

RESTRUCTURING THE PROVISION OF DAMAGES TO VICTIMS OF VIOLENCE IN THE CRIMINAL JUSTICE SYSTEM IN INDONESIA

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ABSTRACT

In Indonesia, the criminal justice system frequently disregards the rights of victims of violence to receive compensation for a crime committed against them; in the current Indonesian criminal system, only criminal sanctions are inflicted on the perpetrators. However, in the practice of criminal justice, no one provides compensation to the victims of violent crimes, which generates unhappiness among victims and their families. The criminal imposition of criminal charges against the perpetrators should also be prosecuted as a violation of the victims' rights. Based on these issues, the formulation of the problem is how the appropriate legal norms provide protection for victims of violence, How the reorganization of compensation for victims of violence in the Indonesian criminal justice system proceeding is. This paper examines the lack of regulations governing the provision of compensation to victims of violence utilizing a normative writing method and a problem-based legislative approach. This study's objective is to ensure that victims of violence receive legal protection not only for their psychological recovery, but also for the financial losses they have sustained as a result of the crime.

Keywords: Restructuring, Providing Compensation, Victims of Violence, Criminal Justice System.

INTRODUCTION

Article 1 paragraph 3 of the Constitution of 1945 specifies that Indonesia is a state of law in which all citizens are treated equally before the law, both in terms of their rights and positions. Based on the legal system in place in Indonesia, which still adheres to the Dutch legal system from the colonial era, the legal system in Indonesia is becoming less effective as a result of the accelerating pace of modernization. One of the problems that occur in the Indonesian legal system, particularly criminal law, is the prevalence of violent criminal activities, as governed by the Criminal Code (henceforth referred to as the Criminal Code) in a number of articles, including Book II Crimes. Article 170, paragraph 1 of Chapter V on Crimes Against the Public stipulates that anyone who publicly and collectively acts violence against persons or property is condemned to a maximum of five years and six months in jail. This relates to the interests of the community affected by a disruption of order, such as a group of protestors who damage public facilities or a group of football fans who assault and harm street sellers. The text solely emphasizes punishment for the culprits, but there is no mention of protection for the victims against the losses they have sustained.

In addition to the article in Chapter XX addressing Punishment, articles 351 through 358 are included in a criminal act of violence in which a person is harmed as a result of a physical act done by another person, and only the punishment of the offender is included in these articles. Indonesia's criminal law system does not provide sufficient attention to the protection of victims. Violence encompasses not only physical hurt, but also psychological violence and sexual violence, psychological violence including bullying, insulting the dignity of others, and other traumatizing acts. While sexual violence, which includes rape, sexual harassment, etc.

When discussing the criminal law system in Indonesia, law enforcement officers play a crucial role in resolving conflicts, upholding the truth, and ensuring justice. In reality, it can serve as a tool for *social engineering* within the society (Ali, 2007). The majority of law enforcement officers minimize the idea that law enforcement is defined as law enforcement. This view implies that the law (law) is the focal point of attention. In actuality, the problem of law enforcement cannot be viewed solely from the perspective of the law; it must be viewed holistically, taking into account all existing factors, such as ethics, conduct, and culture. Therefore, fresh viewpoints and orientations are required in law enforcement (Ali, 2007).

In actuality, law enforcement in Indonesia is frequently marked by conflict with the law, and it is not uncommon for the criminal justice system to decide situations in which the victim's fate is frequently overlooked. As is the case with victims of violence who, in addition to psychological injuries, also suffer physical injuries, the trial process in practice only aims to impose criminal charges against the perpetrators, so that the rights of victims are frequently disregarded, such as charges that are too weak, the guidance is not comparable or too light, and the victim does not receive recovery. The victim of a crime is not entitled to any compensation or other rights. Given that the fundamental goal of the Indonesian legal system is the achievement of a simple, quick, and low-cost trial, the criminal case process should be designed efficiently. Under the aegis of Law No. 13 of 2006 Concerning the Protection of Witnesses and Victims, which designates LPSK as a forum for victims and witnesses of criminal acts, there are still many unclear norms and facts that occur in court, thereby preventing victims of criminal acts from obtaining their rights. In addition, the consolidation of cases, as outlined in Article 98 of the Criminal Procedure Code, is a representation of the victim's claim to compensation, but it does not account for the victim's non-material losses. In the meantime, implicitly, the criminal decision handed down to the perpetrator does not directly correlate to the victim's repair or recovery after the commission of a crime, but in the trial it is only geared towards imposing a crime on the perpetrator without imposing compensation on the victim. In this paper, we will address the reorganization of victims in the Indonesian criminal justice system so that the rights of victims of criminal crimes can be honored.

