



The Urgency of Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance in the Enforcement of Human Rights in Indonesia

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Article	Abstract
Keywords: ICPED; Enforced Disappearance; Ratification; Legal protection	<i>The mechanism of enforced disappearance is regulated in Law No. 39 Year 1999 on Human Rights and Law No. 26 Year 2000 on Human Rights Court, but in the law the definition of enforced disappearance is still unclear, there is no active subject and there is no element of degrading human dignity in crimes against humanity. This study was conducted to analyze the urgency of ratification of the International Convention For The Protection Of All Persons From Enforced Disappearance (ICPPED) in upholding human rights in Indonesia and to examine the legal protection of victims and families of victims of enforced disappearance. This research uses normative juridical research method by using laws and regulations and legal science concepts as the basis of analysis. As for the research results obtained, ratifying the International Convention For The Protection Of All Persons From Enforced Disappearance (ICPPED) was carried out as an effort to break the chain of enforced disappearance practices, anti-impunity, and as an effort to provide guarantees of recovery for victims of enforced disappearance. Legal protection is provided as a form of strengthening regulations and as an effort to favor victims in the form of restoring the rights of victims of deprived rights protection including restitution, compensation, and rehabilitation.</i>

INTRODUCTION

Enforced disappearances are characterized by acts of arrest, detention, kidnapping against their will, deprivation of liberty carried out by government officials or organized groups acting with the authority and intent of the government, followed by a refusal to reveal the fate, whereabouts and a refusal to acknowledge the deprived liberty (Amnesty International 2022).

According to the Commission for Missing Persons and Victims of Violence (KontraS), the first round of enforced disappearances occurred in 1965 (the mass murder of PKI and Sukarno supporters who were PKI-ed), 1982-1985 (mysterious shooting incident), 1984 (Tanjung Priok incident), 1989 (Talangsari incident, Lampung), the Occupation of East Timor, 1997-1998 (Kidnapping of pro-democracy activists). Then the second round occurred during the reform era, namely the implementation of Military Operations Areas in Aceh and Papua (KontraS 2018).

Based on the results of the National Commission on Human Rights' investigation into the enforced disappearances of the 1965-1966 Incident, an estimated 32,774 people have disappeared and there are several places known as the locations of the massacre of victims (KontraS 2020b). Then in the mysterious shooting incident in 1982-1985 there were around 23 people who became victims of enforced disappearance, there were 15 victims of enforced disappearance in the 1984 Tanjung Priok incident, 235 people died and their whereabouts are unknown in the 1989 Talangsari incident, 23 activists were kidnapped in the period 1997-1998 of which 13 people are still missing to date, 18,600 people disappeared in the 1975-1999 East Timor incident, Ruth Sitepu and her husband who were victims of enforced disappearance in 2016, and this number does not include other events such as the Aceh conflict and the Papua conflict (KontraS 2020a).

The mechanism for enforced disappearances is regulated in Law No. 39 of 1999 concerning Human Rights and Law No. 26 of 2000 concerning Human Rights Courts.

In Article 33 paragraph (2) Law no. 39 of 1999 stated:

"Everyone has the right to be free from enforced disappearance and deprivation of life."

And in Article 34 of Law No. 39 of 1999 it states:

"Everyone must not be arrested, detained, forced, excluded, exiled or exiled arbitrarily."

The explanation of Article 33 paragraph (2) states that the definition of enforced disappearance is "an action carried out by anyone which causes a person's whereabouts and condition to be unknown." **Enforced disappearance is defined in a complex manner in international human rights law.** The **explanation of enforced disappearance** in Article 33 paragraph (2) obscures the "active subject" of the perpetrator of the enforced disappearance. **in the form of** state actors and non-state actors who act with the knowledge of the state. This **definition** also does not contain the element of "refusal to acknowledge the deprivation of liberty" or **any** act of "concealment of the fate or whereabouts of the victim". These factors can be a point of differentiation between the crime of enforced disappearance and other crimes including kidnapping (Ashri 2023).

The act of enforced disappearance is classified as a crime against humanity based on Article 9 of Law No. 26 of 2000 concerning the Human Rights Court, which states:

"Crimes against humanity as referred to in Article 7 letter b are acts committed as part of a widespread or systematic attack with the knowledge that the attack is aimed directly at the civilian population in the form of:

(iii) Enforced disappearance of persons.."

