



REVIEW OF CRIMINAL LAW IN PROVIDING LEGAL PROTECTION TO CRIME VICTIMS IN THE JUSTICE SYSTEM CRIME IN INDONESIA

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ABSTRACT

There is relatively little attention paid to victims of criminal acts as can be seen in the Criminal Code which only formulates the rights of victims of criminal acts in one article, namely Article 14 c paragraph (1) which regulates the right to compensation for victims of criminal acts of a criminal nature. civil. The Criminal Procedure Code also regulates the rights of victims of criminal acts in Articles 98-101, which regulates combining claims for compensation with criminal cases. In the practice of criminal justice in Indonesia, it can be said that almost no judges make decisions based on the articles mentioned above. The problem in this research is what is the position and role of victims of criminal acts in the criminal justice system in Indonesia; What is the criminal law policy through the responsibilities of the Criminal Justice apparatus in providing legal protection to victims of criminal acts in the criminal justice system in Indonesia; How to provide legal protection to victims of criminal acts in the criminal justice system in the future. This research uses a sociological juridical approach. This research is a type of research that combines a normative approach and a sociological approach. This means that in addition to studying the law in a theoretical context, we also see directly what is happening in society. The research results show that the right to protection and restoration of legal interests in the criminal justice process is as stated in Law Number 8 of 1981 concerning the Criminal Procedure Code and is also formulated morally in Declaration of Basic Principles of Justice for Victims of Crime and abuse of Power, which includes: ways to obtain justice and fair treatment, including, among other things, the right to a mechanism for obtaining justice; has the right to obtain compensation for the suffering he has suffered; It is possible to obtain compensation using formal procedures (law) or informally (by arbitration, customary practices or customary law), which are fast, honest, cheap and acceptable. However, in reality the victim does not get anything.

Keywords: *Criminal Law Review, Legal Protection, Criminal Justice System*

A. INTRODUCTION

The existing laws governing legal protection for victims of criminal acts are still partial and their existence is spread across various laws and regulations so that they only apply to certain crimes. An example is Article 35 of Law no. 26 of 2000, concerning Human Rights courts and Articles 36 to 42 of Law no. 15 of 2003 concerning Criminal Acts of Terrorism, which gives victims or their heirs the right to obtain compensation, restitution and rehabilitation, relating to the suffering they experience as a result of criminal acts of terrorism. Granting rights to victims or their heirs as regulated in the law above certainly cannot be applied to other crimes, such as conventional crimes. In fact, the consequences suffered by victims of crime (regardless of the type) are the same, namely the emergence of losses, both material and immaterial. Even though Law Number 13 of 2006 concerning the Protection of Witnesses and Victims has been established, because there are no implementing regulations yet, the existing Law is just a written regulation which is difficult to operationalize. Based on the description of the background as outlined above, it is very reasonable to conduct research whose results are made into a thesis with the title "REVIEW OF CRIMINAL LAW IN PROVIDING LEGAL PROTECTION TO VICTIMS OF CRIME IN THE CRIMINAL JUSTICE SYSTEM IN INDONESIA."

B. FORMULATION OF THE PROBLEM

1. What is the position of crime victims in the criminal justice system in Indonesia?
2. How does Criminal Justice provide legal protection to victims of criminal acts in the criminal justice system in Indonesia?
3. What will be the efforts to provide legal protection to victims of criminal acts in the criminal justice system in the future?

C. RESEARCH METHODS

The type of research used in this research is normative legal research methods or library legal research. namely legal research carried out by examining library materials, namely primary and secondary data. These legal materials are arranged systematically to make it easier to draw conclusions from the problems studied. In approaching this problem using the Normative Juridical approach method. This approach is an approach to applicable legislation. The statutory approach is carried out by examining all laws and regulations that are related to the content of the law being handled. The normative juridical problem approach is an approach used to approach statutory regulations (statue approach), this approach examines statutory regulations related to the problem being studied. Apart from that, a conceptual approach is also used to look at legal concepts related to existing problems.

D. DISCUSSION

1. The position of victims of criminal acts in the criminal justice system in Indonesia relating to victims of criminal acts

As parties seeking justice, they have the right to protection and restoration of legal interests in the criminal justice process as stated in Law Number 8 of 1981 concerning the Criminal Procedure Code and also formulated morally in the Declaration of Basic Principles of Justice for Victims of Crime and abuse of Power, which includes:

- a. Pathways to obtaining justice and fair treatment include, among other things:
- b. Have the right to a mechanism for obtaining justice
- c. He has the right to receive compensation for the suffering he has suffered
- d. Makes it possible to obtain compensation using formal procedures (law) or informally (by arbitration, customary practices or customary law), which is fast, honest, cheap and acceptable
- e. Have the right to notifications regarding regulations and the progress of the judicial process
- f. Have the right to guarantee personal and family security from intimidation and revenge
- g. Entitled to Restitution Victims, the victim's family or those who depend on the victim have the right to fair compensation (restitution) from the perpetrator of the crime. This restitution for personal victims can take the form of paying compensation for lost property, reimbursement of expenses and providing services and restoration of their rights. Meanwhile, for the victim group (community) in cases of environmental crime, compensation takes the form of environmental restoration, restructuring of infrastructure, replacement of community facilities and repayment of expenditure costs. This restitution can be given by the government, if there is a government official whose actions are arbitrary or due to negligence in carrying out their duties. Compensation Victims and their victims and those dependent on victims who suffer physically or mentally as a result of serious crimes can receive compensation (compensation) from the government. Victims will receive assistance in the form of material, health, psychological and social services through the State, volunteers and the community. These four things need to be realized in the formulation of criminal legislation clearly and firmly, and in its concretization it is hoped that it will be consistent as an effort to protect and restoration of the legal interests of victims of criminal acts. "The question of victimology" and its reflection on criminal procedural



law, especially those related to compensation, deserves further clarification in our law. This is done by strengthening the victim's sanctions position in a criminal process, temporarily

The provisions in articles 98-101 of the Criminal Procedure Code itself are actually the starting point for further thinking about the position of the victim witness. The problem of compensation as formulated in the Indonesian Criminal Procedure Code, the formulation is incomplete, this can be seen from the definition of compensation in Article 1 point 22 of the Criminal Procedure Code, which states that compensation is a person's right to obtain fulfillment of his demands in the form of compensation for a sum of money for being arrested, detained, prosecuted or tried. without reasons based on law or because of a mistake regarding the person or the law applied in the manner regulated in this law. If you look at article 98 paragraph (1) of the Criminal Procedure Code and its explanation, especially losses to other people, including losses from the victim. With the formulation of the two articles, there is confusion in the concept of compensation, on the one hand, the concept of compensation is intended for those who are arrested, detained, prosecuted or tried without a valid reason. So it is a limited conception, on the other hand, on the other hand, it contains a broad concept of compensation, where the formulation of losses for other people and not only for those who are included in the limited conception, but also includes losses suffered by victims of criminal acts and their heirs.

2. Responsibilities of Criminal Justice Officials in Providing Legal Protection to Victims of Crimes in the Criminal Justice System in Indonesia

Police Responsibilities Legal and moral responsibilities of the Police are formulated in Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia and Law Number 8 of 1981 concerning Criminal Procedure Law, which includes:

- a. Preventive Responsibility This preventive responsibility is the responsibility of the police to prevent symptoms that might give rise to criminal acts. The preventive responsibility is formulated in the provisions. Article 5 paragraph (1) of Law number 2 of 2002, concerning the Police, which reads: The National Police of the Republic of Indonesia is an instrument of the State which plays a role in maintaining security and public order, enforcing the law, as well as providing protection, guidance and service to the community in order to maintain it. internal security, Article 6 paragraph (1) of Law number 2 of 2002, concerning the Police which reads: The National Police of the Republic of Indonesia in carrying out the roles and functions of the police as intended in 5 covers the entire territory of the Republic of Indonesia, Article 13 of Law number 2 In 2002, regarding the Police, it was stated: the main task of the National Police of the Republic of Indonesia is to maintain security and

order Enforce the law and provide protection, guidance and service to the community. Repressive Responsibility. Repressive responsibility is a police responsibility that is realized after a crime has occurred, which includes: Outside of justice, formulated in Article 15 paragraph (1) letter c of law number 2 of 2002, concerning the Police, which reads: preventing and dealing with the growth of social ills. In the judiciary, it includes: The field of investigation is contained in Article 14 paragraph (1) letter g of Law number 2 of 2002, concerning the Police, which states that carrying out inquiries and investigations into all criminal acts in accordance with the criminal procedural law and other statutory regulations. .

- b. Responsibilities of the Prosecutor's Office There are several provisions in the responsibilities of the Prosecutor's Office which directly concern the protection and legal recovery of victims, namely those formulated in Article 30 paragraph (1) of Law Number 16 of 2004, concerning the Prosecutor's Office of the Republic of Indonesia



and Article 14 of the Criminal Procedure Code. By carrying out prosecutions, the prosecutor's office has attempted to provide legal protection from the negative actions of suspects/defendants (for example, revenge by suspects/defendants against victims), even though the restoration of the legal interests of victims of criminal acts is not fulfilled, for example demands for criminal compensation. The condition of not fulfilling the legal interests of victims of criminal acts, because the indictment does not include the wishes of the victim, in the event that the public prosecutor has been given the opportunity by law to carry out criminal prosecution for compensation, namely in Article 8 paragraph (4) Article 30 paragraph (1) Law Number 16 of 2004, concerning the Prosecutor's Office of the Republic of Indonesia which requires Prosecutors/Public Prosecutors to explore and uphold the human values that exist in society. This reflects that the law requires public prosecutors to make breakthroughs or new discoveries in the field of law, especially those concerning prosecution matters, on their own initiative. Apart from that, this is actually also reflected in Article 98 paragraph (1) of the Criminal Procedure Code, which basically gives the public prosecutor the opportunity to combine claims for compensation in criminal cases, but unfortunately this has never been done by the public prosecutor.

