



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 103/PUU-XXI/2023**

Concerning

**Time Limit to Submit Application for Compensation, Medical Assistance,
or Psychosocial and Psychological Rehabilitation
for Victims of Past Terrorist Crimes**

- Petitioners** : Peria Ronald Pidu, et al.
- Type of Case** : Judicial Review of Law Number 5 of 2018 concerning the Amendment to Law Number 15 of 2003 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Act of Terrorism into Law (Law 5/ 2018) against the 1945 Constitution of the Republic of Indonesia (1945 UUD Constitution).
- Subject Matter** : Article 43L paragraph (4) of Law 5/2018 is contrary to the principle of equality before the law, legal certainty, and freedom from discrimination as guaranteed by Article 27 paragraph (1), Article 28D paragraph (1), and Article 28I paragraph (2) of the 1945 Constitution of the Republic of Indonesia.
- Verdict** : 1. To grant the Petitioners' petition in part.
2. To declare that the phrase "3 (three) years from the date of the enactment of this Law" in Article 43L paragraph (4) of Law Number 5 of 2018 concerning Amendment to Law Number 15 of 2003 concerning the Determination of Government Regulations in Lieu of Law Number 1 of 2002 concerning Eradication of Criminal Act of Terrorism into Law (State Gazette of the Republic of Indonesia 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 has conditionally binding legal force provided that it is not interpreted as "10 (ten) years from the date of the enactment of this Law ". Therefore, the norm of Article 43L paragraph (4) of Law Number 5 of 2018 concerning Amendment to Law Number 15 of 2003 concerning the Determination of Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Act of Terrorism into Law, which originally read "The application as referred to in paragraph (2) may be submitted no later than 3 (three) years from the date of the enactment of this Law" now reads in full, "**The application as referred to in paragraph (2) may be submitted no later than 10 (ten) years from the date of the enactment of this Law**

3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.
4. To dismiss the remainder of the Petitioners' petition

Date of Decision : Thursday, 29 August 2024

Overview of Decision

Whereas the Petitioners describe their qualifications as individual Indonesian citizens, the victims of a terrorist crime as determined in the letter of Determination of Victim of Terrorism Crime by *Badan Nasional Penanggulangan Terorisme* (BNPT or the National Counterterrorism Agency). In this regard, Petitioner I was a victim of a terrorist bombing incident at Tentena Market, Poso Regency, Sulawesi Tengah, which occurred on 28 May 2005 pursuant to the Letter of Determination of Victim of Terrorism Crime Number B-PA.03.02/272/2021, dated 19 July 2021. Meanwhile, Petitioner II was a victim of the terrorist bombing incident in Beji, Depok in 2012 pursuant to the Letter of Determination of Victim of Terrorism Crime Number B-PA.03.02/252/2021, dated 22 June 2021. Likewise, Petitioner III was a victim of the terrorist bombing incident in Beji, Depok in 2012 pursuant to the Letter of Determination of Victim of Terrorism Crime Number B-PA.03.02/245/2021, dated 22 June 2021.

Regarding the Court's Authority, because the Petitioners petition for a review of the constitutionality of norms of law, *in casu* Article 43L paragraph (4) of Law 5/2018 against the 1945 Constitution, the Court has the authority to hear the *a quo* petition;

Whereas in relation to the Petitioners legal standings, the Court is of the opinion that the Petitioners have been able to describe their constitutional rights and the alleged constitutional loss due to the enactment of the norms being petitioned for review. The alleged constitutional loss is specific and actual, which according to the Petitioners, it is caused by the enactment of Article 43L paragraph (4) of Law 5/2018 which regulates a time limit of 3 (three) years to submit an application for compensation, medical assistance, or psychosocial and psychological rehabilitation since the enactment of Law 5/2018, as such the deadline for the submission was on 22 June 2021, according to the Petitioners, the Petitioners could not receive compensation, medical assistance, or psychosocial and psychological rehabilitation because of this time limit, since the Petitioners has only received a letter of determination as victims of a criminal act of terrorism from BNPT on 19 July 2021 and 22 June 2021. The Petitioners' alleged constitutional loss has a causal relationship (*causal verband*) with the enactment of the statutory norms for which a judicial review is being petitioned, if the Petitioners' petition is granted, the constitutional loss as described will no longer occur. Therefore, regardless of whether or not the unconstitutionality of the norms as argued by the Petitioners is proven, the Court is of the opinion that the Petitioners have the legal standing to act as Petitioners in the *a quo* petition.