Sanctions for acts of enforced disappearance are regulated in Article 40:

"Any person who commits an act as referred to in Article 9 letters g, h, or i shall be punished with a maximum prison sentence of 20 (twenty) years and a minimum of 10 (ten) years."

In the international sphere, there is *the International Convention for the Protection of All Persons from Enforced Disappearance* (ICPPED) as an international human rights instrument that is legally binding in its entirety regarding enforced disappearances.

Through this convention, the definition of enforced disappearance is stated in Article 2 which reads:

"According to this Convention, enforced disappearance is the arrest, detention, abduction or other act of deprivation of liberty carried out by State officials or by individuals or groups who carry it out with the authority, support and approval of the State, followed by denial of knowledge of the act of deprivation of liberty or an attempt to conceal the fate and whereabouts of the disappeared person, thus causing the disappeared person to be outside the protection of the law."

This convention provides the legal basis for the use of universal jurisdiction and international extradition of suspected perpetrators of enforced disappearances (Ashri and Giovanni 2023). **The definition** of victim in this convention is also expanded to recognize that families and relatives of victims also experience suffering as independent victims (Jonaldi, Tadens, and Bonatukan 2023). Expanding the definition of victim can foster a commitment to upholding human rights.

The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) is the first legally binding human rights instrument specifically addressing enforced disappearance. It addresses gaps in previous human rights instruments by explicitly defining, prohibits and criminalizes enforced disappearances, and also contains specific mechanisms for the prevention, investigation and prosecution of enforced disappearances, as well as providing protection and reparation for victims and their families (Enforced Disappearances 2010).

Based on the background description, to avoid the continuation of enforced disappearances in Indonesia, the author is interested in conducting legal research entitled, " **The Urgency of Ratifying *the International Convention for the Protection of All Persons from Enforced Disappearance* in Upholding Human Rights in Indonesia ."**

METHOD

This legal research employs a normative juridical approach. According to Peter Mahmud, normative legal research is the process of discovering legal rules, principles, and doctrines to address the legal issues at hand (Marzuki 2019). This research will examine the urgency of ratifying the international convention on enforced disappearances as a preventive measure by the state to strengthen human rights protection.

This research will use the statute approach *and* the conceptual approach. The statute approach *is* a research approach that uses laws and regulations as the initial basis for analysis (Fajar and Achmad 2010).

This research uses a legal material collection technique called literature study. Literature study is the examination of written information regarding law originating from various sources and widely published, and is necessary for normative legal research (Muhaimin 2020).

This research uses qualitative prescriptive legal material analysis techniques. Prescriptive analysis is conducted by providing arguments based on the research results (Muhaimin 2020).

RESULTS AND DISCUSSION

1. Urgency of Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance in the Enforcement of Human Rights

Enforced disappearances are crimes against humanity that pose a serious problem for Indonesia and other countries worldwide. Enforced disappearances are classified as ongoing crimes, *involving* single incidents over a long period of time, with particular attention paid to abuse, counter-terrorism measures as a pretext for violating state obligations, and widespread impunity. Serious action is needed in addressing cases of enforced disappearances. Ratifying the *International Convention for the Protection of All Persons from Enforced Disappearance* (ICPPED) is a crucial step in demonstrating the state's commitment to addressing cases of enforced disappearances.

The ratification process for the International Convention **for** *the Protection of All Persons from Enforced Disappearance* (ICPPED) began on September 28, 2009, and continues to this day. To date, acts of enforced disappearances continue to occur in several regions, and the rights of victims and their families have not been fully fulfilled. This is why a serious commitment to addressing enforced disappearances in Indonesia is needed through the ratification of *the International Convention for the Protection of All Persons from Enforced Disappearance* (ICPPED). The urgency of ratifying *the International Convention for the Protection of All Persons from Enforced Disappearance* (ICPPED) is as follows:

a. **Lack of Adequate National Regulations**

Currently, there are still no adequate national regulations regarding enforced disappearances, and the existing regulations do not yet comply with international provisions.

In the applicable legal regulations, acts of enforced disappearance are regulated in Article 33 paragraph (2) of Law no. 39 of 1999 concerning Human Rights which states: "Everyone has the right to be free from enforced disappearance and deprivation of life."

In the explanation of Article 33, enforced disappearance is defined as:

"An action carried out by anyone that causes a person's whereabouts and condition to be unknown."

