

Reconstruction of the Legality of Identification Results Approval of Mass Disaster Victims in the Implementation of Disaster Victim Identification Procedures Based on Justice Values

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Abstract

The purpose of this study is to find and analyze the weaknesses of the legality of the ratification of the results of the identification of victims who died due to mass disasters in the application of the Disaster Victim Identification procedure and to reconstruct the legality of the ratification of the results of the identification of victims who died due to mass disasters in the application of the Disaster Victim Identification procedure based on the value of justice Using the constructivism paradigm, the sociological legal approach method to solve research problems by examining secondary data and primary data by finding the legal reality experienced in the field and qualitative descriptive methods. The results of the study indicate that the legality of the ratification of the results of the identification of victims who died due to mass disasters in the application of the Disaster Victim Identification procedure is not yet based on the value of justice, due to the lack of distribution of DVI police doctors. Weaknesses in legal substance are Article 157 of Law Number 17 of 2023 concerning Health, Article 473 of Government Regulation Number 28 of 2024 concerning Implementing Regulations of Law Number 17 of 2023 concerning Health and Article 21 of Regulation of the Minister of Health Number 38 of 2022 concerning Medical Services for Legal Interests. Weaknesses in legal culture where legal culture will be aware of disasters and the importance of identification are still lacking. The reconstruction proposed by the author is to regulate those who have the right to issue identification results in DVI operations for mass disasters are DVI Police who have DVI Commander expertise certification which guarantees that the identification results are in accordance with the science used, so that they can be legally accounted for.

Keywords: Legal Reconstruction, Mass Disaster Victims, Procedures, Justice Value.

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INTRODUCTION

Mass disasters that occur in a severe and unexpected manner will cause many unrecognized or unidentified victims. Difficulty in identifying victims due to disasters or mass accidents often causes problems in the field of forensic medicine. Thus, the activity of identifying victims of mass disasters (Disaster Victim Identification) is a very important activity and is carried out in almost every incident that causes a large number of fatalities. The main purpose of this examination is to identify the identity of the victim, then efforts can be made to care for, pray for, and hand over to the victim's family to be buried according to their respective beliefs. In addition, the identification of the victim's identity also aims to provide psychological peace to the victim's family with certainty of identity. Disaster Victim

Identification (DVI) is a procedure for identifying victims who died due to mass disasters scientifically and can be accounted for and refers to Interpol standards (Toebagus, 2024). The DVI process uses various methods and techniques. Interpol has determined the existence of a Primary Identifier (PI) consisting of fingerprints, odontology, and DNA and a Secondary Identifier (SI) consisting of medical and property. According to Interpol standards, identification is considered valid and correct if it has been successfully tested by at least one Primary Identifier or two Secondary Identifiers.

In the case of the Rimba III ship sinking (Detik.com, 2009), the body was already in a state of advanced decomposition. The identification process according to the four phases encountered obstacles

because the police sent the body to the morgue with a Letter of Request for a Post-mortem which already contained the victim's identity. Identification was carried out by investigators together with the family at the scene based on the property (clothes, bags, wallets, jewelry) attached to the victim's body. As a result of this action, the family refused to be examined on the victim on the grounds that they were already recognized. The property on the body was also immediately handed over to the family at the scene, so that there was an incident of the bodies being swapped (Nguyen, 2025). This can be overcome after a physical examination of the victim's body is carried out.

Disasters that often occur in Indonesia claim a large number of victims which causes an emergency situation that complicates the evacuation process of disaster victims, both those who are still alive and those who have died, including complicating the process of identifying and handling the bodies of natural disaster victims and the burial process of disaster victims to be carried out according to Islamic law in normal conditions. Basically, under normal circumstances, the body must be bathed, shrouded, prayed for, and buried, according to the procedures determined according to Islamic law, because the organization of the body is the right of a Muslim.

Law Number 17 of 2023 concerning Health has given a mandate to the government and the community to make efforts to identify unidentified bodies. Identification of dead victims is carried out to fulfill the victim's rights so that they can be returned to their families and buried properly according to their beliefs during their lifetime. There are legal implications with the death of a person such as inheritance, insurance, and in criminal cases it can be stopped if the perpetrator has died.

