

State Responsibility In Providing Compensation To Victims of Gross Human Rights Violations

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ABSTRACT

The philosophical basis for providing compensation lies in the state's responsibility for its failure to prevent crimes. From a juridical perspective, Article 35 of Law Number 26 of 2000 on the Human Rights Court indicates that the provision of compensation is still dependent on a court decision. As such, even when gross human rights violations have occurred and victims are identified, if the accused is not proven guilty in court, they cannot be held accountable for providing compensation to the victims. This situation has the potential to create a vertical normative conflict with Article 28 of the 1945 Constitution, particularly regarding fundamental human rights that must be fulfilled by the state. This study aims to examine the principles and the role of the state in providing compensation to victims of gross human rights violations. It employs a normative legal research method with a conceptual and philosophical approach, and data collection is carried out through literature review and legal document analysis. The research findings show that the principle of state responsibility in providing compensation to victims of gross human rights violations must be grounded in the Universal Declaration of Human Rights (UDHR), the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, and the International Covenant on Civil and Political Rights (ICCPR).

Keywords: Compensation, Gross Human Rights Violations, State Responsibility.

1. INTRODUCTION

Theoretically, human rights are rights inherent in humans that are natural and fundamental as a gift from God that must be respected, guarded and protected. The essence of human rights itself is an effort to maintain the safety of human existence as a whole through a balancing action between individual interests and public interests. Likewise, efforts to respect, protect and uphold human rights are a shared obligation and responsibility between individuals. The government (government apparatus, both civil and military) and the state. (A.Bazar Harapan 2006, 33)

In the course of history, the Indonesian nation has recorded various sufferings, misery and quite deep social disparities caused by unjust behavior and discriminatory treatment based on race and ethnicity, language, religion, gender and other social status. Such unjust and discriminatory treatment falls into the category of human rights violations, both vertical (performed by the state) and horizontal (performed between citizens) and even some of these human rights violations fall into the category of serious human rights violations.

Human rights violations according to article 1 paragraph (6) of Law Number 39 of 1999 concerning Human Rights are defined as any violation against a person or group of people including state officials, whether intentional or unintentional, which legally reduces, hinders, limits, and/or revokes the human rights of a person or group of people guaranteed by this law, and does not receive, or is feared will not receive, a fair and correct legal settlement, based on the applicable legal mechanism. (Government of the Republic of Indonesia 1999) While serious human rights violations in Law No. 26 of 2000 is categorized into two, namely genocide and crimes against humanity. (Ali and Rauf 2021, 471) Meanwhile, in Indonesia, several gross human rights violations that have occurred can be categorized as crimes against humanity. Article 9 of Law Number 26 of 2000 concerning the Human Rights Court Crimes against Humanity is an act carried out as part of a widespread or systematic attack known to be directed directly at the civilian population.

In Indonesia, cases of gross human rights violations have occurred in almost every regime in power. Cases of human rights violations in Indonesia have occurred since the Dutch colonial era, the Japanese colonial era, the beginning of independence until now are recorded in history. Even the State through President Jokowi after receiving recommendations from the Non-Judicial Settlement Team for Past Gross Human Rights Violations (PPHAM) at that time has acknowledged that there have been 12 Gross Human Rights Violations in Indonesia. The following are 12 gross human rights violations recognized by the government.

Table 1 Gross human rights violations recognized by the government

No.	Pelanggaran HAM Berat di Indonesia
1	Peristiwa 1965-1966
2	Penembakan Misterius 1982-1985
3	Peristiwa Talangsari Lampung 1989
4	Peristiwa Rumoh Geudong dan Pos Sattis di Aceh 1998
5	Peristiwa Penghilangan Orang Secara Paksa 1997-1998
6	Peristiwa Kerusuhan Mei 1998
7	Peristiwa Trisakti Semanggi 1 & 2 1998-1999
8	Peristiwa Pembunuhan Dukun Santet 1998-1999
9	Peristiwa Simpang KAA di Aceh 1999
10	Peristiwa Wasior di Papua 2001-2002
11	Peristiwa Wamena Papua 2003
12	Peristiwa Jambo Keupok Aceh 2003