The definition of enforced disappearance in the explanation of Article 33 is considered too general, thus creating difficulties in its legal application. In addition to the definition of enforced disappearance, other weaknesses in Article 33 are that the article does not explicitly criminalize the act of enforced disappearance as a stand-alone act, does not mention witnesses to the act of enforced disappearance, and does not specifically explain the mechanism for dealing with enforced disappearances, but only states that the government is obliged to address human rights violations.

Furthermore, Article 34 states:

"Everyone must not be arrested, detained, forced, excluded, exiled or exiled arbitrarily."

Similar to Article 33, the act of enforced disappearance does not specify in detail the forms of action that constitute enforced disappearance. The only acts classified as enforced disappearance under this article are arbitrary arrest, detention, exclusion, exile, and banishment.

As written in Article 2 of ICPPED which states:

"For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."

"According to this Convention, enforced disappearance is the arrest, detention, abduction or other act of deprivation of liberty carried out by State officials or by any group of people who carry it out with the authority, support and approval of the State, followed by denial of knowledge of the act of deprivation of liberty or an attempt to conceal the fate and whereabouts of the disappeared person, thus causing the disappeared person to be outside the protection of the law."

Furthermore, Article 9 of Law No. 26 of 2000 concerning the Human Rights Court states:

"Crimes against humanity as referred to in Article 7 letter b are acts committed as part of a widespread or systematic attack with the knowledge that the attack is aimed directly at the civilian population in the form of:

... i. Enforced disappearance of persons".

The article, specifically the definition of crimes against humanity, does not specify the form of "attack." In addition to the definition of crimes against humanity, one category missing from the law is the degrading nature of crimes against humanity (Santoso 2022).

The definition of enforced disappearance is also considered unclear because it does not include elements of enforced disappearance in international law, such as refusing to acknowledge or provide information regarding the victim's whereabouts and does not explain the rights of the victim and the victim's family (Sujarwo 2020).

b. Commitment to Human Rights Protection in Indonesia

The government has stated its commitment to providing human rights protection through human rights institutions and through applicable legal instruments.

In accordance with the provisions of Article 28G paragraph (1) of the 1945 Constitution which states:

"Everyone has the right to protection of themselves, their families, their honor, their dignity and the property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right."

If it is related to fulfilling the rights of victims of enforced disappearance, this paragraph can be The constitutional basis for protecting human rights, particularly personal data and dignity. Personal data protection, when linked to the rights of victims of enforced disappearance, includes the right not to be misused, accessed, or disclosed without consent, as well as the right to access information regarding the enforced disappearance.

In addition, Article 28G paragraph (2) states:

"Everyone has the right to be free from torture and treatment that degrades human dignity and has the right to obtain political asylum from another country."

This article can be used as a basis for protecting victims of enforced disappearances. This article emphasizes the rights that protect a person against forms of torture and acts that degrade human dignity, as victims of enforced disappearances often experience.

This is further reinforced through the ICPPED Article 19 which states:

"(1) Personal information, including medical and genetic data, which is collected and/or transmitted within the framework of the search for a disappeared person shall not be used or made available for purposes other than the search for the disappeared person. . This is without prejudice to the use of such information in criminal proceedings relating to an offense of enforced disappearance or the exercise of the right to obtain reparation.

(2) The collection, processing, use and storage of personal information, including medical and genetic data, shall not infringe or have the effect of infringing the human rights, the fundamental freedoms or human dignity of an individual.”

“(1) Personal information, including medical and genetic data, collected and/or transmitted in an effort to locate a person deprived of liberty may not be used or made available for purposes other than the search for the person deprived of liberty. This is done without prejudice to the use of such information in the case of judicial proceedings related to the crime of enforced disappearance or the exercise of the right to obtain redress.

(2) The collection, processing, use and storage of personal information, including medical and genetic data, must not violate or diminish a person's human rights, fundamental freedoms or dignity .”

Article 19 emphasizes the rights of victims and their families to receive information and receive reparation. In receiving information, victims and their families have the right to know the fate and whereabouts of the missing person, and the government may take steps to investigate the missing person and provide information regarding the results of the investigation. Information should not be provided for any purpose other than to locate the missing person. In receiving compensation, victims and their families have the right to receive fair and appropriate compensation, both material and immaterial.

c. **State Commitment to Preventing the Recurrence of Enforced Disappearances**

The state has an obligation to **prevent** the recurrence of enforced disappearances. Guarantees of *non-repetition* are one of the rights to reparation , which is the government's responsibility to fulfill victims' rights.

