



## STATE ACCOUNTABILITY FOR FULFILLMENT HEALTH COSTS OF VICTIMS OF KLITIH CRIMINAL ACT IN YOGYAKARTA

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**Abstract:** The study aims to examine the state's responsibility in meeting health costs for victims of street crime in the Special Region of Yogyakarta based on the 1945 Constitution and Presidential Regulation No. 82 of 2018, excluding the provision of health insurance for victims of violent crime of klitih. The research method used is normative juridical with the Pancasila welfare state theory framework, which focuses on the analysis of legal norms and public policies. This study confirms the existence of discrimination between existing policies and the principle of state responsibility in fulfilling health rights for victims. Current policies do not fully meet constitutional standards in providing health protection to victims of Violent Crimes, which has the potential to hinder their rehabilitation process. Most victims face challenges in accessing health services due to lack of guarantees. Therefore, comprehensive policy reform is needed to strengthen social protection, by optimizing cooperation between institutions, and ensuring fair and equitable accessibility of health services for all victims of crime.

**Keywords:** State Responsibility, Health, Klitih, Victims.

### INTRODUCTION

Indonesia is a country based on the principle of social justice which is the main foundation in its public policy. One of the basic rights recognized constitutionally is the right to health, as stated in Paragraph 4 of the Preamble to the 1945 Constitution, one of the goals of the founding of the Republic

of Indonesia is to protect all Indonesian people and all of Indonesia's blood. (Basuki, 2022). This right is clarified in Article 28H paragraph 1 of the 1945 Constitution of the Republic of Indonesia which states that everyone has the right to receive decent health services and a good and healthy living environment.

Article 34 of the 1945 Constitution also emphasizes the state's responsibility to develop a social security system that covers all people with the aim of empowering weak communities in accordance with human dignity.(Anchori, 2020).

Fulfillment of the right to health is part of the state's efforts to realize general welfare for all citizens, which includes providing equal access to health services. The Indonesian government passed Law Number 40 of 2004 concerning the National Social Security System (SJSN), which became the basis for the establishment of the Social Security Administering Body (BPJS) through Law Number 24 of 2011(BPJS Health, 2014). BPJS Kesehatan, which manages the National Health Insurance Program-Indonesian Healthy Card (JKN-KIS), aims to cover the entire population of Indonesia, including vulnerable groups and the poor who often face obstacles in accessing health services.(Son, 2021).

The phenomenon of street crime, better known as "klitih" in the Special Region of Yogyakarta, has developed into a worrying social issue and is endangering public safety.(Lubis et al., 2023). The term "klitih" refers to the activity of wandering around aimlessly, but is now interpreted as violence committed by teenagers on the streets. This act of violence is often carried out using sharp weapons or objects that cause serious injury to the victim of violence. The impacts not only include physical and psychological trauma, but also burden the victim with high medical care costs, especially for those from the

lower middle class. Victims of klitih are often categorized as victims of criminal acts of abuse, namely arbitrary treatment in order to torture or oppress others, which causes pain or injury to the body of another person.(Wahyuni, Willa, 2022). Victims of klitih crimes need health care and protection, especially for medical expenses, who will bear it? In general, perpetrators of crimes can be burdened with the responsibility to compensate victims of crimes committed by the perpetrator, based on the provisions of Articles 1370 and 1371 of the Civil Code. However, there are obstacles in its implementation, such as, when the perpetrator is not caught, then to whom can the losses be charged?

Presidential Decree (Perpres) No. 82 of 2018 regulates Health Insurance for the Community through the Social Security Administering Body. Ideally, every illness suffered by citizens can be discovered by the Social Security Institution through a mandatory social insurance system.(Astuti, 2020). There is an article that excludes the provision of health services, especially BPJS, for someone who is sick due to criminal acts of sexual violence, abuse, terrorism, and human trafficking in accordance with the provisions of laws and regulations, as regulated in Article 51(1) letter r of Presidential Decree Number 82 of 2018. Victims of klitih, if interpreted as part of a criminal act of abuse, are then excluded from being able to receive the benefits of social security services through BPJS even though the person concerned is a BPJS participant.(Riasari, 2022). Of course, this is contrary to the constitutional right to health as regulated in Article

28H Paragraph (1) of the 1945 Constitution.