In addition, there are other cases of gross human rights violations outside of what is recognized by the state, such as the gross human rights violations that occurred in Tanjung Priok in 1984, the East Timor incident in 1999 and the Abepura incident in 2000, however in the process of

enforcing the law, these cases of gross human rights violations were not resolved properly, demanding the state's responsibility, which until now has failed to uphold justice for the victims. The resolution of human rights violation cases has also been widely highlighted by the public, especially cases of gross human rights violations, because this concerns the credibility of state institutions and the government in upholding justice in the midst of society. In addition, there are other cases of gross human rights violations outside of what is recognized by the state, such as the gross human rights violations that occurred in Tanjung Priok in 1984, the East Timor incident in 1999 and the Abepura incident in 2000, however in the process of enforcing the law, these cases of gross human rights violations were not resolved properly, demanding the state's responsibility, which until now has failed to uphold justice for the victims. The resolution of human rights violation cases has also been widely highlighted by the public, especially cases of gross human rights violations, because this concerns the credibility of state institutions and the government in upholding justice in society. (Siahaan, Setyadi, and Romainur 2021) Philosophically Based on the above problems, the state must be present in providing protection to victims of human rights violations In accordance with the provisions of Article 28I paragraph (4) of the 1945 Constitution, the state is present and responsible if Indonesian citizens are involved in gross human rights violations. One form of protection for victims of crime and is the right of victims of criminal acts is to receive compensation and restitution. Compensation is provided by the State to victims of Gross Human Rights violations, while restitution is compensation to victims of criminal acts given by the perpetrator as a form of accountability .(Didik M 2006, 4)

The philosophical basis for providing compensation is based on the obligations/responsibilities of society towards those who suffer bad luck and the state's responsibility for failure to prevent crime. In relation to this, Made Dharma Weda is of the opinion that the state through its apparatus is obliged to maintain public order and security. Therefore, the crimes that occur are the responsibility of the state. This means that the emergence of victims is also the responsibility of the state(Made Dharma Weda 1996, 91) In Law Number 26 of 2000 concerning the Human Rights Court (hereinafter referred to as the Human Rights Court Law) which provides a basis for victims of gross human rights violations to obtain compensation and restitution, which is stated in Article 35 paragraph (1) "Every victim of gross human rights violations and/or their heirs can obtain compensation, restitution, rehabilitation". ("Law Number 26 of 2000 concerning the Human Rights Court" 2000) Then Article 35 paragraph (2) of the Human Rights Court Law, which states that: "Compensation, restitution, and rehabilitation as referred to in



paragraph (1) are stated in the verdict of the Human Rights Court". This means that victims can only file their rights to obtain restitution and compensation if they are stated in the court verdict.

However, the Legal Problems of the Compensation Concept as explained in Law No. 26 of 2000, show that for compensation to exist, there must first be a perpetrator who is found guilty and sentenced to a criminal offense and ordered to pay compensation to the victim. However, because the perpetrator is unable to pay it, the state takes over the responsibility of this perpetrator. However, the requirement for a judge's decision stating the perpetrator is guilty before compensation can be given is one of the legal problems in Law No. 26 of 2000.

Regarding Compensation and Restitution, its implementation has never been received by the victim. Even though there have been many cases of gross human rights violations that have been brought to trial, the victims have not yet received compensation. The freedom of perpetrators of gross human rights violations in court so far has implications for freedom from responsibility in paying restitution and the victim's right to receive compensation, so that even though an incident suspected of being a gross human rights violation can be identified as having a victim, but with the failure to prove the criminal act in court, he cannot be held responsible for providing restitution and compensation to the victim.

This has the potential to experience a vertical norm conflict with Article 28 of the 1945 Constitution, especially regarding fundamental human rights that must be fulfilled by the state, Article 28I paragraph (4): "Protection, advancement, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government". From the articles above, the state has absolute responsibility in fulfilling the rights of victims, including the right to compensation, without having to wait for the trial process which is often long and does not always result in a guilty verdict for the perpetrator. Article 35 paragraph (2): "Compensation and restitution as referred to in paragraph (1) are provided by the state in the event that the perpetrator is unable to provide full restitution to the victim or his family." This provision limits the provision of compensation only if there is a court decision declaring the defendant guilty, which has the potential to harm the victim if the trial process does not proceed or the perpetrator cannot be tried. Based on the description above, the author raises the issue of legal protection for victims of gross human rights violations into the title "State Responsibility In Providing Compensation To Victims Of Gross Human Human Rights Violations".