By respecting the concept of *Equality before the Law*, the rights of victims of violence must be fought for in order to ensure their survival, given the frequent neglect of their rights, such as excessively light demands against perpetrators, no recovery for victims, and no compensation for victims. violence. According to Law No. 8 of 1981 on the Criminal Procedure Code (KUHP),

there are few rules regulating the fulfillment of victims' rights. Even throughout the judicial process for violent crimes, the culprits are tried and punished for the crimes they have committed. Within the meantime, the victim is automatically represented by the government, which in this case is the prosecutor/public prosecutor who indicts and charges the perpetrator of a violent crime, so that the prosecution against the perpetrator only seeks to impose a crime, while the victim's rights, such as the provision of compensation, are not met. According to the law, a crime is a human act that violates or is contrary to what is stipulated in the rule of law; specifically, acts that violate the prohibitions stipulated in the rule of law and do not fulfill or violate the orders stipulated in the rules of law applicable in the community in question (Nur Khalimatus Sa'diyah, 2021).

Law No. 1 of 1946 pertaining to the Criminal Code (KUHP) article 170 jo. Article 351 pertaining to violent crimes simply addresses the enforcement of punishment on the criminal, but the victim's rights are not specified. In the practice of criminal justice, there are still numerous developing nations, Indonesia in particular, that disregard the place and function of victims of criminal actions. Concerns exist that victims of criminal actions will become more involved in the independent criminal justice bureaucracy (Bawole, 2021). Consequently, it is necessary to restructure Victims of Violence in the Criminal Justice System in Indonesia so that the protection of victims is not limited to imposing criminal sanctions on perpetrators of violence, but also includes the restoration of rights and compensation for criminal acts suffered by victims.

Based on the aforementioned problems, the authors formulate the following problem statement:

1. What is the form of protection for victims of violence based on the applicable law?
2. How is the restructuring of the provision of compensation for victims of violence in the criminal justice system in Indonesia?

THEORITICAL FRAMEWORK AND HYPOTHESIS DEVELOPMENT

Article 170 of the Criminal Code defines violence as "anyone who openly and with joint force uses violence against people or property," while Article 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) defines domestic violence as "any act against women that results in physical, sexual, psychological suffering and/or neglect with threats against the law within the household."

As seen by specialists, violence is a condition in which a person commits activities that can cause physical injury to himself, others, and the environment, such as Stuart and Sundeen's definition. There are also many who contend, as R. Audi does, that violence is an attack or physical abuse against a person or animal, or an extremely aggressive, violent, cruel, and brutal attack, damage, or destruction of property or something that could be someone's property. Even the *World Health Organization (WHO)* defines violence as the use of physical force and power, threats or actions against oneself, an individual, a group of people or society that results in or is likely to result in bruises, trauma, or the denial of rights. There are numerous forms of violence, such as:

- a. Physical Violence: an attack or action that causes a person to be harmed, bruised, disabled, or gravely injured by abuse such as kicking, hitting, banging things, or causing the death of another individual.
- b. Psychological or mental violence: violence that affects a person's mind or spirit, such as hurtful speech, speaking in a high-pitched/snarling tone, insults, *bullying*, and threats.
- c. Sexual Violence: the occurrence of coercive activities against sexual relationships, such as rape and sexual harassment.

According to numerous definitions, violence is an act of force or attack that causes harm or injury to oneself, others, or society. In actuality, the majority of victims of violence are women and children, but men can also be victims of violence. However, the provision of compensation for victims of violence is rarely mentioned in the contents of a number of articles.

In accordance with Article 1239 of the Civil Code, "any agreement to do or not to do something must be completed with reimbursement of costs, damages, and interest if the debtor does not meet his responsibilities," compensation is a civil lawsuit if the debtor defaults or violates the law." In the Criminal Procedure Code (KUHAP), however, compensation for victims is also regulated if the case is combined with a civil lawsuit, as stated in Article 98 paragraph 1: "If an act that is the basis of an indictment in an examination of a criminal case by the District Court causes harm to that person, it can be stipulated to combine a lawsuit for compensation into a criminal case."