Whereas according to the Petitioners, the provisions of Article 43L paragraph (4) of Law 5/2018 do not reflect fair legal certainty and equality in treating victims. In addition, the *a quo* provisions of Article 43L paragraph (4) substantially contains discriminatory material that discriminates and does not provide equal opportunities for every victim of a criminal act of terrorism to receive compensation, medical assistance, or psychosocial and psychological rehabilitation. Article 43L paragraph (4) of Law 5/2018 stipulates that there is a time limit of 3 (three) years from the enactment of Law 5/2018 to submit an application for compensation, medical assistance, or psychosocial and psychological rehabilitation, as such the deadline for submission is 22 June 2021. This is what causes the Petitioners as victims to be unable to access the compensation, medical assistance, or psychosocial and psychological rehabilitation as regulated in Article 43L paragraph (1), paragraph (2), and paragraph (3) of Law 5/2018. This results in the rights of victims of criminal acts of terrorism automatically becoming obstructed and cannot be upheld. In their *Petitum*, the Petitioners petition for the Court to declare Article 43L paragraph (4) of Law 5/2018 is contrary to the 1945 Constitution and it does not have binding legal force.

Whereas Law 5/2018 defines terrorism as an act that uses violence or the threat of violence that creates an atmosphere of terror or widespread fear, which can cause mass casualties, and/or cause damage or destruction to vital strategic objects, the environment, public facilities, or international facilities under the ideological, political, or security disturbance motives [vide Article 1 number 2 of Law 5/2018]. Due to the nature of the crime of terrorism and the impacts it causes, this crime is a serious crime that endangers the security and sovereignty of the state, territorial integrity, peace, welfare, and human security, both nationally, regionally, and internationally [vide General Elucidation of Law 5/2018]. The inclusion of criminal acts of terrorism in the category of serious crime is because of the difficulty of disclosing the crime as it is a transboundary crime and involves international networks as stated in the Elucidation of Law 5/2018 that acts of terrorism are basically transnational and organized because they have clandestine characteristics, namely secret, silent, or underground movements, across countries supported by the use of modern technology in the fields of communication, informatics, transportation, and modern weaponry so that cooperation is required at the international level to overcome them [vide General Elucidation of Law 5/2018]. To strengthen the efforts to combat the criminal acts of terrorism, Law 5/2018 not only strengthens the eradication aspect but also optimizes the state's efforts to prevent them, including strengthening the protection for victims. The victim of a criminal act of terrorism is a person who experiences physical, mental, and/or economic suffering resulting from a criminal act of terrorism [vide Article 1 number 11 of Law 5/2018].

In this context, internationally, the definition of a victim in Law 5/2018 is in line with the operative paragraph 8 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation of Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, annexed to Commission on Human Rights Resolution 2005/35. The definition of a victim is also in line with the description in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power which was adopted by the General Assembly resolution 40/34 of 29 November 1985.

Meanwhile, if we refer to the report of the special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism: framework principles for securing the human rights of victims of terrorism, paragraph 16 (A/HRC/20/14), there are at least 4 (four) categories of victims of terrorism. First, a direct victim of terrorism namely, individual who is killed or suffers serious physical or psychological injury as a result of an act of terrorism. Second, a secondary victim of terrorism namely individual who is the closest family or dependent of a direct victim of an act of terrorism. Third, an indirect victim of terrorism which described by the special rapporteur as an individual who suffers serious physical or psychological injury as an indirect result of an act of terrorism. This category includes (a) a member of the public (such as a hostage or observer) who was killed or injured by the use of potentially lethal force by the terror suspect; (b) a witness who suffers serious psychological harm as a result of witnessing a violent terrorist incident or its direct consequences; (c) an individual who was subjected to potentially lethal force by public authorities after being mistakenly identified as a terror suspect; (d) a rescue worker who suffer serious physical or psychological harm as a result of participating in emergency response. Fourth, a potential victim of terrorism, the special rapporteur deliberately provides this category in order to promote a comprehensive statement of basic rights and obligations in this area, making this category an important addition.

Whereas under the said categorization of victims of terrorism, it provides a comprehensive framework for understanding the various forms of impact caused by an act of terrorism that are suffered by the victims. In addition, this framework also ensures that the human rights of all victims of an act of terrorism are recognized and guaranteed, without exception, so that no one is neglected in the context of protecting the victims of an act of terrorism.