2. RESEARCH METHOD

This research is compiled using the type of normative legal research, namely "legal research that places law as a normative system. The normative system in question is regarding the principles, norms, rules, from laws and regulations, court decisions, agreements and doctrines. (Achmad 2010, 34) Given that this research uses a normative legal approach method, the main data used is secondary data. Secondary data consists of primary legal materials, secondary legal materials, tertiary legal materials, namely with the explanation:

Primary legal materials are legal materials consisting of laws and regulations that are arranged based on the hierarchy of the 1945 Constitution, Laws (UU) / Regulations in Lieu of Laws (Perpu), Government Regulations (PP), Presidential Regulations (Perpres), Regional Regulations (Perda). (Johnny Ibrahim 2007, 302), The primary legal materials used are Law No. 26 of 2000 concerning the Human Rights Court.

Secondary legal materials are legal materials written on textbooks written by experts influential laws (*de herseende leer*), legal journals, opinions of scholars, legal cases, jurisprudence, and the results of recent symposiums related to the research topic. (Johnny Ibrahim 2007, 287) Secondary legal materials used include: Literature in the form of books containing theories and opinions of legal experts, Written works in the form of legal journals, dissertations and research reports that are relevant to the research theme, Articles in legal journals on the internet, and others.

Tertiary legal materials are legal materials that provide guidance or explanations to primary legal materials and secondary legal materials such as legal dictionaries, encyclopedias, and others. (Johnny Ibrahim 2007, 288) Tertiary legal materials used include: Legal Dictionaries, Indonesian and English Dictionaries, and others

The three legal materials are then supported by the screening of legal materials, namely by document studies.

The analysis of legal materials carried out in this study is a "deductive" legal material analysis, namely drawing conclusions from a problem which is general in nature to the concrete problems faced". (Johnny Ibrahim 2006, 393) namely explaining things that are general in nature towards things that are specific in nature to draw conclusions that can provide answers to the problems of this research.

3. RESULTS AND DISCUSSION

Principle of State Responsibility in Providing Compensation

Specifically, the protection of human rights by the state is the implementation of the concept of the rule of law (*rechtstaat*) as regulated in Article 1 paragraph (3) of the 1945 Constitution. This is also specifically regulated in the Indonesian constitution through Article 28I paragraph (4) of the 1945 Constitution which stipulates that "Protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government". This regulation is in line with the basic principles related to universally applicable human rights which place the state as a duty bearer in enforcing human rights principles. Therefore, every branch of state power is obliged to carry out the protection, promotion, enforcement, and fulfillment of human rights in carrying out its duties. (Stanford 2019)

The concept of human rights has clearly explained the position of the state in terms of human rights. The state as an entity that has power is considered capable of carrying out the mission of promoting human rights globally. The consequence of this is that the state will always be required to carry out its obligations in the context of promoting human rights. In the principle of human rights, the state is a human rights holder and every individual under its jurisdiction is a human rights holder. The main obligations that must be carried out by the state are the obligation to respect, the obligation to fulfill, and the obligation to protect. (Setiyani and Setiyono 2022) In addition, the state is also obliged to control and guarantee the implementation of human rights for every individual under its jurisdiction. As for a phenomenon of human rights violations, structurally the victims of human rights violations are citizens, both individuals and groups. Human rights violations can be linked to the state or government if the violation is committed by a state agency or official or the cabinet or parliament that makes or implements state policies. (Zaini 2016)

The position and role of the state as a human rights holder has clearly shown that all aspects concerning respect, protection, fulfillment and advancement of human rights are the responsibility of the state. If the state cannot carry out its obligations as a human rights holder, the state will be labeled as having committed a human rights violation. This condition has given rise to a principle of state responsibility where the state can be held accountable for human rights violations that befall a group or individual. In general, state responsibility will arise if the state has taken actions that are considered internationally wrong.

In relation to the state's responsibility in providing compensation to victims of gross human rights violations in Article 8 and Article 10 of the Universal Declaration of Human Rights,



it affirms the victim's right to receive protection and recovery through the national legal system. The provisions of this article certainly become the moral and normative basis that the state is obliged to provide a recovery mechanism for victims of human rights violations, including compensation.

