding compensation awards, rather than on judicial review processes at the Constitutional Court or the integration of substantive justice through normative change.

Accordingly, this research presents a significantly different and novel academic contribution by conducting a juridical analysis of Constitutional Court Decision No. 103/PUU-XXI/2023, specifically examining how the Court incorporates justice considerations in extending the state's constitutional obligations to victims of terrorism from the past. It addresses a critical gap in the existing literature by analyzing the state's responsibility in facilitating access to justice through the extension of time limits for filing claims, and by evaluating the practical challenges of implementation from a human rights and justice-oriented perspective. To support this analysis, the study employs Gustav Radbruch's legal theory of the three fundamental values of law justice, utility, and legal certainty alongside the theory of criminal law reform as a conceptual framework to promote a more comprehensive and equitable system of victim protection.

METHOD

This study adopts a normative juridical (or doctrinal) legal research methodology, which emphasizes the analysis of secondary legal materials, including statutory regulations, court decisions, legal doctrines, and the opinions of legal scholars (Sunggono, 2015). The research utilizes a combination of conceptual, statutory, and comparative approaches. These methodologies are employed synergistically to examine the dimension of justice within the Constitutional Court's reasoning regarding the fulfillment of rights for victims of past acts of terrorism, as articulated in Decision No. 103/PUU-XXI/2023.

RESULTS AND DISCUSSION

The Aspect of Justice Considered by the Constitutional Court Justices in Decision Number 103/PUU-XXI/2023"

The aspect of justice in the Constitutional Court's judicial consideration plays a crucial role in Decision Number 103/PUU-XXI/2023, which extends the time limit for submitting claims by victims of past acts of terrorism. This ruling not only reflects the Court's alignment with the interests of victims—who have long been overlooked—but also illustrates how the Court prioritizes substantive justice over mere procedural justice. In this context, the dispositive portion (*dictum*) of the Constitutional Court's decision that reflects the aspect of justice in Decision Number 103/PUU-XXI/2023 is as follows:

Declares that the phrase “3 (three) years from the date this Law comes into force” as contained in Article 43L paragraph (4) of Law Number 5 of 2018 concerning the Amendment to Law Number 15 of 2003 on the Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law (State Gazette of the Republic of Indonesia of 2018 Number 92, Supplement to the State Gazette of the Republic of Indonesia Number 6216), is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force insofar as it is not interpreted as “10 (ten) years from the date this Law comes into force.” Accordingly, the provision of Article 43L paragraph (4) of Law Number 5 of 2018, which previously read: “The application as referred to in paragraph (2) may be submitted no later than 3 (three) years from the date this Law comes into force” shall henceforth read in its entirety as: “The application as referred to in paragraph (2) may be submitted no later than 10 (ten) years from the date this Law comes into force.”

The Constitutional Court Decision Number 103/PUU-XXI/2023 constitutes a form of constitutional correction to a legal norm that was deemed inadequate in providing optimal protection for victims of past acts of terrorism. In this case, the Court took into account the principle of substantive justice, asserting that the three-year limitation period for submitting claims for compensation failed to reflect the factual and psychological conditions of victims, many of whom continue to suffer from trauma and face limited access to their rights. Consequently, the Court amended the provision by extending the limitation period to ten years, as an affirmation of victims' rights and an effort to realize restorative justice—justice that is not merely procedural, but substantively meaningful.

This normative change embodies a broader conception of justice one that extends beyond procedural justice to encompass substantive justice as outlined in Gustav Radbruch's theory of the three fundamental values of law: justice, legal certainty, and utility. In this context, the Constitutional Court progressively prioritized justice and social utility for victims, rather than merely preserving formal legal certainty. Furthermore, the Court's ruling reflects the spirit of criminal law reform in Indonesia, wherein the focus is no longer solely on offenders, but also on the restoration of victims' rights as an integral part of a more humane and trauma-responsive criminal justice system.

From the perspective of Gustav Radbruch's theory of the three fundamental values of law, the amendment of the legal phrase in Constitutional Court Decision Number 103/PUU-XXI/2023 reflects an effort to harmonize justice, legal certainty, and utility. Initially, the three-year limitation period embodied the value of legal certainty by providing a clear and definitive timeframe. However, this time limit failed to fulfill the values of justice and utility, particularly for past victims of terrorism who faced psychological, administrative, and structural barriers in exercising their rights. The Court rectified the norm to be more just (*Gerechtigkeit*) by extending the period to ten years, while also enhancing the utility (*Zweckmäßigkeit*) that could be directly felt by the victims. This decision demonstrates that when a conflict arises between legal certainty and justice, justice must take precedence, as asserted in Radbruch's central legal philosophy.

