

Legal Reconstruction of Victim's Protection Regulations through Claims for Damages Case Combination Based on Justice Value

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Abstract

The objectives of this research are to analyze and find legal weaknesses of Victim's Protection Regulations through Claims for Damages Case Combination and how to reconstruct the Victim's Protection Regulations through Claims for Damages Case Combination based on justice value. The method used in this study uses an empirical approach and a normative juridical approach with the paradigm used by the constructivism paradigm. This study uses the constructivism paradigm. The approach method used is sociological juridical, with descriptive-analytical research specifications. The data used are primary data and secondary data, which are then analyzed. The results of the study show that the weaknesses in merging cases for compensation claims include: a) Lawsuits can only be filed at the first level; b) The public prosecutor who enters the request for compensation in the case file; c) The decision on compensation demands is very dependent on the criminal case, therefore, Based on the foregoing, the legal reconstruction as intended by the author is by adding a new article, namely article 98 paragraph (3) which reads: "That the Public Prosecutor is obliged to ask the victim whether he wants to make a claim for compensation" and also revises Article 100 paragraph (2) so that it reads: "If a criminal case is not filed for an appeal, then an appeal regarding the decision for compensation is still permitted."

Keywords: Legal Reconstruction, Victim, Damages, Justice Value.

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INTRODUCTION

One form of compensation for victims of criminal acts is restitution. Restitution in accordance with the Principle of Restoration in its Original Condition (*Restitutio in Integrum*) is an effort that wanted to make the victim of a crime to be returned to its original state before the crime occurred even though it is based on the fact that it is impossible for the victim to return to his original condition (Sulistiani, 2022). This principle emphasizes that the form of recovery for victims must be as complete as possible and covers various aspects arising from the consequences of crime. With restitution, victims can be restored to their freedom, legal rights, social status, family life, and citizenship, return to their place of residence, restore their jobs, and recover their assets (Toebagus, 2022). In practice, in many countries, the concept of restitution has been developed and given to victims of crimes for their suffering as victims of crimes (Widodo 2019).

In this concept, victims and their families must receive fair and appropriate compensation from the

guilty person or a responsible third party. This compensation will include the return of property or payment for damage or loss suffered, compensation for costs incurred as a result of the victim's fall, provision of services, and rights of recovery. Based on Article 1365 of the Civil Code, people who suffer losses caused by other people's actions that violate the law have the right to claim compensation. If the person suffers a loss as a result of a crime, to make it easier for the person, the state provides a way to obtain compensation without having to go through the usual civil lawsuit process by combining cases of claims for compensation with criminal cases regulated in the Criminal Procedure Code.

Furthermore, the state is increasingly providing space for victims of criminal acts to obtain their rights to obtain compensation with a wider range by issuing Law Number 13 of 2006 concerning the Protection of Witnesses and Victims (hereinafter abbreviated as Law No. 13 of 2006) which was later replaced by The Law Number 31 of 2014 concerning

Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims (hereinafter abbreviated as Law No. 31 of 2014).

However, it turns out that many problems have occurred in the implementation of compensation provisions for victims of criminal acts, both those regulated in the Criminal Procedure Code and the Law on Witness and Victim Protection. This paper aims to examine some of the problems that arise in connection with the provision of compensation in the form of restitution for victims of criminal acts and offers a new mechanism concept regarding requests for restitution submitted by victims of criminal acts, which adopts various provisions regarding restitution from various laws and regulations considered ideal for the victim.

If the provisions in the Criminal Procedure Code are carefully examined, then compensation can be given to victims of criminal acts by looking at Article 98 paragraph (1) which states that if an act forms the basis of an indictment in a criminal case examination by a district court causes harm to other people, then the head judge at trial at the request of that person may decide to combine the case for compensation for damages to the said criminal case.

The meaning of "*harm for other people*" (the subject) is not limitation, that is, in accordance with the provisions of civil law, anyone who suffers a loss caused by a crime, including the loss of the victim (explanation of Article 98 paragraph (1) of the Criminal Procedure Code), while the types of losses arising from a criminal act are limitations, namely limited to material losses in the form of costs or replacement costs incurred by interested third parties (Article 99 of the Criminal Procedure Code) which is strengthened by the jurisprudence of the Supreme Court of the Republic of Indonesia Number 976 K/ Pid/1988 dated September 24, 1991. The provisions regarding this type of loss are not in accordance with the aspirations of Article 101 of the Criminal Procedure Code, namely "*provisions from the rules of civil procedural law apply to claims for compensation*" Civil law does not limit the type and amount of loss suffered by the injured party (plaintiff) if the loss is truly in accordance with the principle of causality as stipulated in Article 1365 of the Civil Code. The possibility of lawsuits from third parties or victims of criminal acts that can be combined with criminal cases is a new form introduced in criminal procedural law in Indonesia. Whether the examination and decision are granted or not, the application for compensation is of an accessory nature, meaning that the decision is granted or the rejection of the application for compensation depends on the decision of the principal case, namely the criminal act charged by the Public Prosecutor. Decisions on compensation to third parties can only be executed if the main decision has permanent legal force (Widodo, 2018).