In the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power ratified by the UN General Assembly on November 29, 1985 and recognized as a source of international norms that serve as guidelines for protecting victims of crime and abuse of power, although in Indonesian law it has not been explicitly adopted as a law, it is an important normative basis for the reformulation of Article 35 of the Human Rights Court Law, so that the state is no longer passive in waiting for a court decision to provide compensation to victims, because Article 12 states that: (If restitution is not fully obtained from the perpetrator or other sources, the state must strive to provide financial compensation to: a). Victims who suffer serious physical injuries or deterioration in physical or mental health as a result of a serious crime, b). Families, especially dependents of people who die or become physically or mentally incapacitated as a result of the crime. (Right 2018)

The principle of state responsibility is inherent in the state, meaning that the state is obliged to provide compensation when losses occur due to negligence committed by the state.

One example of compensation related to human rights is also regulated in Article 2 paragraph (3) of the ICCPR. This article states and regulates that the state is obliged to effectively restore victims of human rights violations even if the violations are committed by its own apparatus. (UNITED NATIONS 1967) The ICCPR is an international treaty that is legally binding and has been ratified by Indonesia through Law No. 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights. Thus, Indonesia is legally obliged to implement all provisions in the ICCPR. In relation to compensation as the responsibility of the state, this cannot be separated from the provisions of Article 2 paragraph (3) of the ICCPR which requires the state to provide an effective recovery mechanism, including compensation for victims of civil and political rights violations. This means that the state is fully responsible for restoring the rights of victims of gross human rights violations, including if the perpetrator has not been punished or the judicial process has not been completed.

Referring to the two international instruments above and the previous description of state responsibility, the protection of the human rights of crime victims in terms of compensation can be stated as follows:

1. The state is obliged to protect its citizens,

2. Compensation is given on the basis of state responsibility which is considered to be one of the causes of victimization
3. State responsibility in the form of compensation is secondary, meaning that compensation is given when full restitution is not obtained from the perpetrator of the crime.

The Victim Declaration contains a number of basic principles of justice that can be given to victims of crime, namely:

1. The right to restitution
2. The right to Compensation
3. The right to material, medical, psychological and social assistance
4. The opportunity to obtain justice and fair treatment in relation to the handling of the case and the ease of the mechanism for obtaining compensation.

This victim declaration is a moral call to UN member states to immediately create and strive to improve regulations and judicial administration to make it easier for victims of crime to obtain compensation either through formal or informal mechanisms. As a form of state responsibility, this declaration also contains an affirmation that member states review their customs and legislation to consider restitution as a punishment option in criminal cases in addition to other criminal sanctions. In terms of compensation, this declaration calls that if compensation is not fully obtained from the perpetrator or other sources, the state must strive to provide financial compensation to: a) victims who suffer serious physical injuries or mental deterioration as a result of serious crimes, b) families, especially dependents of people who die or become physically or mentally incapacitated as a result of the crime. (Right 2018)

The Position of the State in Providing Compensation to Victims of Gross Human Rights Violations

In fact, human rights violations are unlawful acts (Article 1365 BW), which requires the person who committed the act to pay compensation to the victim. (Asrowi dan Suko Susilo 2006, 147) Initially, compensation was a problem between the victim and the perpetrator as a form of revenge. (Maharandi 2004, 65) This initial concept gave rise to various problems that disturbed the peace of society, so that in its development the concept of material compensation emerged. Then in further developments, society handed over the issue of compensation to the authorities as regulated by law.

The term compensation in the Kamus Besar Bahasa Indonesia is: 1) Compensation; 2) Settlement of receivables by providing goods of equal value to the debt; 3) Searching for

satisfaction in one area to obtain balance from disappointment in another area.; 4) Rewards in the form of money or non-money (in kind), which are given to employees in a company or organization. (Debdikbud 1990, 453)

The concept of compensation arises on the basis of the idea that the state is also guilty of an act that causes victims. Therefore, it is only natural for the state to provide compensation to the victim. (Sahetapy 1987, 97) Likewise, in cases of gross human rights violations, it must be followed by the state's responsibility to punish the perpetrators and provide fair compensation to the victims. This principle is known as an effective remedy. (Widodo 2004, 2) Every victim of gross human rights violations has the right to redress, namely the right to receive restoration of their dignity and survival. This right will be fulfilled by punishment of the perpetrators and compensation for the losses suffered. Compensation arises from the victim's request, and is paid by society/the state ("the responsibility of the society"). The basis for compensation from the state is fundamental that every citizen should have a form of guarantee against the risk of crime, as a form of social solidarity. Compensation is given because someone suffers material losses and immaterial losses. (Amal 2020, 85) Civil compensation is given through the criminal process and is supported by state revenue sources. Here compensation does not have any criminal aspect, even though it is given in a criminal process. So, compensation remains a purely civil institution, but the state fulfills or bears the obligation to compensate the perpetrator imposed by the court. This is an acknowledgment that the state has failed to carry out its duties to protect victims and has failed to prevent crimes from occurring.