From the standpoint of criminal law reform theory, this ruling also represents part of a broader effort to renew Indonesia's criminal justice system in a more victim-oriented direction. Historically, the criminal justice system has focused predominantly on offenders and punitive measures, often neglecting the victims in the process of recovery and the fulfillment of their rights. By extending the time limit for victims to claim their rights, the Court has encouraged a transformation of the legal system toward greater victim protection, in line with the principles of restorative justice. This legal reform is not only normative but also structural and cultural in nature, requiring adjustments in policies, procedures, and the institutional mindset of law enforcement officials toward crime victims especially victims of terrorism who endure deep and prolonged suffering.

Based on the above explanation, it can be analyzed that there are three key considerations employed by the Constitutional Court Justices in Decision Number 103/PUU-XXI/2023 in amending the phrase to "ten years" as a form of affirmation of the victims' rights, namely:

1. The Principle of Justice for Past Victims of Terrorism

The Court considered that the imposition of a three-year time limit as stipulated in Article 43L paragraph (4) of Law No. 5 of 2018 does not reflect substantive justice for victims of past acts of terrorism. Many victims

were unaware of their rights, suffered from psychological trauma, or faced limited access to information and legal assistance. Therefore, the Court held that such a temporal restriction is discriminatory and disproportionate.

2. Fulfillment of the Constitutional Rights of Citizens

The Court emphasized that the state holds a constitutional obligation to respect, protect, and fulfill the rights of all citizens, including victims of terrorism. The right to justice, recognition, protection, and redress constitutes part of the fundamental human rights guaranteed by the 1945 Constitution of the Republic of Indonesia. Therefore, an excessively narrow time limitation could impede the realization of those constitutional rights.

3. The Principle of Legal Certainty and Utility Grounded in Justice

In its legal reasoning, the Court underscored the necessity of striking a balance between legal certainty and legal utility in a manner consistent with justice. Extending the time limit to ten years was deemed more proportionate and provided fairer access for victims to claim their rights. This approach aligns with the principle of a rule of law that prioritizes not only legality, but also justice and the protection of vulnerable groups

The Concept of Fulfilling the Rights of Past Victims of Terrorist Crimes Within the Indonesian Criminal Justice System as It Should Be Realized in the Future

The concept of fulfilling the rights of past victims of terrorism within the Indonesian criminal justice system, as ideally envisioned for the future, must be grounded in Gustav Radbruch's theory of the three fundamental values of law: justice (*Gerechtigkeit*), expediency or utility (*Zweckmäßigkeit*), and legal certainty (*Rechtssicherheit*). In the context of terrorism victims, justice must serve as the central value to be realized in a substantive manner, rather than merely formalistic. Victims of terrorism often suffer prolonged hardship physically, psychologically, socially, and economically. Thus, justice cannot be confined solely to prosecuting perpetrators, but must also encompass the comprehensive restoration of victims' rights, including compensation, rehabilitation, and guarantees of non-repetition in the future.

According to Radbruch, the value of utility demands that the law must contribute positively to the well-being of society, particularly for those who have suffered from extraordinary violence such as terrorism. Indonesia's criminal justice system must formulate policies that directly impact the lives of victims, especially those who have historically been marginalized due to limited legal access and rigid bureaucracy. The fulfillment of victims' rights should produce a restorative effect creating conditions in which victims can return to living with dignity. In this regard, the utility of law should not be narrowly perceived as a mere instrument for crime deterrence, but rather as a means of healing social wounds and strengthening the bond between the state and its citizens.

Legal certainty also constitutes a crucial element in constructing a victim-oriented justice system. Many past victims of terrorism have faced significant barriers in claiming their rights due to restrictive filing deadlines, ambiguous regulations, or the absence of legal mechanisms that ensure sustained protection. From the perspective of criminal law reform theory, these conditions highlight the need for both structural and substantive improvements within the legal system, including the revision of norms that continue to hinder access to justice for victims. Criminal law reform must aim toward reconstructing a legal framework that is more humane, inclusive, and responsive to the needs of victims particularly in the context of extraordinary crimes such as terrorism, which inflict collective suffering. In line with criminal law reform theory, the future Indonesian criminal justice system must move beyond the classical paradigm centered on retributive justice.