RESEARCH METOD

The research undertaken at this time employs normative legal research that evaluates and analyzes written rules, using a statutory approach to examine the absence of legislation addressing the provision of compensation for victims of violence. The sources of legal materials utilized are primary legal materials derived from the laws and regulations in effect in Indonesia, and secondary legal materials derived from books, journals, and other legal publications.

RESULT AND DISSUCION

Although there have been some improvements made to Indonesia's legal system, which is based on the Dutch legal system, many more changes are still needed to keep up with the advancement of the times. In addition to the necessity for the Indonesian legal system to be updated to reflect changing social standards and escalating issues, victims' rights must also be controlled. Legal protection for victims is not adequately regulated by the law, and because victims' rights are not upheld, victims and their families feel abandoned. Once again, it is regrettable that incidents of violence submitted to the police by victims are deemed incomplete or cannot be investigated further owing to a lack of evidence; this leaves victims and their families in despair and worsens the impact. Finally, this discourages anyone who go through the same situation from reporting violent crimes to the police.

The primary right in the recovery of suffering caused by violent crimes in the form of compensation in the form of restitution and compensation as well as rehabilitation cannot be accommodated either openly or implicitly in its entirety. In Indonesia, the criminal justice system solely imposes criminal penalties on the culprit, while the victim and victim's family do not receive compensation or restitution for the harm they have suffered. Even though the victim's impact from the violent crime is

quite large, both materially and immaterially, such as the victim having to pay for treatment due to the injury suffered, or if the person is physically disabled to the point where he cannot support his family, as well as the impact of other losses suffered by victims of violence, the impact of these losses is often overlooked.

A. Forms of Protection for Victims of Violence Based on Applicable Laws

Immediate implementation of protection and aid for victims of crime is essential and necessary. The absence of protection and aid for victims of criminal activities actually contributes significantly to the degradation in the quality of law enforcement in a nation (Hamid, 2017). As a result of a movement in the criminal justice system's ideology of justice from positive law to material legal principles, the necessity of victim protection has increased. This offers a novel perspective on criminal law and the criminal justice system: (Mudzakir, 2005)

1. Justice in criminal law is centered on the victim's interests or suffering, as well as the suspect's accountability for his conduct and their repercussions.
2. Both the public interest and the interests of the victim are violated when a crime or criminal legislation is broken, making the public interest take precedence over the victim's interests. Crime then is a struggle between those who violate the law and those who see themselves as serving the public interest.
3. Victims are individuals who are harmed as a result of crimes (violations of criminal law), including, but not limited to, the victims (directly), the community, the state, and the offenders themselves.
4. Criminal justice implementation serves as a form of conflict settlement.
5. The punishment and the type of punishment to be imposed on the violator is part of conflict resolution by emphasizing the violator's responsibility for the act and its consequences.
6. Victims, society, the state, and offenders all play active roles in the criminal justice system.

According to Sulistiyowati Irianto, "the rapid evolution of society cannot be accompanied by a new legal paradigm, lest the law become insensitive to women's issues" (Irianto, 2006). According to the *Oxford Dictionary*, a *victim* is "a person who is wounded, injured, or killed as a result of a crime, accident, or other incident or action." The notion of victim or victim is well-known from the standpoint of criminal law and human rights. Declaration of Basic Principle of Justice for Victims of Crime and Abuse of Power (thereafter known as the Declaration of the Principles of Justice for Victims). Victims are defined as "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, as a result of acts or omissions that violate criminal laws applicable within Member States, including those prohibiting criminal abuse of power" (Tantri, 2021).

From the perspective of victimology, the court's decision against the defendant of a violent crime who was found guilty and sentenced to prison did not necessarily provide legal protection for the victim. Victimology is the study of crime victims in an effort to provide legal protection for their rights so that they are not neglected. (I Gusti Ayu Christiani and A.A. Sri Utari, 2022).