- c. Court Responsibilities The legal and moral responsibility of judges is a very heavy responsibility, because judges must be accountable to God Almighty, which is reflected in their decisions for the sake of justice based on the belief in God Almighty.

(Article 4 paragraph (1) of Law Number 4 of 2004, concerning Judicial Power. In the trial process the judge focuses more on the interests of the defendant and this can also be seen in Article 28 paragraph (2) of Law Number 4 of 2004, concerning Judicial Power. In passing criminal decisions, judges are required to pay attention to the good and evil characteristics of the defendant. Meanwhile, relatively little attention is given to the interests of victims of crimes. This is proven by research data showing that 4 judges or 80% of judges do not read out the rights and obligations of victims of criminal acts, and only 1 judge or 20% of judges read out the rights and obligations of victims of criminal acts. Judges mostly asked about the correct identity of victims of criminal acts when they were asked to give their testimony.

- d. Responsibilities of Advocates/Lawyers In the criminal justice system in Indonesia, the existence of advocates/lawyers has an important role in finding material truth, so that the legal and moral responsibilities of Advocates/Lawyers must be realized and implemented by paying attention to legal values and justice values as well as human values. There is a situation where private Advocates/Lawyers are not used to accompany/defend victims of criminal acts, because: criminal legislation, criminal legislation places more emphasis on the formulation of legal aid for suspects/defendants, as formulated in Article 37 to Article 40 Law Number 4 of 2004, concerning Judicial Power and Articles 69 to Article 74 of the Criminal Procedure Code, the authority of criminal justice officials, criminal justice officials have authority that cannot be interfered with and challenged by advocates/attorneys.

3. Legal Protection Efforts for Crime Victims in the Justice System in the Future

The government has a big obligation to protect and legally restore victims of criminal acts in the justice system in the future because the government is also responsible for the criminalization that is formulated in criminal legislation. These protection and recovery efforts must be carried out by the government. Legal Sector. Formulating the position and role of victims of criminal acts in legislation, as well as providing implementing regulations, especially regarding regulations regarding the provision of compensation and restitution to victims of serious human rights violations; Composition of the selection committee; position, structure, organization, duties and responsibilities of the Secretariat of the Witness and Victim Protection Agency (LPSK); Procedures for carrying out selection and selection of LPSK members. Reforms need to be carried out, both in the formation of new legislation regarding material criminal law (KUHP) and law



formal criminal law (KUHP). The Criminal Justice Apparatus Sector needs to take actions that provide legal protection for victims of criminal acts, including by having the courage to combine compensation claims with criminal cases, because nowadays people roughly draw the conclusion that the situation in the current criminal law system, both in the field of legislation, as well as in the field of investigation and prosecution, most of this has occurred without good guidance, is irrational and ineffective. In the Social Services Sector, the government needs to establish social institutions that specifically serve victims of criminal acts as an effort to restore the balance of interests that have been damaged by perpetrators of criminal acts. This social institution not only handles compensation, restitution, but also handles rehabilitation.

E. CLOSING

Conclusion

1. The position of victims of criminal acts in the criminal justice system in Indonesia, the path to obtaining justice and fair treatment, includes, among other things:
 - a. have the right to a mechanism for obtaining justice
 - b. has the right to receive compensation for the suffering he has suffered
 - c. makes it possible to obtain compensation using formal procedures (law) or informally (by arbitration, customary practices or customary law), which are fast, honest, cheap and acceptable.
 - d. has the right to notification regarding regulations and the progress of the judicial process
 - e. has the right to guarantee personal and family security from intimidation and revenge
2. Responsibility of criminal justice officials in providing legal protection to victims of criminal acts in the criminal justice system in Indonesia
 - a. Police Responsibilities The legal and moral responsibilities of the Police are formulated in Law Number 2 of 2002 concerning the National Police of the Republic
 - b. Responsibility of the Prosecutor's Office
 - c. Judicial responsibility
 - d. Attorney's Responsibilities
3. Efforts to Legally Protect Victims of Criminal Acts in the Justice System in the Future The government has a major obligation to protect and legally restore victims of criminal acts in the justice system in the future because the government is also responsible for criminalization which is formulated in criminal legislation. These protection and recovery efforts must be carried out by the government.

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