Article 187 letter c of the Criminal Procedure Code states that a letter as valid evidence is a statement from an expert containing an opinion based on his expertise regarding something or a situation that is officially requested from him. Associated with Article 157 paragraph (1) (2), (4), and paragraph (5) of Law Number 17 of 2023 concerning Health which only explains the legal norms attempted identification makes there is no element of legal obligation norms and legal certainty (Widodo, 2018) in identifying victims who died in the Disaster Victim Identification procedure and does not regulate who has the right to issue the results of the Disaster Victim Identification procedure identification. Therefore, knowing the handling of disaster victims is very important considering that Indonesia is a country that is prone to disasters every year, so this discussion is very necessary in order to know the laws related to handling the bodies of victims of natural disasters. The problem above, is of an interest thing to study, where the Author are then further organized into research with the following main problem:

1. What are the weaknesses of the legality of ratifying the results of the identification of victims who died due to mass disasters in the application of the Disaster Victim Identification procedure?
2. How is the reconstruction of the legality of ratifying the results of the identification of victims who died due to mass disasters in the application of the Disaster Victim Identification procedure based on the value of justice?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of the legality of ratifying the results of the identification of victims who died due to mass disasters in the application of the disaster victim identification procedure

Effective disaster preparedness, emergency response, and recovery require integrated and planned actions supported by experienced human resources who can apply their knowledge and skills to critical and emergency situations (Widodo, 2019). Regardless of their professional background, education for human resources assigned to disaster situations must be based on experience in handling crisis situations, suitability to their profession, and cross-disciplinary competency. However, doctors who are faced with crisis situations due to disasters often lack the knowledge and experience needed to work effectively in stressful disaster conditions.

In Indonesia, during education, doctors are not fully equipped with emergency competencies due to disasters. This is because the 2012 SKDI stipulated by the Indonesian Medical Council (KKI, 2012) only contains disasters in the health problem management section.

When viewed by region, the ratio of doctors to the population in Indonesia that is close to the WHO standard is in Bali, followed by Java, Sumatra, Sulawesi, and Kalimantan. Meanwhile, the ratio of doctors to the population is large in Maluku Island, Papua, and the largest is in Nusa Tenggara with a ratio of 1:5,200.8 This means that in Nusa Tenggara, one doctor serves 5,200 people. From the ratio obtained, it can be seen that the distribution of doctors in Indonesia is still centered on the islands of Bali and Java, while the distribution of doctors is still very lacking in eastern Indonesia, namely Maluku Island, Papua, and especially in Nusa Tenggara. As is known, the obstacle still faced by health human resources in Indonesia is the ineffective distribution of health workers. This occurs due to the uneven placement of health workers, the mismatch between the type and number of health workers needed, which has an impact on low public access to adequate and quality health services. Various problems experienced by health workers can also cause a reduction in the number of health workers which will affect the distribution of health workers throughout the region.

The problems above are caused by Article 157 of Law Number 17 of 2023 concerning Health, Article 473 of Government Regulation Number 28 of 2024 concerning Implementing Regulations of Law Number 17 of 2023 concerning Health and Article 21 of Regulation of the Minister of Health Number 38 of 2022 concerning Medical Services for Legal Interests which has not regulated who has the right to issue identification results in DVI operations for mass disasters.

The existence of the legal norm of Article 187 letter c of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP) associated with Article 157 of Law Number 17 of 2023 concerning Health based on the Pancasila justice value does not reflect the value of justice.

Justice is one of the most important legal objectives of a legal system, although there are still several other legal objectives, namely legal certainty, and legal benefits which are also the mainstay of a legal system. There are two formulations of justice: first, the view that what is meant by justice is the harmony between the use of rights and the implementation of obligations in line with the postulate of the legal balance, namely the measure of rights and obligations. Second, the views of legal experts who basically formulate that justice is the harmony between legal certainty and legal comparability (Toebagus, 2022). Article 157 of Law Number 17 of 2023 concerning Health has not regulated who has the right to issue identification results in DVI operations for mass disasters.

The increasing trend of disasters that occur in society and the increasing number of victims and losses due to disasters, indicate the need for social change. One of them is through diffusion. The government as the institution responsible for disaster risk reduction creates programs with the aim of reducing the number of disaster victims which are then diffused to the community so that the idea / concept can be well received by the community.