Another policy that can cover the shortcomings of the Health insurance policy through BPJS is the Law on the Witness and Victim Protection Agency. In the additional provisions of Article 7A of Law Number 13 of 2006 which has been amended by Law Number 31 of 2014, it is determined that victims of criminal acts have the right to receive restitution in the form of compensation for loss of wealth or income, compensation for losses caused by suffering directly related to the crime either before or after a court decision has permanent legal force. (Wijaya, 2019). As with the obstacles to the implementation of compensation claims based on Articles 1370 and 1371 of the Civil Code, the policy in the Witness and Victim Protection Agency Law is also difficult to implement in practice when the perpetrator is not caught, while the victim still needs medical assistance and has to bear the costs themselves.

In Law Number 31 of 2014, there are provisions regarding the right to compensation or in the form of compensation obtained from the state because the perpetrator is unable to provide compensation which is actually the perpetrator's responsibility. The right to restitution or compensation given to the victim or his/her family by the perpetrator or a third party. The granting of the right to compensation is a form of the state's responsibility to provide constitutional rights to decent health for citizens, including victims of crime. However, the provision of compensation will be borne by the state if the perpetrator is unable. Meanwhile, if the perpetrator

has not been caught, can it be interpreted as being unable? There are limitations in the policy for the provision of compensation by the state for victims of klithih crimes. The right to restitution for victims of crime can be given by a third party. The definition of a third party if interpreted to include insurance providers such as BPJS, then victims of crime, including klithih, can obtain protection in the form of compensation for death or medical care costs. Article 6 of Law 13 of 2006 as amended by Law Number 31 of 2014 provides the right to victims of serious assault crimes to obtain medical assistance as well as psychosocial and psychological rehabilitation assistance. This article is also incomplete because it only provides medical assistance and not compensation.

The problem of providing compensation for victims of criminal acts has been widely studied. Iksan examines the Law in Indonesia regarding compensation for victims of criminal acts which he said is incomplete and less coherent, making it difficult for victims to claim their rights. (Iksan et al., 2023). Ali et al also examine the legal framework particularly that which links compensation to the offender's sentence, which can be problematic when offenders choose a short prison sentence rather than paying restitution. (Ali et al., 2018). Angkasa et al have provided recommendations on the weaknesses of the compensation process for victims of criminal acts by recommending the development of a restitution model based on justice and legal certainty. Among the recommendations are: eliminating the

limitations of victim types for restitution claims, establishing a mechanism that refers to diversion requests to force law enforcement to seek restitution, developing restitution in a form that can be followed up, confiscating the perpetrator's assets from the investigation stage, executing restitution without waiting for inkracht, adjusting subsidiary sanctions, implementing installment payments, revoking the rights of convicts, and integrating restitution and compensation through the development of victim assistance funds.(Space, 2023). The recommendations submitted by Angkasa et al in their research only focus on providing restitution or compensation for victims of criminal acts whose perpetrators have been caught and tried, and do not touch on victims of criminal acts whose perpetrators have not been caught, as is the case with victims of violent crimes committed by the klithih group.

## **MAIN PROBLEM**

This study aims to examine how the state is responsible for providing compensation, or restitution, or assistance to victims of violent crimes whose perpetrators are not caught, with a case study of 'klithih' in Yogyakarta, with the approach of the theory of state responsibility in the concept of a welfare state, especially how the state is responsible for crimes in public areas which are seen as a result of the state's failure to provide security and safety for citizens. In addition, it is also to identify the weaknesses of the existing system. The resulting contribution is a solution for fulfilling the rights of victims of

crimes in public areas based on state responsibility as well as strategic recommendations for future policy reforms. This effort is very important to create a fair and inclusive health system, where all citizens can feel the benefits of social welfare policies evenly.(Lubis MR, 2023).

## **METHOD OF RESEARCH**

This research uses normative or doctrinal legal methods.(Bhat, 2020), by analyzing Indonesian laws and regulations related to the protection of victims of crime, human rights, the right to social security and health, the concept of the welfare state, the state's responsibility to provide safety and security for its citizens, as well as comparative studies in countries that have successfully provided protection for victims of crime or accidents in public spaces, such as Singapore.

The data will be analyzed qualitatively(Cropley & Arthur, 2024), with the method of interpretation and analogy of regulations, theories and concepts(Canale et al., 2014), to answer the issue, namely how the state is responsible for providing compensation, restitution, or assistance for victims of criminal acts whose perpetrators are not caught. The conclusion is drawn with a deductive mindset.