Whereas the regulation regarding victims in Law 5/2018 emphasizes the state responsibility as one of the important amendments to Law Number 15 of 2003 concerning the Determination of Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law (Law 15/2003) which was considered to be

unable to provide protection for victims of criminal acts of terrorism. This is because the provisions in Law 15/2003 are more oriented towards perpetrators of criminal acts of terrorism. Moreover, there is no clarity regarding the institution that is given the authority to determine which victims are entitled to receive assistance or compensation and who or which institution has the authority to determine a person to be a victim of the past act of terrorism who is entitled to receive an assistance or compensation. In this case, Law 5/2018 has emphasized that the institution responsible for victims of criminal acts of terrorism is the institution that handles the affairs related to the witness and victim protection, *in casu* Lembaga Perlindungan Saksi dan Korban (LPSK or the Witness and Victim Protection Agency). This is in line with Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims (Law 31/2014), which stipulates that victims of gross human rights violations, victims of terrorism, victims of human trafficking, victims of torture, victims of sexual violence, and victims of serious abuse, in addition to obtaining rights as victims of crimes in general, they are also entitled to receive: a. medical assistance; and b. psychosocial and psychological rehabilitation assistance. The assistances are provided pursuant to the LPSK Decision [*vide* Article 6 paragraph (1) and paragraph (2) of Law 31/2014].

The regulation of protection for victims of criminal acts of terrorism is also in accordance with one of the objectives of the state as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia, namely that the state protects the entire Indonesian nation and all of Indonesia's territory. That means, the *a quo* Law provides a normative basis that the state is responsible for protecting the victims in the form of medical assistance, psychosocial and psychological rehabilitation, allowance, and compensation for those who were murdered. However, the form of state responsibility in protecting a victim does not eliminate the victim's right to receive restitution as a compensation from the perpetrator to the victim [*vide* General Elucidation of Law 5/2018]. In relation to the above description, to eradicate the criminal acts of terrorism, it is not sufficient to only prevent and combat the acts of terrorism without providing protection for the victims of these crimes. One of the protections is by providing assistance or compensation to the victims pursuant to the concept of fulfilling the rights of victims of criminal acts of terrorism. This is in line with the recommendations in the United Nations General Assembly in 1985 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power which aims to provide access to justice and fair treatment for victims and also ensure restitution, compensation, and social assistance.

The protection through the provision of compensation rights for victims of criminal acts of terrorism can also be studied from the point of view of victimology, where the victim should not be a secondary victim (secondary victimization). Secondary victimization is defined as victimization that occurs not as a direct result of the criminal act that harmed the victim, but rather is related to how institutions and individuals respond to the victim. In this regard, secondary victimization occurs when a victim of a crime feels that he/she experiences inadequate, insensitive, or inappropriate treatments, attitudes, behaviors, responses, and/or practices carried out by institutions which result in the initial trauma experienced by the victim becoming more severe. Therefore, doctrinally, secondary victimization will not only harm the victims of criminal acts of terrorism but also hinder the epistemic function of the justice system (Antony Pemberton and Eva Mulder. *Bringing injustice back in: Secondary victimization as epistemic injustice. Criminology & Criminal Justice* 1-20. 2023).

Whereas regarding the direct victim as referred to, it has been described in the Elucidation of Article 43L paragraph (1) of Law 5/2018, that the direct victims of criminal acts of terrorism that occurred prior to the enactment of this law are victims of the criminal acts of terrorism that occurred since the enactment of Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism (Government Regulation in Lieu of Law 1/2002) [*vide* Elucidation of Article 43L paragraph (1) of Law 5/2018]. The provisions of Government Regulation 1/2002 apply to the bomb explosion incident that occurred in Bali on 12 October 2002 [*vide* Article 1 of Government Regulation in Lieu of Law Number 2 of 2002 concerning the Enforcement of Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism, in the Bomb Explosion Incident in Bali

on 12 October 2002 (Government Regulation in Lieu of Law 2/2002)]. In this regard, Article 43L paragraph (4) of Law 5/2018 has limited the definition of direct victims of past criminal acts of terrorism entitled to the compensation, medical assistance, or psychosocial and psychological rehabilitation prior to the enactment of Law 5/2018 are the victims of the Bali bombings, where most of the victims have been identified.

The direct victims may apply for compensation, medical assistance, or psychosocial and psychological rehabilitation no later than 3 (three) years from the date of the enactment of Law 5/2018. In this regard, because Law 5/2018 was enacted and became binding on 22 June 2018, the maximum time limit of 3 (three) years will expire on 22 June 2021. Therefore, before the time limit ends, the victims of criminal acts of terrorism that occurred prior to the enactment of Law 5/2018 may submit applications to receive compensation, medical assistance, or psychosocial and psychological rehabilitation. However, the provisions of Article 43L paragraph (4) of Law 5/2018 cannot be immediately implemented because they are still subject to the *a quo* provisions of Article 43L paragraph (7) of Law 5/2018 which requires that a government regulation must first be issued which will regulate the conditions and procedures for submitting the applications for compensation, medical assistance, or psychosocial and psychological rehabilitation. The problem is that the said government regulation is not immediately issued before the end of the time limit or the passing of the deadline for implementing the provisions of Article 43L paragraph (4) of Law 5/2018 as mandated in Article 46B of Law 5/2018 which states, "The implementing regulations of this Law must be stipulated no later than 1 (one) year from the date of the enactment of this Law."