The community needs to understand the forensic workflow in identifying disaster victims who are difficult to recognize. One important thing to prepare if there is a family member who is a disaster victim is data before death or antemortem. The more and better quality data submitted, it will make it easier for forensic officers to identify victims, as in line with the Head of the Data, Information and Public Relations Center of the National Disaster Management Agency (BNPB) Sutopo Purwo Nugroho statement in Fang (2024) that the culture of disaster awareness in Indonesian society is still low. In fact, a culture of disaster awareness is important considering that the threat of disaster can come at any time at an unexpected time. Based on BNPB research, disaster knowledge in Indonesian society increased after the 2004 Aceh tsunami, however, disaster awareness has not become everyday behavior in society.

2. Reconstruction of the legality of ratifying the results of the identification of victims who died due to mass disasters in the application of the disaster victim identification procedure based on the value of justice

One of the weakness of the disaster victim identification method using DNA is that a person can have two DNA images if the person has undergone a bone marrow transplant procedure for medical purposes. In that person, two DNA profiles will be depicted which

can later create confusion and doubt. If this is found, then the secondary identification method plays an important role. This method is the victim's medical records. Once again, the shortcoming of us Indonesians is that we rarely have complete medical records since we were born. Most of us will have medical records if we have ever had health problems and been treated in a hospital. Meanwhile, Europeans, Americans and Australians have a family doctor system where all data related to a person's health is neatly stored in the records of a family doctor.

DVI operations begin immediately after a mass disaster. The controller of the DVI operation is the DVI Commander in this case the Head of the Medical and Health Division (Kabid Dokkes) of the local Police. By coordinating with all elements involved in the search and disaster management, the DVI Commander must immediately determine the steps needed in a DVI operation such as determining a temporary place to store bodies, a morgue for identification purposes, calling all identification experts and coordinating with the search team for the crime scene phase.

There are so many aspects that must be done in a DVI operation with various obstacles and barriers, making the involvement of various elements very important for the success of an operation like this. Coordination and cooperation are always prioritized in the implementation of DVI operations in an effort to achieve success in the victim identification process. Many emotions are involved so that often a DVI operation is an operation that must be carried out with all patience and care. Because returning the body to the family that is not appropriate is a fatal mistake and should not happen.

From the explanation above, the legality of the Disaster Victim Identification identification letter must and must be issued by someone based on their expertise regarding something or a situation in this case Disaster Victim Identification. Associated with Article 157 of Law Number 17 of 2023 concerning Health which explains that:

1. For the purposes of law enforcement and population administration, every person who dies must be tried to find out the cause of death and their identity.
2. In order to determine the cause of death of a person as referred to in paragraph (1), a death audit may be conducted, including a verbal autopsy, clinical autopsy, forensic autopsy, and/or laboratory examination and virtual post-mortem autopsy.
3. The implementation of a clinical autopsy, forensic autopsy, and/or laboratory examination and virtual post-mortem autopsy as referred to in paragraph (2) must be carried out with the consent of the family.

4. In order to determine the identity as referred to in paragraph (1), efforts must be made to identify the body in accordance with standards.
5. The implementation of efforts to determine the cause of death as referred to in paragraph (1) may be combined with research, education and training, including anatomical autopsy and/or clinical autopsy.

Article 157 of Law Number 17 of 2023 concerning Health does not yet regulate who has the right to issue identification results in DVI operations for mass disasters.

The existence of the legal norm of Article 187 letter c of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP) associated with Article 157 of Law Number 17 of 2023 concerning Health based on the Pancasila justice values does not yet reflect the value of justice. Justice is one of the most important legal objectives of a legal system, although there are still several other legal objectives, namely legal certainty and legal benefits which are also the mainstay of a legal system. There are two formulations of justice: first, the view that what is meant by justice is the harmony between the use of rights and the implementation of obligations in line with the postulate of the legal balance, namely the measure of rights and obligations. Second, the views of legal experts who basically formulate that justice is the harmony between legal certainty and legal comparability.