Article 5 paragraph 1 of Law No. 13 of 2006 on the Protection of Witnesses and Victims stipulates that every witness and victim has the right to:

- a. Obtain protection for his personal, family, and property safety, and be free from dangers relating to the testimony he will, is giving, or has already provided;
- b. Participate in the selection and determination of the form of security protection and assistance;
- c. Offer information without coercion;
- d. Got a translator;
- e. Free of complicated questions;
- f. Obtain updates on the status of the case;
- g. Obtain details regarding legal decisions;
- h. Knowing if the prisoner is released;
- i. Got a new identity;
- j. Obtain a new dwelling;
- k. Obtain payment for necessary transportation expenditures;
- l. Get legal advice; and/or
- m. seek temporary assistance with living expenses until the protection period ends.

The LPSK Law does not explicitly mention the provision of compensation, but in point m it is stated "getting living cost assistance." The purpose of this sentence is to provide compensation for the living expenses of victims of violence if it is determined that the victim is the head of the family or the backbone of the family who must provide for their parents, spouse, children, and/or family. Additionally, it is a legal need to honor the right to compensation for transportation expenses incurred either during the course of the trial or as a result of the victim's consequences being secured. The punishment meted out to the offender isn't always removed by the giving of this reparation. The victim, his family, or his representatives must apply to the court via LPSK in order to get this compensation.

The rule of law against criminal acts of violence is outlined in Article 170 of the Criminal Code (KUHP): "Whoever openly and with joint force uses violence against people or goods, shall be sentenced to prison," while the article that regulates the criminal act of persecution is outlined in Article 351 - Article 361 of the Criminal Code (KUHP) nowhere mentions the imposition of criminal penalties for suspects, while legal protection for victims is not outlined, both for victim and suspect.

The centralistic prohibitions in the Netherlands' Criminal Code, which is based on French criminal law, indicate the authorities' intention to create rules that are followed by their inhabitants. This has produced a codified criminal law environment with ramifications for positivist inclinations (Savitri, 2008). Every citizen has human rights and the same legal rights, so it is the responsibility of the state to safeguard and secure the welfare of its citizens.

Law enforcement officers are part of a legal system that operates as a single mechanism, with components including law-making institutions, courts and institutions authorized to implement the law, as well as institutions authorized to prosecute parties who breach legal provisions (Hamid, 2007; 2017). The importance of law enforcement in the process of legal protection stems

from the belief that the apparatus is intimately connected to both victims and offenders. In contrast to the theory, however, the lack of contribution to the protection of victims produces circumstances in which victims of violence do not know what steps they can take to receive protection as a result of the losses they have sustained.

B. Restructuring the Provision of Compensation for Victims of Violence within the Indonesian Criminal Justice System

For the protection of victims, this fundamental issue must be addressed as quickly as feasible by improved criminal law policies and better and more accommodating criminal law enforcement. This is a crucial step in the framework of enhancing criminal law policy by incorporating restorative justice principles. These are not new principles, but rather ideals that already exist and are reflected in the nation's concept of life; in fact, they are still upheld in practice by our customary law. This paradigm's necessity or repetition is understood as an attempt to rephilosophize legal justice. The implication of applying this paradigm is the formation of legal alignments that are balanced and proportional to victims, communities, and perpetrators. Thus, the concept of crime that is based solely on violations of the public or state interest must be turned into a violation of the interests of the parties, in this case the victims, the offenders, and the community (Research and Development Agency for Law and Judicial Training of the Supreme Court of the Republic of Indonesia, 2013).

The recovery of victims of human rights breaches must be carried out as effectively as possible because every victim of a crime has human rights, and victims of violence constitute one category of human rights violation. According to Law No. 39 of 1999 Concerning Human Rights, there are two categories of human rights infractions: minor violations and serious violations. Crimes of genocide and crimes against humanity are examples of serious human rights abuses, whereas minor human rights violations can take many other forms, including:

- a. Doing persecution.
- b. Acts that can be used to slander someone.
- c. Prevent a person from expressing their desires in diverse ways..
- d. Assault people as part of violent acts. stealing anything or someone else's property.
- e. Menghalangi seseorang menjalankan ibadah. Melakukan pencemaran lingkungan.
- f. direct or indirect bullying via social media.
- g. The act of parental coercion towards children.