Compensation in the concept of compensation has the meaning of providing assistance to a victim of a violent crime taken from public funds. So compensation is more a part of social welfare efforts, rather than a part of the criminal justice system, so that its implementation is also based more on the state's responsibility to protect its citizens, especially those who are victims of a crime. (Amal 2020, 88)

Various international human rights (HAM) legal instruments have normatively required the state to provide guarantees of protection and respect for the human rights of each individual. However, the existence of these instruments cannot in itself end or prevent human rights violations in various countries. Dinah Shelton stated, (Dinah Shelton 1999, 14)

"there are close to one hundred human rights treaties adopted globally and regionally. Nearly all states are parties to some of them and several human rights norms have become part of customary international law. Yet, like all law, human rights law is violated. It has not ended governmental oppression and by itself cannot prevent or remedy all human rights abuses.

State responsibility in relation to human rights, was initially developed from the law of state responsibility that regulates the treatment of foreigners. It contains rules regarding how foreigners can file claims due to the wrong treatment of them by the state. From the above, procedures were then developed in international human rights law that allow victims of human rights violations to file claims directly against the state. Dinah Shelton explains, (Dinah Shelton 1999, 93)

"international human rights law has developed innovative procedures to allow victims of human rights violations to bring complaints directly against the offending state. Prior to development of these procedures, violations of international law-in cluding those involving the mistreatment of individuals-were met with responses under the law of state responsibility. This traditional body of law, particularly the part of it that concerns the mistreatment of aliens, contains useful precedents for evaluat ing the nature and scope of remedies afforded in state practices.

In this regard, the law of state responsibility for losses suffered by foreigners can be seen as a precursor to international human rights law. (Dinah Shelton 1999, 104)

"In some regards, the law on state responsibility for injury to aliens can be viewed as a precursor to international human rights law, in spite of long-standing debate over whether the required standard of treatment was 'international minimum' or 'national treatment' standard."

The law of state responsibility also requires a state to make reparations when it fails to carry out, by doing or not doing something attributable to it, an obligation under international law. (Dinah Shelton 1999, 93)

International law stipulates that states must be responsible for any human rights violations that occur in their territory. According to the principle of state responsibility, serious human rights violations can be categorized as internationally wrongful acts. The action is regulated in Article 1 of the International Law Commission Draft on Responsibility of States for Internationally Wrongful Act 2001 (Draft ILC 2001) which states that any internationally wrongful act of a state will give rise to international responsibility of that state. (International Law Commission Draft on Responsibility of States for Internationally Wrongful Act 2001 2002)

Article 2 of the Draft ILC 2001 stipulates that the wrongful act arises when an act in the form of an action or omission can be accounted for by the state according to international law and results in a violation of an international obligation of the state. Based on Article 31 paragraph (1) of the Draft ILC 2001, the state must be responsible and obliged to make full reparation for the losses (injury) that arise due to its actions.



The law of state responsibility can be applied to human rights violations, because it results in a violation of international obligations. Bing Cheng stated this as follows.

"Clearly, the law of state responsibility remains applicable to the violation by a state of internationally-recognized human rights, because such an act constitutes a breach of an international obligation."(Dinah Shelton 1999)

Meanwhile, based on the principle of state responsibility, the state must make reparations for human rights violations that occur. For the perpetrators, the state is obliged to carry out legal proceedings against those responsible for the occurrence of human rights violations. For the victims, the state is obliged to provide compensation, restitution, rehabilitation, and guarantees that similar events will not be repeated. This kind of thing can be found in several documents, such as: *the United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles and Guidelines)* dan *the General Comment No. 3 of the UN Committee against Torture emphasises that 'the comprehensive reparative concept' comprises of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition* (Sari 2013)

The concept of responsibility has actually been recognized in every legal system, both in national legal systems and international law. C. de Rover stated, (Rover. 1998)

"in any legal sistem there must be liability for failure to observe obligations imposed by its rules. Municipal law distinguishes between civil and criminal liability based upon deliberate or negligent acts or omissions that constitute an offence under that law. In internati onal law such liability is known as responsibility. Responsibility arises for the breach of any obligation owed under international law."