Article 187 letter c of the Criminal Procedure Code states that a letter as valid evidence is a statement from an expert containing an opinion based on his expertise regarding something or a condition that is officially requested from him. Linked to Article 157 paragraph (1) (2), (4), and paragraph (5) of Law Number 17 of 2023 concerning Health which only explains the legal norms attempted identification makes there is no element of legal obligation norms and legal certainty in identifying victims who died in the Disaster Victim Identification procedure and does not regulate who has the right to issue the results of the Disaster Victim Identification procedure identification. Based on this, the legal reconstruction of the ratification of the results of the identification of victims who died due to mass disasters in the implementation of the Disaster Victim Identification procedure based on the value of justice proposed by the author is through the reconstruction of values in Law Number 17 of 2023 concerning Health by regulating that those who have the right to issue identification results in DVI operations for mass disasters are the DVI Police who have DVI Commander expertise certification which guarantees that the identification results are in accordance with the science used, in order to create transparency, coordination, togetherness between the National Police and the team of experts, so that they can be legally accounted for. Reconstruction of norms regarding Article 157 paragraphs (1) (2), (4), and

(5) and the addition of two paragraphs in Law Number 17 of 2023 concerning Health so that it becomes paragraph (1) For the purposes of law enforcement and population administration, every person who dies requires identification to determine the cause of death and their identity. (2) In order to determine the cause of death of a person as referred to in paragraph (1), a death audit may be conducted, including a verbal autopsy, clinical autopsy, forensic autopsy, and/or laboratory examination and virtual autopsy post-mortem. (3) The implementation of a clinical autopsy, forensic autopsy, and/or laboratory examination and virtual autopsy post-mortem as referred to in paragraph (2) must be carried out with the consent of the family. (4) In order to determine the identity as referred to in paragraph (1), identification of the corpse must be carried out in accordance with standards. (5) The implementation of the determination of the cause of death as referred to in paragraph (1) may be combined with research, education and training, including anatomical autopsy and/or clinical autopsy. (6) The determination of the identification results in the Disaster Victim Identification operation is authorized by the Disaster Victim Identification Commander. (7) In order to determine the forensic identification as referred to in paragraph (1), any person who prevents, obstructs or thwarts the examination of the corpse in the Disaster Victim Identification procedure shall be punished with imprisonment for a maximum of one year or a maximum fine of IDR 50,000,000.

CONCLUSION

1. The weaknesses in the legality of ratifying the results of the identification of victims who died due to mass disasters in the implementation of the current Disaster Victim Identification procedure consist of a). The legal structure where the distribution of DVI police doctors is lacking. b). The weakness of the legal structure, namely Article 157 of Law Number 17 of 2023 concerning Health does not yet regulate who has the right to issue identification results in DVI operations for mass disasters. c). The weakness of the legal culture where the legal culture of being aware of disasters is still lacking, resulting in the evacuation process being hampered, resulting in many fatalities every time a mass disaster occurs and also a lack of awareness of the importance of identification.
2. Reconstruction proposed by the author is in Law Number 17 of 2023 concerning Health especially in Article 157 paragraph (1) (2), (4), and paragraph (5) and the addition of two paragraphs in Law Number 17 of 2023 concerning Health so that it becomes paragraph (1) For the purposes of law enforcement and population administration, every person who dies requires identification to determine the cause of death and identity. (2) In order to determine the cause of death of a person as referred to in paragraph (1), a death audit can be carried out, including verbal autopsy, clinical autopsy, forensic autopsy, and/or

laboratory examination and virtual autopsy after death. (3) The implementation of clinical autopsy, forensic autopsy, and/or laboratory examination and virtual autopsy after death as referred to in paragraph (2) must be carried out with the consent of the family. (4) In order to determine the identity as referred to in paragraph (1), the corpse must be identified in accordance with standards. (5) The implementation of determining the cause of death as referred to in paragraph (1) can be combined with research, education and training, including anatomical autopsy and/or clinical autopsy. (6) The determination of the identification results in the Disaster Victim Identification operation is authorized by the Disaster Victim Identification Commander. (7) In order to determine the forensic identification as referred to in paragraph (1), any person who prevents, obstructs or thwarts the examination of the corpse in the Disaster Victim Identification procedure shall be punished with imprisonment for a maximum of one year or a maximum fine of Rp. 50,000,000.

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