However, it turns out that there are several shortcomings in the Criminal Procedure Code regarding the provision of this compensation. First, the filing procedure is not simple because filing for compensation can only be made through a claim for compensation combined with an examination of the main criminal case. In addition, in the process itself, the victim must be proactive, namely victims of criminal acts must frequently be in contact with law enforcement officials to ensure that the process of filing a claim for compensation will be accommodated by the Public Prosecutor in his or her lawsuit. This of course will spend time and money from victims of criminal acts. Second, the form of compensation given was apparently only for losses that were material in nature. The Judge's decision is only limited to granting which determines the reimbursement of costs incurred by the aggrieved party.

This means that the amount of compensation is only the amount of actual loss or material loss. Apart from real losses, such as losses that are immaterial in nature, cannot be filed in a merger of cases. If immaterial compensation is filed by the aggrieved party, the judge must declare the claim unacceptable (*niet onvankelijke*, or N.O). Third, filing for immaterial compensation can only be filed with a civil lawsuit procedure which is a long and convoluted process. Therefore, based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction of Victim's Protection Regulations through Claims for Damages Case Combination Based on Justice Value*" where the main problem discussed in this article is as follows:

1. What Are the Weaknesses of the Implementation of Victim's Protection Regulations Through Claims For Damages Case Combination in Indonesia Currently?
2. How is the Legal Reconstruction of Victim's Protection Regulations through Claims for Damages Case Combination Based on Restorative 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 Implementation of Victim's Protection Regulations through Claims for Damages Case Combination in Indonesia Currently

If the provisions in the Criminal Procedure Code are carefully examined, then compensation can be given to victims of criminal acts by looking at Article 98 paragraph (1) which states that if an act forms the basis of an indictment in a criminal case examination by a district court causes harm to other people, then the head judge at trial at the request of that person may decide to combine the case for compensation for damages to the said criminal case. The meaning of "*harm for other people*" (the subject) is not limitation, that is, in accordance with the provisions of civil law, anyone who suffers a loss caused by a crime, including the loss of the victim (explanation of Article 98 paragraph (1) of the Criminal Procedure Code), while the types of losses arising from a criminal act are limitations, namely limited to material losses in the form of costs or replacement costs incurred by interested third parties (Article 99 of the Criminal Procedure Code) which is strengthened by the jurisprudence of the Supreme Court of the Republic of Indonesia Number 976 K/ Pid/1988 dated September 24, 1991. The provisions regarding this type of loss are not in accordance with the aspirations of Article 101 of the Criminal Procedure Code, namely "*provisions from the rules of civil procedural law apply to claims for*

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Case in point, as experienced by Ace Yuliana Punuf alias Yuli as a Victim (PN SOE Decision - 135/Pid.Sus/2018/PN.Soe) in the Crime of Trafficking in Persons, initially in mid-2014 the Victim received an offer to want to work in Kupang with a guarantee that he would receive a large salary and a guaranteed life, in vulnerable position due to the economic situation of the victim and/or his family and out of necessity so that the victim accepts the invitation and the victim is initially taken to stay at the shelter for 2 (two) days and the victim is given paper to sign and photograph the victim, after 2 (two) days the victim is taken to the airport Eltari Kupang and on the way the victim was given a passport and ID card which was not the victim's name and left for Malaysia and when he arrived in Malaysia

the victim was picked up by an unknown person who later became the victim's employer, while the victim was in Johor Baru, the victim was tortured and abused and the victim did not receive a salary from the employer to the victim those who were ill and did not recover were returned to Indonesia on May 28 2017 and when at Eltari Kupang Airport the victim was picked up by BNP3TKI Kupang city and taken to Kupang Wirasakti Hospital to receive treatment, and after the victim's parents found out about the incident they immediately reported it to the authorities and processed up to this case.

In this case, as can be seen in the verdict that states that the defendants did not pay restitution, so they were replaced with imprisoned for 1 (one) year, which still creates the possibility that restitution will not be paid for the witness-victim later (Putri, 2022).

When we talk about criminal justice, our imagination will be directed at the criminal justice apparatus or bureaucracy consisting of police, prosecutors, and judges on the one hand, and defendants and their defense attorneys on the other. Victims as parties harmed by a crime are isolated or at least receive less attention. Moreover, with the increasing attention to the development of convicts which is often interpreted as something that is not related to fulfilling the interests of the victims, it is not surprising that attention to victims is increasingly away from criminal justice. In Indonesia itself, the impression of the victim's alienation in criminal justice is also felt. This can be seen, for example, from the lack of discussions regarding victims in criminal proceedings. Experts who try to write about criminal justice generally only highlight aspects related to the functions and roles of the criminal justice bureaucracy and its suspects. The provisions of national legislation are also the same as the situation; there is no one that specifically regulates the problem of victims as a party who is harmed in criminal proceedings.