However, the issue of state responsibility to date is still an area that has not been clearly regulated in international law. (Boczek 1987, 57) The unclear regulation of state responsibility to date is, among other things, marked by the absence of an international agreement that regulates it. Discussions on state responsibility have actually been carried out by the International Law Commission (ILC) since its first session (1949) until it entered its 53rd session (2001). Therefore, other sources of international law such as customary international law, general legal principles, decisions of the International Court of Justice (ICJ) relating to the application of the principle of state responsibility can be used as a legal basis for resolving human rights violations.

The principle of state responsibility known in international law that commits serious human rights violations. The form of state responsibility is manifested, among other things, by

punishing the perpetrators through legal mechanisms in the country concerned, providing compensation, restitution, and rehabilitation to the parties who are victims.

The implementation of a complete legal process for perpetrators of serious human rights violations at the national level by the violating country is a form of state responsibility regulated in international human rights law. If this is not implemented then the international mechanism will act.

The international mechanism is basically more complementary and will be applied if the national mechanism is not implemented. For example, the complementary principle contained in the ICC Statute can be stated. (Cartwright 2010)

"The ICC should also act as a catalyst for national prosecution. The statute makes the Court's jurisdiction "complementary" to that of national courts. The basic principle is that the ICC will complement -and not replace- national courts, and will prosecute only those cases that are not dealt with by national courts or for which national investigation is a sham. A case will only be admissible if the prosecution can show that the national courts are unable or unwilling to investigate. This recognizes that the ICC can never be the primary trial court for "rank and file" offenders, and that duty to prosecute should lie first with national courts."

Furthermore, state protection for its citizens applies wherever they are in all corners of the world because the protection provided is one of the rights of citizens that is embodied in the Body of the 1945 Constitution of the Republic of Indonesia Article 28D paragraph (1) which states that "Everyone has the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law". Therefore, with the protection of Indonesian citizens wherever they are, the state has not only fulfilled its obligations but has also fulfilled the human rights of these citizens. The obligations and responsibilities of the state within the framework of a human rights-based approach can be seen in three forms : (Khairunnisa 2018)

- a. Respect: it is the state's obligation not to interfere in regulating its citizens when exercising their rights. In this case, the state has an obligation not to take actions that will hinder the fulfillment of all human rights.
- b. Protect: it is the state's obligation to act actively for its citizens. The state is expected to act actively in providing guarantees of protection for the human rights of its citizens and the state is obliged to take measures to prevent violations of all human rights by third parties.

- c. Fulfill: it is the state's obligation and responsibility to act actively so that the rights of its citizens are fulfilled. The state is obliged to take legislative, administrative, legal, budgetary and other measures.

This State obligation is carried out by the government in a broad sense (executive, legislative and judicitive). Criminal law has taken over the rights of the Victim in fulfilling his/her need to vent his/her revenge. Related to the retributive theory in criminalization, the demands for absolute justice may only be carried out by the State through its law enforcement apparatus. The interests of the Victim have been represented by the Police at the investigation level and the Prosecutor/Public Prosecutor at the prosecution and trial levels.

State responsibility in International Law according to Theo van Boven arises as a result of violations of International Law by the State. Elements that constitute violations of International Law include:

1. Carrying out actions that are not permitted or not carrying out actions that are the obligations of the State, based on the provisions of International Law.
2. Carrying out actions that constitute a violation of a State's International obligations.

The International Law Commission further provides details regarding violations of international obligations and distinguishes them into two, namely:

1. *International Crimes*
2. *International Delicts*.

International crimes are violations of international obligations that are so important for the protection of the interests of the international community and are considered crimes by that community as a whole. Those that fall into this category include serious violations of international obligations including gross human rights violations. Meanwhile, international crimes are actions that violate or violate international provisions but are not classified as crimes. (Boven 2002, 19)

The issue of state responsibility in relation to international law for human rights will arise if a state violates its obligation to respect human rights. (Boven 2002, 24) In a human rights violation, especially a gross human rights violation, the state has the first obligation to conduct an investigation, prosecute the perpetrator and punish him if proven guilty. This obligation requires the state to respect internationally recognized human rights and ensure the implementation of these rights and if a violation does occur, the government is obliged to give an appropriate punishment to the perpetrator to prevent impunity for the case. failing to protect a gross human rights violation that will result in Second, providing compensation, rehabilitation and compensation to the victim.