## **RESEARCH RESULT AND DISCUSSION**

### **1. State Responsibility in the Perspective of Human Rights and Welfare State**

The welfare state theory is a framework of thought that emphasizes the state's responsibility in ensuring

the social welfare of all its citizens. This concept underlies the understanding that the state does not only function as a regulator of law and security, but also as a provider of essential social services, including equitable access to health. According to (Espring, 1990), in the context of the welfare state, the state has a moral and practical obligation to ensure that all individuals, regardless of social, economic, or demographic status, have equal access to quality health services. This includes special protection for vulnerable groups, such as people with disabilities, the elderly, and victims of violence.

This important position becomes even more relevant when considering the situation in Indonesia, where challenges in health and social protection systems are often more complex. Health insurance policies in Indonesia, especially in the context of protection for victims of *klitih*, are in the spotlight. *Klitih*, referring to acts of violence between teenagers that often occur in public spaces, creates significant negative impacts on the physical and mental health of victims. It is imperative for health systems to be able to respond to the unique needs of marginalized groups and victims of violence. (Cane, 2002). This includes providing health services that not only treat physical injuries, but also provide the psychological support necessary for their recovery.

In practice, despite progress in national health policies, many victims of *klitih* still experience difficulties in accessing health services. Barriers such as social stigma, lack of understanding of health rights, and dissatisfaction with existing services

often prevent them from getting the help they need. Therefore, the development of health insurance policies must include aspects of education and counseling to the community about their health rights. In addition, there also needs to be a mechanism that allows victims to report incidents of violence and gain quick and unhindered access to health services.

Esping-Andersen also emphasized that to realize an effective welfare state, the state must continuously evaluate existing policies and adapt to the dynamic needs of society. (Espring, 1990). Therefore, it is important to conduct further research to evaluate the implementation of health insurance policies in Indonesia, as well as their impact on vulnerable groups, including *klitih* victims.

The link between the welfare state theory and the protection of victims of violence shows how important a holistic approach is in formulating health policies. By considering the various social, economic, and cultural dimensions that influence access to health services, the contribution aims to create a more prosperous and just society. Public awareness and participation in formulating health policies are also very crucial, because the community involved tends to understand and appreciate the services provided better.

The implementation of welfare state principles in health insurance policies in Indonesia is very important to improve the quality of life of all citizens, especially for those who are most vulnerable. Through this effort, it

is hoped that Indonesia can realize the ideals of true social welfare.

The opening of the 1945 Constitution, paragraph 4, provides clear direction regarding the state's responsibility to protect and guarantee the welfare of all Indonesian people. This mandate is stated in the phrases "advancing public welfare" and "protecting the entire Indonesian nation," which imply that the state has a fundamental obligation to guarantee the basic needs of every citizen. In the body, Article 28H paragraph (1) explicitly regulates the right to health as a human right. This article states that everyone has the right to a decent life, including access to adequate health services, decent housing, and a good living environment. Article 34 paragraph (3) emphasizes that the state is responsible for providing health facilities for all citizens, especially for those who are vulnerable and in need of assistance, such as victims of violence or crime (Indonesian Government, 1945).

In the context of cases of violence, especially for victims of *klitih* who are often categorized as victims of abuse, the role of the state in providing health services still needs to be followed up. The crime of *klitih*, which refers to a form of street violence involving physical attacks and resulting in serious injuries to the victim, has physical and psychological impacts that require intensive medical treatment. Data shows that in 2023 there were around 70 cases of *klitih* in the Special Region of Yogyakarta with most victims suffering serious injuries requiring intensive medical treatment. (Kurniawan, 2020).

Lack of access to health services for victims of violent crimes remains a complex problem. This requires a special policy that not only protects the public's health rights in general but also specifically targets vulnerable groups, such as victims of *klitih*. This policy should include preventive, rehabilitation, and compensation efforts that are appropriate to the needs of the victims so that they can reduce the negative impacts they experience. (Pancawati, D., 2020).

Presidential Regulation No. 82 of 2018, specifically Article 52 Paragraph (1) Letter r, states that health insurance through BPJS does not apply to victims of violence, including street violence known as "*klitih*". This provision is a serious problem, because victims who experience violence cannot access the health care they need without having to bear the costs themselves. This forces them to seek additional sources of funding that can cover health care costs that are not guaranteed or charged by BPJS.

This situation is very contrary to the mandate of the constitution of the Republic of Indonesia which emphasizes that the right to health is a basic right of every citizen which must be guaranteed by the state. In Article 28H Paragraph (1) of the 1945 Constitution, it is stated that everyone has the right to a prosperous life and to receive health services. Law No. 36 of 2009 concerning Health also emphasizes the importance of access to quality health services for all citizens. (BPJS Health, 2014).