The government regulations as the implementation of Law 5/2018, namely Government Regulation Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims (Government Regulation 35/2020), came into effect on 8 July 2020 or 2 (two) years since the enactment of Law 5/2018. Therefore, without the Court intending to assess the legality of Government Regulation 35/2020, it has been proven that the said government regulation was issued not in accordance with the mandate of Article 46B of Law 5/2018. Then this causes the Petitioners, as victims of criminal acts of terrorism who have been determined by BNPT, cannot immediately have their constitutional rights upheld because they have not yet received the compensation, medical assistance, or psychosocial and psychological rehabilitation which should be the responsibility of the state.

Whereas the determination of the victims of past criminal acts of terrorism that occurred since 2002 so that the victims could receive compensation, medical assistance, and psychosocial and psychological rehabilitation, of course, is a process. In the hearing, the relevant facts were revealed that in addition to the issue that the time limit for submitting applications to receive compensation, medical assistance, psychosocial and psychological rehabilitation for victims of past criminal acts of terrorism is no later than 22 June 2021 or 3 (three) years after the enactment of Law 5/2018, there are also various other difficulties, including: (1) the difficulty in finding patient data or medical record due to the passing of the period for destroying medical records in accordance with the policy of each hospital; (2) victim data and the data from the Counterterrorism Special Detachment 88 are incomplete which hinders the victim identification and there is limited demographic information; (3) limited human resources in the Sub-Directorate for Recovery of Victims of Criminal Acts of Terrorism; (4) limited time for the state, namely less than 1 (one) year pursuant to the government regulations to carry out identification, verification, and assessment of victims of past criminal acts of terrorism as the basis for issuing the letter of determination of victim by BNPT; (5) the victims' residences are spread throughout Indonesia and there are changes in the victims' residences, changes of status in the case of deceased victims, and there are minimal means of communication in a number of areas; and (6) there are still victims who do not believe in the state's capacity to handle victims. Pursuant to the information from BNPT and LPSK, the institutions responsible for implementing the *a quo* Law also acknowledge that the 3 (three) year period is a brief time, therefore LPSK and BNPT do not have enough time to fulfil their duties and authorities optimally. Therefore, to overcome these various challenges, it is important for BNPT to create a clear Standard Operating Procedure (SOP) that includes specific steps in accelerating the process of determining victims of criminal acts of

terrorism.

In addition to the above challenges, in the time period between 22 June 2018 and 22 June 2021, the World Health Organization (WHO) on 11 March 2020 stated that the world is facing the COVID-19 pandemic which requires restrictions on human mobilization and activities. In Indonesia, this restriction is stated in the Presidential Decree Number 11 of 2020 concerning the Determination of Public Health Emergency of Corona Virus Disease 2019 (COVID-19), and in relation to these restrictions, the Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Framework of Accelerating the Handling of Corona Virus Disease 2019 (COVID-19) was issued. It is important to implement restriction of movement to mitigate the spread of the virus. Moreover, as revealed in the hearing, there were several BNPT and LPSK officers who were on field duty being exposed to the COVID-19 virus. These conditions or facts ultimately affect the process of application submissions by the victims of past criminal acts of terrorism and the handling of which by BNPT and LPSK.

Due to the COVID-19 pandemic as a force majeure, the handling of victims of past criminal acts of terrorism cannot be carried out as stipulated in Law 5/2018 and its implementing regulations. The said force majeure is one of the reasons for the occurrence of secondary victimization for victims of past criminal acts of terrorism.

Whereas if it is linked to the existence of the norm of Article 43L paragraph (4) of Law 5/2018 which is a part of the "Transitional Provisions", then the *a quo* norm cannot be separated from its function as a transitional provision containing adjustments to the existing legal action or legal relationship arrangements under the previous laws and regulations and the new laws and regulations, which aims to: a. avoid legal vacuums; b. guarantee legal certainty; c. provide legal protection for parties affected by amendments in the provisions of laws and regulations; and d. regulate any matters that are transitional or temporary in nature [*vide* letter C.4. number 127 of Attachment II of Law Number 12 of 2011 concerning the Formation of Laws and Regulations as last amended by Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Laws and Regulations]. Therefore, the protection for the victims of past criminal acts of terrorism or prior to the enactment of Law 5/2018 must also be provided in line with the function and purpose of the transitional provisions which are the bridging norms for the protection for the victims of criminal acts of terrorism as stipulated in the principal norms that regulate "the protection of the victims". In principle, the victims of criminal acts of terrorism are the responsibility of the state and the state must assume such responsibility in the form of providing medical assistance, psychosocial and psychological rehabilitation, allowance for families in the event of death, and compensation.