Regarding the prevention of the repetition of the practice of enforced disappearance, it is stated in Article 24 paragraph (5) of ICPPED which states:

“The right to obtain reparation is referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:

- a. Restitution;*
- b. Rehabilitation;*
- c. Satisfaction, including restoration of dignity and reputation;*
- d. Guarantee of non-repetition.”*

“The right to obtain reparation as referred to in paragraph 4 includes material and psychological aspects and, where necessary, other aspects of reparation such as:

- a. Restitution;
- b. Rehabilitation;
- c. Satisfaction, including restoration of dignity and reputation;
- d. Guarantee that you will not experience the same thing.”

This article emphasizes reparations for victims **with the aim of** improving the situation. Victims include the victim's family and those directly dependent on the victim, as well as those who suffered as a result of helping the victim or preventing victimization (Eddyono and Abidin 2016).

Reparations **refer to** efforts to restore or compensate victims of human rights violations. In the context of restitution, financial compensation can include repairing the losses suffered, such as financial compensation, medical expenses, and educational costs.

Rehabilitation for gross human rights violations involves supporting victims to recover. This includes medical, psychological, and psychosocial rehabilitation.

Associated with Restoring the victim's dignity and reputation is intended as an effort to return the victim to their previous situation. By resolving cases of gross human rights violations, it is hoped that the rights of the victim will be restored, while also restoring their dignity and reputation. **The** restoration of the victim's dignity **is evidence** that Indonesia, as a state based on the rule of law, recognizes, respects, and protects human rights, which are rooted in respect for human dignity. However, the guarantee of non-recurrence is still not explicitly stated in applicable laws and regulations.

d. Enforced Disappearances Still Occur in Indonesia

The act of enforced disappearance is classified as a continuing crime . Black's Law Dictionary defines *a continuous crime* as lasting; not terminated by an act or fact; persisting for a certain period of time or intended to cover or enforce similar obligations or events in succession over a certain period of time (Dalmia 2023).

disappearances continue to occur in Indonesia . Examples of enforced disappearances include the 1965-1966 incident, the 1982 mysterious shootings, the 1986 Tanjung Priok incident, the 1989 Talangsari incident, and the 1997-1998 activist kidnappings. Beyond these cases, many other cases of enforced disappearances continue to occur.

During the 1965-1966 events, gross human rights violations occurred against members of the Indonesian Communist Party (PKI) and those involved with the PKI. According to the 1965 *International People's Tribunal* (IPT), the number of victims likely ranged from 400 to 500,000, with approximately 600,000 victims of imprisonment, including forced labor, and slavery. Meanwhile, an investigation by the National Human Rights Commission (Komnas HAM) estimates that approximately 32,774 people have disappeared without a known location. However, to date, no efforts have been made to restore the victims' rights.

The Mysterious Shootings (Petrus) are a case of gross human rights violations that occurred from 1982 to 1985, a measure deemed a deterrent to crime. KontraS also reported that 23 people were victims of enforced disappearance. To date, all

efforts to resolve the case and restore rights have failed. The truth remains unknown, and the victims have not been held accountable.

The Tanjung Priok incident was a gross human rights violation that occurred on September 12, 1984. According to KontraS, 15 people disappeared during this incident. The case was not considered a human rights violation but should have been prosecuted in criminal court. This resulted in the revocation of the state's obligation to provide compensation, restitution, and rehabilitation to the victims and their families.

In the Talangsari Incident on February 7, 1989, an estimated 235 members of the congregation were declared missing and their whereabouts are unknown. The fulfillment of the victims' rights in the Talangsari Incident is considered insufficiently serious, as it is dominated by material reparations, which tend to override the fulfillment of basic citizen rights. Furthermore, regulations in the law containing compensation and rehabilitation provisions that require waiting for a court decision make fulfilling victims' rights even more difficult (Amran and Runturambi 2021).

The 1997-1998 activist kidnappings were a serious human rights violation against activists, youth, and students who sought to uphold justice and democracy during the New Order era. Nine people were reportedly successfully returned, while 13 have not yet returned. Efforts to secure the rights of the victims of the 1997-1998 activist kidnappings are still ongoing, but there has been no clear conclusion to these efforts.