This obligation implies that the State is responsible for carrying out effective reparation for the Victims.

Law enforcement against cases of gross human rights violations in Indonesia, including 12 incidents that have been officially declared by the government as gross human rights violations, has so far experienced many obstacles, ineffectiveness, and minimal concrete results, both in judicial (court) and non-judicial (administrative recovery and compensation) aspects. Although the 1945 Constitution expressly mandates the protection and respect of human rights, especially in Article 28I paragraph (4) which states that "Protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government", reality shows that this responsibility has not been carried out optimally, especially in handling cases of gross human rights violations. Until now, the state has not shown seriousness and effectiveness in resolving 12 cases of gross human rights violations in the past, which have been recognized by the government through Presidential Decree Number 17 of 2022.

The state's responsibility to provide compensation for victims of gross human rights violations is a fundamental aspect in enforcing justice and rehabilitating victims. However, in practice, the compensation mechanism regulated in Article 35 of Law Number 26 of 2000 concerning the Human Rights Court still faces various obstacles. The formulation of the definition of compensation has the consequence of making it difficult for victims to obtain compensation. Compensation requires a guilty perpetrator and states that the perpetrator is obliged to pay restitution first. This provision means that compensation is not immediately given if the perpetrator is not found guilty by the court even though it is recognized that there has been a Gross Human Rights Violation. (Abidin 2016)

The urgency of regulating the provision of compensation to victims of gross human rights violations is a state responsibility that cannot be postponed, considering that gross human rights violations have caused prolonged suffering, both physically, psychologically, and socially. In the context of national law, the current compensation mechanism still depends on a court decision declaring the defendant guilty.

The urgency of regulating the provision of compensation to victims of gross human rights violations is not only based on a country's constitutional obligations, but also on international legal norms that have been universally agreed upon. Compensation for victims of gross human rights violations is part of the right to restitution guaranteed by international law. In this regard, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse



of Power (1985) are fundamental references. Article 8 of the UDHR explicitly states that everyone has the right to an effective legal remedy for violations of their rights. This emphasizes that the right to compensation is not a form of mercy or voluntary policy, but rather part of human rights that must be fulfilled by the state. Furthermore, Article 2 paragraph (3) of the ICCPR strengthens this position by requiring state parties to provide effective legal remedies, even if the violation is committed by an official state official. This means that the state cannot evade its responsibility simply because the perpetrator of the violation is from a state institution. In the context of gross human rights violations, this provision is very important because violations are generally systematic and are carried out by state officials or are allowed by the state itself. Therefore, the state is not only obliged to prosecute the perpetrators, but also to ensure that the victims receive the right to compensation as part of comprehensive recovery. Meanwhile, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) provides more technical and moral guidance for the state to guarantee the rights of victims. Articles 11 and 12 emphasize that when the perpetrator is unable to provide compensation, the state must take over the responsibility through the state compensation mechanism. This principle is very relevant for Indonesia, considering that in many cases of gross human rights violations that have been recognized by the government such as the 1965-1966 incident, the 1997-1998 Enforced Disappearances, and the Wasior-Wamena Tragedy, there has been no proper compensation given to the victims. The state cannot continue to delay the recovery of victims on the grounds of formal law alone.

4. CONCLUSIONS

The state's responsibility to provide compensation for victims of gross human rights violations is a fundamental aspect in enforcing justice and rehabilitating victims. However, in practice, the compensation mechanism regulated in Article 35 of Law Number 26 of 2000 concerning the Human Rights Court still faces various obstacles. The formulation of the definition of compensation has the consequence of making it difficult for victims to obtain compensation. Compensation requires that there be a guilty perpetrator and states that the perpetrator is obliged to pay restitution first. This provision means that compensation is not immediately given if the perpetrator is not found guilty by the court even though it is recognized that there has been a Gross Human Rights Violation. Therefore, the regulation of compensation for victims of gross human rights violations is not only based on a country's constitutional obligations, but also on international legal norms that have been universally agreed upon. In this case, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights



(ICCPR), and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) are fundamental references.

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