Whereas regarding the *petitum* of the Petitioners which petitioned for the Court to declare that Article 43L paragraph (4) of Law 5/2018 is contrary to the 1945 Constitution of the Republic of Indonesia and it does not have binding legal force, it is important for the Court to explain that the substance of Article 43L paragraph (4) of Law 5/2018 regulates transitional provisions to provide a time limit for victims of past criminal acts of terrorism since the Bali bombings in 2002 who have not received compensation, medical assistance, or psychosocial and psychological rehabilitation, namely prior to the enactment of Law 5/2018. Even though the definition of direct victims of past criminal acts of terrorism has been described in the Elucidation of Article 43L paragraph (1) of Law 5/2018, however, declaring the entire norm of Article 43L paragraph (4) of Law 5/2018 as unconstitutional as petitioned by the Petitioners could actually give rise to legal uncertainty. Even though the definition of direct victims of past criminal acts of terrorism is described as since the Bali bombings in 2002, where most of the victims have been identified, if the time limit for submitting an application for compensation, medical assistance, or psychosocial and psychological rehabilitation is not stated in the transitional provisions, it will be difficult for investigators and related institutions to prove that a person is a victim of a criminal act of terrorism since 2002. In this case, although the state is responsible for the protection of the victims of criminal acts of terrorism, this responsibility must also have a clear and sufficient time limit to determine whether a person is indeed a victim. By considering that the problem of not being able to provide compensation, medical assistance or psychosocial and psychological rehabilitation is

not caused by any factor from the victim's side but rather it is caused by a delay in issuing technical regulations and the existence of a force majeure, therefore, for the victims of criminal acts of terrorism prior to the enactment of Law 5/2018 who have been determined as victims by BNPT in accordance with the applicable provisions, the Court is of the opinion that these victims must still obtain their constitutional rights in the form of compensation, medical assistance, or psychosocial and psychological rehabilitation.

Therefore, for the sake of fair legal certainty, the Court declares that the phrase "3 (three) years from the date of the enactment of this Law" in Article 43L paragraph (4) of Law 5/2018 is conditionally unconstitutional to the extent that it is not interpreted as "10 (ten) years from the date of the enactment of this Law" as fully described in the verdict section of this decision. The Court considers the period of 10 (ten) years from the date of the enactment of the *a quo* law is a fair time limit on the grounds that Law 5/2018 was enacted on 22 June 2018, there was a delay in the issuance of the government regulations and other implementing regulations, and there was COVID-19 pandemic and the impacts it caused. Therefore, the period of 10 (ten) years, starting from the enactment of Law 5/2018 until 22 June 2028, must be optimally utilized by the authorized institutions to restore the victims' constitutional rights, including to provide convenient services for the victims.

Whereas it is evident that the provisions of Article 43L paragraph (4) of Law 5/2018 are insufficient to provide a guarantee of fair legal certainty as guaranteed in the 1945 Constitution of the Republic of Indonesia as argued by the Petitioners. However, since the decision of the Court is not in accordance with the Petitioners' *petition*, the *a quo* petition is legally justifiable in part.

Pursuant to all the legal considerations above, the Court is of the opinion that the Petitioners' petition is legally justifiable in part, therefore, in its decision the Court stated:

1. To grant the Petitioners' petition in part.
2. To declare that the phrase "3 (three) years from the date of enactment of this Law" in Article 43L paragraph (4) of Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Determination 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 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 it has conditional binding legal force to the extent that it is interpreted as "10 (ten) years from the date of the enactment of this Law". Therefore, the norm of Article 43L paragraph (4) of Law Number 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning the Determination of Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism into Law, which originally read "The application as referred to in paragraph (2) may be submitted no later than 3 (three) years from the date of enactment of this Law" shall be read in full, "**The application as referred to in paragraph (2) may be submitted no later than 10 (ten) years from the date of enactment of this Law.**"
3. To order this decision to be published in the State Gazette of the Republic of Indonesia as appropriate.
4. To dismiss the remainder of the Petitioners' petition.