The events described above provide evidence that enforced disappearances continue to occur in Indonesia. Cooperation from all parties is needed to support efforts to prevent further acts of enforced disappearance.

e. Provide a legal basis for Indonesia to persuade other countries to protect Indonesian citizens from enforced disappearances.

Enforced disappearances are not excluded from the possibility of Indonesian citizens (WNI) abroad. Indonesia is committed to protecting all Indonesian citizens, as stated in Paragraph IV of the Preamble to the 1945 Constitution, which states:

"Then, to form an Indonesian government that protects all the Indonesian people and all of Indonesia's territory..."

In addition, Article 18 of Law No. 37 of 1999 concerning Foreign Relations also states:

"(1) The Government of the Republic of Indonesia protects the interests of Indonesian citizens or legal entities facing legal problems with representatives of foreign countries in Indonesia.

(2) The provision of protection as referred to in paragraph (1) is carried out in accordance with international law and customs."

Through these articles, Indonesia demonstrates its commitment to ensuring the protection of Indonesian citizens abroad. For example, in the case of the enforced disappearance of Indonesian citizen Ruth Sitepu in Malaysia, Ruth Sitepu and her husband, Joshua Hilmy, a Malaysian citizen, have been reported missing since 2016.

Until now, the search for Ruth Sitepu and Joshua Hilmy is still ongoing, but there are obstacles in completing it. KontraS said that in resolving the forced disappearance case of Ruth Sitepu with Joshua Hilmy, even though facts were found regarding the perpetrator of the forced disappearance, the Royal Malaysian Police (PDRM) showed a non-proactive attitude towards this case of forced disappearance. PDRM seems to be covering up the facts of the investigation. Apart from that, KontraS also conveyed the lack of witness protection during the *public inquiry process*.

This case demonstrates the importance of ratifying *the International Convention for the Protection of All Persons from Enforced Disappearance* (ICPPED). Ratification of this convention provides the legal basis for persuading other countries to provide protection for their citizens abroad.

2. Forms of Legal Protection for Victims and Families of Victims of Kidnapping and Enforced Disappearance in Indonesia

The state has an obligation to provide protection and restoration of rights for victims of gross human rights violations. Legal protection measures that the state can provide include preventive measures, such as ratifying *the International Convention for the Protection of All Persons from Enforced Disappearance* (ICPPED), and repressive measures, such as guaranteeing a sense of security for victims and fulfilling their rights.

a. Preventive Legal Protection

Preventive legal protection is implemented to prevent similar acts from occurring again. Efforts to prevent enforced disappearances include strengthening regulations regarding enforced disappearances. In addition to preventing the recurrence of enforced disappearances, preventive legal protection is implemented as a form of anti-impunity. Impunity is defined as freedom from punishment, harm, or loss (Merriam Webster 2008).

States are required to define enforced disappearance as a separate crime to prevent impunity.

The definition of enforced disappearance in Article 2 of the ICPPED states: *“For the purposes of this Convention, “enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”*

"According to this Convention, enforced disappearance is the arrest, detention, abduction or other act of deprivation of liberty carried out by State officials or by individuals or groups who carry it out with the authority, support and approval of the State, followed by denial of knowledge of the deprivation of liberty or an attempt to conceal the fate and whereabouts of the disappeared person, thus causing the disappeared person to be outside the protection of the law."

In order to clarify the definition of enforced disappearance, it is reinforced by Article 4 of ICPPED which states:

"Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offense under its criminal law".

"Each State Party shall take necessary steps to ensure that enforced disappearance is a crime under its criminal law."

Through the definition in the article, the main elements of the formulation of enforced disappearance are known, namely (Civilian Coalition Against Enforced Disappearances 2022):

- a. There is deprivation of liberty against the will of the victim;
- b. Actions in the form of arrest, detention, kidnapping, or other forms of deprivation of liberty;
- c. Actions carried out by state actors/agents or individuals/groups acting with the authority, support or approval of the state;
- d. There is a denial of deprivation of liberty or an act of concealment of the fate or whereabouts of the missing person;
- e. Placing victims outside of legal protection."