This condition shows the gap in the health insurance system in Indonesia, where not all citizens, especially victims of violence, receive

equal protection and access to health services. Research shows that injustice in access to health services can worsen the physical and mental conditions of victims of violence, and hinder their recovery process.(Setiawan, 2020).

The absence of health insurance for victims of violence should be a serious concern for policy makers. In this context, efforts to reform health insurance policies need to be made so that all citizens, especially those who are victims of violence, receive adequate protection in accordance with the principles of human rights and social justice.(Handayani, 2021).

## **2. The Role of the Witness and Victim Protection Agency (LPSK) and BPJS as Extensions of the State**

The Witness and Victim Protection Agency (LPSK) is an institution that plays an important role in providing protection to witnesses and victims of crime, including the increasingly rampant *klitih* cases in DI Yogyakarta. *Klitih*, which generally refers to acts of violence or fights that occur in public spaces, has become a complex social problem, affecting the security and peace of society. In this context, LPSK has the responsibility to ensure that witnesses and victims receive proper protection and access to justice.

The procedures and procedures implemented by LPSK to provide protection to witnesses and victims of *klitih* are often considered complicated by the public. The process of registering a protection application, for example, requires a number of documents and verifications that are not always easy for those who are

under pressure due to violent incidents. The public often complains about the lack of socialization regarding this procedure, so that many do not know their rights as witnesses or victims who can access protection from LPSK.(LPSK, 2022).

One of the main challenges faced by the community is the accessibility of LPSK services. Many individuals, especially in remote areas, have difficulty accessing the information and procedures needed to obtain protection. In addition, social stigma against victims and witnesses can also prevent them from reporting and seeking protection. Research shows that many people are afraid to report because they are worried about the social and personal consequences they may face, including threats from perpetrators (Arief, 2021).

In a study conducted by Setiawan (2023), it was found that there is a gap between the public's expectations of LPSK and the reality they experience. The public hopes that LPSK can be the front guard in protecting their rights, but often feel that the existing procedures are too long and complicated. This results in many witnesses and victims preferring not to report and bear the risk themselves.

Based on these findings, LPSK is certainly expected to increase efforts to socialize victims' rights and existing protection procedures. In addition, simplifying registration procedures and increasing service accessibility, including the application of information technology, can help the community get the protection they need. With these steps, it is hoped that LPSK can be more effective in carrying out its duties and providing a sense of

security to the community, especially in dealing with the disturbing klithih phenomenon.

### **3. Optimizing the rights of victims of the crime of 'Klithih' violence based on state responsibility**

The state has an obligation to provide compensation to victims of criminal acts committed by the perpetrator is a theory of failure to protect. An individual who becomes a victim of a crime is the result of the failure of society to prevent crime and the failure of law enforcement to reduce and prevent crime.

There are two opinions that victims should receive and have the right to receive compensation. The first opinion is that the compensation received by victims is a natural thing and is a form of social solidarity. Victims of crime are victims of society and society should take part in providing compensation. The government immediately has full responsibility for providing compensation to victims. The second opinion is that other sources of compensation have proven inadequate to provide full compensation to victims.

Provisions regarding compensation and restitution are regulated in Article 35 of Law No. 26 of 2000 concerning the Human Rights Court, in the first part that every victim and witness in a serious human rights violation can receive compensation, restitution, and rehabilitation as referred to in paragraph 1 which is stated in the decision of the Human Rights Court, and in the third part the provisions regarding compensation, restitution, and rehabilitation are

regulated in Government Regulation. Compensation for victims of criminal acts is part of human rights based on Article 98 Paragraph 1 of the Criminal Procedure Code and victims have the right to apply for compensation through the Witness and Victim Protection Agency. Viewed from the concept of a welfare state as reflected in the fifth principle of Pancasila, one of the state's responsibilities is to rehabilitate victims of crime by providing medical, psychological, or social assistance for victims of criminal acts. The highest state legislation has mandated the protection of human rights, including providing compensation to victims of criminal acts as regulated in the 1945 Constitution Article 28I paragraph (4) which emphasizes that the protection, advancement, enforcement, and fulfillment of human rights are the responsibility of the state.

Similar responsibilities have also been written in the legislation below in Law Number 13 of 2006 concerning Protection of Witnesses and Victims, which was updated by Law Number 31 of 2014, and Government Regulation Number 44 of 2008, victims of criminal acts have the right to receive compensation and restitution. Compensation is given by the state if the perpetrator is unable to provide compensation, while restitution is given by the perpetrator or a third party.