According to Boven (Kurnia, 2005), the types of restitution for victims of human rights breaches include:

2. Restitution, which is an effort to restore the condition prior to the incidence of human rights breaches, includes the return of freedom, labor, and property rights, for instance.
3. Compensation, specifically compensation for any economic loss that can be assessed as a result of human rights violations, such as physical or mental losses including pain, suffering, and emotional distress; missed opportunities including education; material loss and, loss of income including potential income; damage to reputation or dignity; and the costs associated with acquiring legal assistance, medical care, and medicines.
4. Rehabilitation (rehabilitation) that consists of medical and psychosocial treatment.
5. Assurances of satisfaction and non-repetition, which include:
 - a. Termination of violation;
 - b. Verification of facts and full and open revelation of the truth;
 - c. A formal declaration or court ruling that restores the victim's or other closely associated parties' dignity, reputation, and legal rights.

Contrary to various sections of the article in the Criminal Code, which only addresses the application of criminal charges against the perpetrators and makes no mention of the providing of compensation to the victims of violence, this is still the case. Between the supply of criminal sanctions and the perpetrators of criminal activities, there must be a match so that the objective of the criminal sanctions may be fulfilled, and the court must keep the features or character of the criminals while imposing criminal sanctions (Revana, 2009).

In the criminal justice system, solely the imposition of punishments on offenders is prioritized, while the fulfillment of victims' rights is overlooked. In numerous situations of violence, numerous victims suffered tangible and immaterial losses, but law enforcement officers constantly disregard this fact. According to the Human Rights Law, victims of serious human rights breaches are eligible for compensation, whereas victims of minor human rights violations are required to make reparation. In Indonesia's criminal justice system, Article 91, Paragraph 1 of the KUHAP stipulates that if a victim wishes to get compensation for losses resulting from a criminal conduct, the victim must initiate a civil case outside of the criminal court system. However, because the procedure of submitting a claim for compensation in a criminal case is time-consuming and expensive, not all victims ultimately sue for compensation for the crime they have suffered. This requires reworking the laws and regulations that stipulate that every victim of violence must receive compensation for the loss incurred as a result of the act of violence he has experienced, so that when a judge decides a case, he or she not only imposes a sentence on the perpetrator of violence, but also determines the provision of compensation. to the victim. As a result, the reform of the supply of compensation is designed to ensure that victims' rights can be granted and that their families can rest assured that they have legal protection.

CONCLUSION

Legal protection for victims is not adequately regulated by the law, and because victims' rights are not upheld, victims and their families feel abandoned. It is critical to act quickly to provide protection and support for crime victims. The change away from positive law, which is founded on material legal concepts in the criminal justice system, has resulted in a greater emphasis on safeguarding victims. In Indonesia, the criminal justice system solely imposes criminal penalties on the culprit, while the victim and victim's family do not receive compensation or restitution for the harm they have suffered. Even though the victim's impact from the violent crime is quite large, both materially and immaterially, such as the victim having to pay for treatment due to the injury suffered, or if the person is physically disabled to the point where he cannot support his family, as well as the impact of

other losses suffered by victims of violence, the victim's impact is considered to be immaterial. From the perspective of victimology, the court's decision against the defendant of a violent crime who was found guilty and sentenced to prison did not necessarily provide adequate legal protection for the victim. Victimology is the study of crime victims with the goal of providing legal protection for their rights so they are not neglected.

Every victim of a crime has human rights, and victims of violence are a form of human rights violation for which the optimal recovery of victims of human rights violations must be achieved. In the criminal justice system, solely the imposition of punishments on offenders is prioritized, while the fulfillment of victims' rights is overlooked. In numerous situations of violence, numerous victims suffered tangible and immaterial losses, but law enforcement officers constantly disregard this fact. According to the Human Rights Law, victims of serious human rights breaches are eligible for compensation, whereas victims of minor human rights violations are required to make reparation. This requires reworking the laws and regulations that stipulate that every victim of violence must receive compensation for the loss incurred as a result of the act of violence he has experienced, so that when a judge decides a case, he or she not only imposes a sentence on the perpetrator of violence, but also determines the provision of compensation. to the victim.

The criminal justice system needs to be restructured so that victims of violence receive justice that doesn't just involve locking up the offenders but also involves compensating them for the losses they and their families have endured—both material and immaterial losses—without having to go through a drawn-out and drawn-out process. astronomical expense

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