Furthermore, based on these two articles, the state is required to not only define enforced disappearance as the criminal acts of kidnapping, unlawful detention, illegal deprivation of liberty, and torture but also to make enforced disappearance a separate crime. Meanwhile, in the applicable regulations, namely in Law No. 39 of 1999 concerning Human Rights and Law No. 26 of 2000 concerning Human Rights Courts, the act of enforced disappearance is not clearly defined, resulting in diverse understandings of enforced disappearance, depending on the procedures of human rights bodies (Indonesian Coalition Against Enforced Disappearances 2011).

The expansion of the definition of disappearance was carried out on the grounds that the act of enforced disappearance is classified as a crime against humanity with widespread and systematic elements, so that if an incident of enforced disappearance occurs without fulfilling these elements, no accountability can be carried out because it is not classified as a gross human rights violation (Civil Coalition Against Enforced Disappearances 2022).

b. Repressive Legal Protection

Repressive legal protection is implemented to protect individuals and groups from actions deemed detrimental. Repressive legal protection can refer to actions to restore rights that have been violated, with the goal of ensuring that victims receive the restoration of their rights and dignity. The forms of recovery provided can include security protection, reparation, restitution, compensation, and rehabilitation.

The obligation to protect security in Article 18 paragraph (2) of ICPPED states:

“Appropriate measures shall be taken, where necessary, to protect the persons referred to in paragraph 1 of this article, as well as persons participating in the investigation, from any ill-treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty”

“The necessary steps must be taken, if necessary, to protect the persons referred to in paragraph 1, including persons involved in the investigation process, from all forms of physical threats and intimidation, or sanctions as a result of efforts to seek information about the person experiencing restrictions on liberty.”

One form of security protection that can be implemented is identity secrecy. Identity **secrecy** is implemented to protect victims in the event of a threat that might be carried out because their identity is known. In addition to avoiding threats, keeping identities secret or creating new ones aims to help victims recover from social and psychological stigma and feel safer. **To date**, there are still no legal provisions regarding the mechanism for identity change by the Witness and Victim Protection Agency (LPSK). In addition to security protection, other forms of protection provided can include restitution.

In *Principle 19 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*, it is stated:

“Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.”

“Restitution should, whenever possible, restore the victim to the situation they were in before the gross violation of international human rights law or serious violation of international humanitarian law occurred. Restitution includes, where appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, reinstatement of employment, and return of property.”

Meanwhile, in national regulations, restitution is regulated in the Criminal Procedure Code (KUHAP), Law No. 26 of 2000 concerning Human Rights Courts, Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims.

Article 98 of the Criminal Procedure Code states:

"(1) If an act which is the basis of the indictment in a criminal case examination by the district court causes harm to another person, then the presiding judge at the request of that person may decide to combine the claim for compensation with the criminal case.

(2) The request as referred to in paragraph (1) may only be submitted no later than before the public prosecutor files a criminal charge. If the public prosecutor is not present, the request must be submitted no later than before the judge issues a verdict."

There are shortcomings in Article 98 of the Criminal Procedure Code, such as the form of victim's loss is only at the first level and the form of compensation is material, in addition, in including a request for compensation in the case file, the victim must convince the public prosecutor (Rizki 2021).

Furthermore, Article 99 states:

"(1) If the injured party requests the consolidation of his lawsuit into a criminal case as referred to in Article 98, the district court shall consider the authority to try the lawsuit, the truth of the basis of the lawsuit and the penalty for reimbursement of costs incurred by the injured party.

In Article 99 paragraph (1) the form of loss that meets the requirements to be replaced is a loss that is real in nature, whereas losses that are immaterial in nature cannot be submitted as a combination of cases.

Article 100 states that:

"(2) If an appeal is not filed against a criminal case, then an appeal regarding the compensation decision is not permitted."

Article 100 paragraph (2) states that a request for compensation will only be made if an appeal is filed. In filing an appeal, coordination with the public prosecutor must be carried out, so that the form of protection for the victim still cannot guarantee the victim's interests in providing justice.

In Law No. 26 of 2000 concerning Human Rights Courts, regulations regarding restitution, compensation and rehabilitation are regulated in Article 35 paragraph (1) which states:

"(1) Every victim of a serious human rights violation and/or their heirs can receive compensation, restitution and rehabilitation."

The explanation of this article only mentions the type of compensation provided, but does not include the mechanism for claiming restitution. Similarly, the implementing regulations, namely Articles 3 to 5 of Government Regulation

No. 3 of 2002 concerning Compensation, Restitution, and Rehabilitation for Victims of Gross Human Rights Violations, only mention the procedures for implementing compensation, restitution, and rehabilitation.