Law Number 13 of 2006 concerning Protection of Witnesses and Victims which was revised by Law Number 31 of 2014 continued by Government Regulation Number 7 of 2018 concerning Technical Regulations for the Provision of



Compensation, Restitution, and Assistance to Witnesses and Victims by LPSK and finally concerning the procedures regulated through LPSK Regulation Number 1 of 2023 to ensure that victims' rights are protected and they receive the necessary assistance has been made, but in reality the submission is still not applicable. This can be seen in the example of a case of submission to LPSK which resulted in no assistance.

Muhammad Latif Rezza as the older brother of the klitih victim opened a donation for his younger sibling's medical expenses, who needed surgery on both his hands and head. His efforts were motivated by the fact that his medical expenses were not covered by BPJS Kesehatan. On the advice of the police, he made a complaint to LPSK but received the answer that LPSK would only cover the costs after a verdict was made. (Wijana, 2019).

Pendiyanto, who works as an online motorcycle taxi driver, became a victim of klitih when he was about to return home to Gunungkidul. He had to receive treatment at the hospital in the form of 17 stitches on his arm and surgery because his hand bone was cracked. Because it could not be covered by BPJS Kesehatan or Jasa Raharja, he felt burdened to have to bear the costs himself, even though he was a victim, and as a result he could not work. (Kuntadi, 2020).

Slamet, who works as a casual laborer, was forced to take his wife home who was a victim of klitih when she was about to sell bay leaves at the market. This was done after finding out that her medical expenses were not covered by BPJS. Even though after

getting seven stitches on his wife's cheek, the doctor told him that her nose was broken and had to be referred to a higher hospital for surgery, but he was confused because he had no money. The hospital suggested that he take care of the Regional Health Insurance (Jamkesda), but he did not know how to take care of it. (Erlin, Erfan., 2023).

The Special Region of Yogyakarta through Governor Regulation Number 7 of 2023 concerning Universal Health Insurance regulates health insurance in the Special Region of Yogyakarta which is organized to fulfill basic health, supplements and complements that are appropriate to be given to beneficiaries. This is as a synchronization and synergy towards integration between the Provincial and Regency/City Governments. Article 5 states that beneficiaries include the poor and/or disadvantaged population who do not yet have Health Insurance or a verified benefit package by Health Insurance.

The application process includes a recommendation letter from the District/City Social Service, which requires terms and conditions to obtain it (photocopy of KTP/Birth Certificate/Birth Certificate. Photocopy of Family Card, Certificate of Inability to Pay, verification and validation sheet of poverty, photo of house, statement letter regarding the truth of photo of house), referral letter from health center/independent practice of midwife/family doctor or emergency certificate from hospital ER, if hospitalized then must attach a certificate of hospitalization from hospital, if routine outpatient then must

attach a certificate of under treatment (SKDP) according to the date of control, certificate of not guaranteed by JKN from BPJS Kesehatan if registered as a PBI participant who has been deactivated.

Such an administrative process that requires many requirements will certainly make it difficult for people who want to access it. It is not certain that people also know about the mechanism. Slamet for example, he is poor and wants to access treatment for his wife and is directed by the Hospital to be able to access Regional Health Insurance but because he does not know the process, he cancels his intention and prefers to take his wife home.

According to the welfare theory as described in the sub-chapter of State Responsibility in the Perspective of Human Rights and Welfare State, the state has a moral and practical obligation to ensure that all individuals, regardless of social, economic, or demographic status, have equal access to quality health services. Thus, when citizens become victims, they should automatically receive health services. The complicated administration coupled with various requirements indicates that the state has not been able to fulfill its obligations to guarantee the health of its citizens.

### **CONCLUSION**

This study concludes that there is a gap between the state policy as a welfare state and the reality of its implementation, where health services should be easily accessible to every citizen without complex administrative barriers. This is evidence that the state has not been fully able to fulfill its

responsibility in ensuring the right to health for all its citizens in accordance with the principles of social justice and human rights.

The weakness of the existing system is that it has not been widely socialized to the public regarding the existence of a guarantor institution, a guarantor mechanism. In addition, the many administrative requirements that must be met by victims make it difficult for victims to access the service.

Based on these conclusions, the following recommendations are made to the Government.

1. An evaluation was conducted of the health insurance policy for klitih victims.
2. Simplification of procedures for handling health services for victims of street crime is carried out through a one-stop shop, namely through BPJS.
3. A comprehensive evaluation of the compensation and restitution policies for klitih victims was carried out through LPSK.

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