A new paradigm must incorporate the principles of restorative justice as an integral part of legal reform, positioning victims as primary subjects whose rights must be fully restored. Such reform entails adjustments not only in legislation but also in judicial procedures and institutional practices, in order to prioritize victim recovery and protection. Within this framework, the state must establish a system that not only punishes offenders but also actively ensures that victims receive recognition, reparations, and opportunities to participate in legal processes that concern their interests. By integrating Gustav Radbruch's theory of the three fundamental values of law with the theory of criminal law reform, it can be concluded that the ideal concept for fulfilling the rights of past victims of terrorism must be grounded in principles of substantive justice, tangible social utility, and legal certainty that guarantees unimpeded access to justice. The state must no longer adopt a passive stance or delay victim recovery efforts on the grounds of technical or procedural limitations. On the contrary, the state is obliged to take an active role through the formulation of progressive and responsive legal policies, while ensuring that the criminal justice system in place upholds the human dignity of victims to the fullest extent. This endeavor is not merely a corrective action for past

neglect, but rather a firm commitment to shaping a more just, humane, and socially equitable legal future. Based on the above elaboration, it can be analyzed that there are at least five (5) conceptual pillars for the fulfillment of the rights of past victims of terrorism that should ideally be realized within Indonesia's future criminal justice system:

1. **Expansion and Clarification of Rights Through Specific Regulations**
There is a need for specific legislation that explicitly governs the rights of victims of past acts of terrorism, including the right to compensation, restitution, rehabilitation, and guarantees of non-repetition. Such regulations must apply retroactively in a fair and proportional manner, considering that delays in fulfilling victims' rights are often beyond their control.
2. **Application of the Principle of Restorative Justice**
The criminal justice system should not solely emphasize the punishment of perpetrators, but must also prioritize the recovery and empowerment of victims. A restorative justice approach provides space for victims to be heard, to receive redress, and to have their rights acknowledged, while also allowing for social reconciliation. This framework positions victims as active subjects in the pursuit of justice.
3. **Institutional Strengthening for Victim Protection**
Institutions such as the Witness and Victim Protection Agency (LPSK) must be reinforced in terms of authority, budget, and cross-sectoral coordination to reach past victims who have not yet received adequate support. In addition, the establishment of regionally-based victim service units that are proactive and responsive is essential.
4. **Formulation of an Efficient and Equitable State Compensation Mechanism**
The state bears responsibility for providing compensation funds for victims. However, the compensation mechanism must be streamlined, transparent, and free from complex administrative procedures that burden victims, while still maintaining accountability.
5. **Reform of Criminal Law Responsive to Victims' Rights**
Within the framework of criminal law reform theory, Indonesia's penal system must continue to evolve in response to dynamic social needs, including justice for historical victims. This reform must encompass the substantive dimension (legal norms), the structural dimension (implementing institutions), and the cultural dimension (awareness and attitudes of legal practitioners).

CONCLUSION

First, the aspect of justice considered by the Constitutional Court in Decision Number 103/PUU-XXI/2023 demonstrates that the Court did not rely solely on the principle of legal certainty, but also emphasized the importance of substantive justice for victims of past acts of terrorism. By annulling the statutory time limit for claiming rights—deemed to hinder victims' recovery—the Court adopted a juridical approach aligned with Gustav Radbruch's theory of the three fundamental values of law: justice, utility, and legal certainty. This decision also supports the direction of criminal law reform toward a more humanistic and restorative paradigm.

Second, the conceptualization of fulfilling the rights of victims of past terrorism within Indonesia's future criminal justice system must be founded on the principles of restorative justice and respect for human rights. A future-oriented legal system should incorporate comprehensive victim recovery mechanisms, including compensation, rehabilitation, and formal state recognition of their suffering as a form of constitutional accountability. This vision is consistent with a reformed criminal law framework that positions victims as primary subjects in judicial processes, while prioritizing substantive justice that favors those who have long been marginalized by the formal legal system.

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