Furthermore, through Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims, Article 7A paragraph (2) states:

"(2) The criminal acts as referred to in paragraph (1) are determined by a LPSK Decision."

Article 7A paragraph (2) explains that compensation is provided based on the LPSK decision and this can be interpreted to mean that not all victims of criminal acts can receive restitution, however the form of criminal act that can receive restitution is not explained in the provisions of this law.

Meanwhile, regarding requests for restitution, this is explained in Article 5 paragraph (4) of Perma 1 of 2022 concerning Procedures for Settling Requests and Providing Restitution and Compensation to Victims of Criminal Acts, which states:

"The application for restitution as referred to in paragraph (1) and paragraph (2) is made in writing in Indonesian, signed by the applicant or his/her attorney, and submitted to the Chair/Head of the Court, either directly or through the LPSK, investigator, or Public Prosecutor."

However, in practice, there are no regulations regarding a third party authorized to enforce court decisions regarding restitution, and no institution has the authority to oversee the restitution process (Hidayat 2022). Based on this, strengthening regulations regarding restitution is necessary to ensure that the rights of victims of enforced disappearance are fulfilled and have a clear legal framework.

Meanwhile, regarding the request for compensation, this is explained in Article 2 paragraph (3) of PP 44 of 2008 concerning the Provision of Compensation, Restitution and Assistance to Witnesses and Victims, which states:

"The application to obtain compensation as referred to in paragraph (2) is submitted in writing in Indonesian on stamped paper to the court via LPSK."

In practice, the state will only provide compensation if the perpetrator is unable to pay. Compensation will be awarded based on a court ruling for human rights violations, finding the perpetrator guilty. If the defendant is found not guilty, even if the incident is recognized as a gross human rights violation, the victim will still be denied their rights. Therefore, greater attention is needed in providing compensation as a demonstration of the government's commitment to providing reparations for victims of enforced disappearance.

Based on the provisions of ICPPED, the fulfillment of rights must be given to victims, namely parties who have suffered losses due to the practice of enforced disappearance as stated in Article 24 paragraph (1) of ICPPED which states:

“For the purposes of this Convention, “victim” means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance”

“For the purposes of this convention, a “victim” is a missing person or any other person who has suffered harm as a result of an act of enforced disappearance.”

In addition, it is reiterated to the state to guarantee that victims can obtain the right to rapid recovery as stated in Article 24 paragraph (4) ICPPED:

“Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation”

“Each State Party shall ensure, within its legal system, that any person who is a victim of enforced disappearance has the right to obtain prompt and fair reparation and compensation.”

CONCLUSION

Based on the things that the author has described in the results of the research and the author's discussion, it can be concluded that:

1. The points underlying the need for ratification of the international convention *The International Convention For The Protection Of All Persons From Enforced Disappearance* are related to the absence of adequate national regulations, as a form of commitment to human rights protection in Indonesia, as a form of state commitment in preventing the recurrence of enforced disappearance practices, enforced disappearance practices still occur in Indonesia, providing a legal basis for Indonesia to persuade other countries to protect Indonesian citizens from enforced disappearance. Ratification of this convention in upholding human rights is carried out as a chain breaker of enforced disappearance practices, anti-impunity, and as an effort to provide recovery guarantees for victims of enforced disappearance.
2. Legal protection provided to victims of enforced disappearances includes preventive and repressive legal protection. Preventive legal protection is implemented as a regulatory reinforcement by ratifying *the International Convention for the Protection of All Persons From Enforced Disappearance* (ICPPED) to prevent the spread of impunity due to the unclear definition of enforced disappearance and the absence of a strong legal mechanism. Meanwhile, repressive legal protection provides protection for the rights of those who have been deprived, including restitution, compensation, and rehabilitation. This is implemented as an effort to support victims in the form of restoring their rights.

Suggestion

Based on the author's research results, the author provides suggestions in the form of:

1. The Indonesian government must ratify the international convention, *The International Convention for the Protection of All Persons from Enforced Disappearance*, to prevent the recurrence of the practice of enforced disappearance.
2. The Indonesian government and law enforcement officials must work together to provide protection for all people against acts of enforced disappearance and to work together to ensure that victims' rights are fulfilled, including restitution, compensation, rehabilitation, and the right to find missing victims.

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