However, with the entry into force of the Criminal Procedure Code which was promulgated through Law No. 8 of 1981 which allows the combination of claims for compensation from victims with their own criminal cases as stipulated in articles 98 to 101, it can be considered as the beginning of the victim's attention in criminal proceedings. Attention to the interests of the victim will have a lot to do with the imposition of a sentence for the perpetrator, while the presence of the victim in the criminal process will have a lot to do with the position and role of other parties such as the police, prosecutors, defendants and so on. This is where the relevance of victimology is in solving problems that may arise in the two fields mentioned above, namely the relationship between the interests of the victim and the imposition of a crime, and the involvement of the victim in the criminal process.

Based on the losses that may be suffered by victims based on the description above, programs for providing assistance or compensation to victims of crime are actually a combination of various efforts. These efforts include efforts in the field of social welfare, the human service system, and criminal justice. With these three lines of service, the provision of assistance programs to victims of crime is not only the responsibility of the perpetrators of crime but also the general public and the state.

The involvement of the state and the general public in overcoming the burden of suffering of victims is not only because the state has public service facilities, but also accompanied by the premise that the state is obliged to maintain safety and improve the welfare of its citizens. The occurrence of victims of crime can be considered the failure of the state in providing good protection to its citizens.

The system of giving compensation or other forms of service from the state is of course a commendable humanitarian effort. However, in terms of law enforcement, especially criminal law, the compensation system from the state has drawbacks. Because the provision of compensation from the state only requires that the victim of a crime reports the crime that happened to him without further determining whether the suspect was caught and then sentenced. This provision can reduce the victim's cooperation in subsequent criminal proceedings because he has succeeded in obtaining assistance from the state. The next drawback is that the compensation system from the state can reduce the perpetrator's sense of responsibility for the crimes he has committed.

2. Legal Reconstruction of Victim's Protection Regulations through Claims for Damages Case Combination Based on Restorative Justice

The time limit provisions stipulated in Article 98 paragraph (2) of the Criminal Procedure Code judges must pay attention to the provisions of Article 99 paragraph (1). Strictly speaking, judges must be guided by the provisions of civil procedural law in examining claims for compensation, in connection with matters relating to the authority to examine lawsuits, both in terms of absolute competence, and especially in terms of relative competence. In connection with the issue of authority in terms of civil procedural law, the judge must examine more carefully the place of residence or residence of the defendant.

Apart from the issue of the authority stated above, the district court must reconsider the following matters:

- a. Regarding the basic correctness of the claim for compensation, is it true that the compensation proposed was a direct result arising from the criminal act committed by the defendant? The judge considers the existence

of a "causalities" or "causal relationship" between the crime committed by the defendant and the loss suffered, as stipulated in Article 1365 of the Civil Code.

- b. Likewise, the amount of compensation for costs incurred by the aggrieved party can really be proven by the claimant or the person who suffered the loss.

After the court has weighed all the things that determine whether the merger of cases for compensation for damages is acceptable, the process or mechanism of the trial will continue in accordance with the criminal procedure law until the judge makes a decision.

Based on the description above, it can be concluded that the district court which is not authorized to adjudicate, in this case, the claim for compensation, the claim will be transferred back to the plaintiff and it will be advisable to file a lawsuit with the competent district court, of course, with a separate examination from the process of examining the criminal case.

Based on the results of the interviews it is known that Basically, the public prosecutor's demands must contain the main basis of the case, namely the criminal case, so in the charges usually, the public prosecutor first speaks or states the facts of the criminal case, then below that the public prosecutor will explain about there is a merger of cases for claims for compensation as well as providing evidence related to the claim for compensation (Ramadhani, 2022).

Before the victim through the public prosecutor informs the court that there is a combination of claims for compensation, the victim must first prove that he has indeed suffered a loss, for example, if his car is embezzled by the defendant then he must prove that he has indeed suffered a loss and demands compensation which could be a sum of money with the same nominal as the price of the embezzled car, or it could be with witnesses or with an agreement in the form of a letter if any. If, for example, it is a Traffic case, he can prove it with medical receipts and so on. After he has provided evidence, the public prosecutor will read it out in court and the judge will decide whether the case can be combined or not (Pasaribu, 2020).

After the judge considers that the merger of cases for compensation for damages is accepted, then the trial will continue like a trial in criminal cases as usual, what will differ later will be the judge's decision which of course contains compensation.

The decision of the panel of judges is of course in accordance with the demands of the public prosecutor; if the defendant is proven guilty then the

judge will consider the principal of the criminal case first, then will weigh and decide on compensation as well as the nominal amount to be paid by the defendant.

Based on the foregoing, the legal reconstruction as intended by the author is by adding a new article, namely article 98 paragraph (3) which reads: "*That the Public Prosecutor is obliged to ask the victim whether he wants to make a claim for compensation*" and also revises Article 100 paragraph (2) so that it reads: "*If a criminal case is not filed for an appeal, then an appeal regarding the decision for compensation is still permitted.*"

CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. The Weaknesses in merging cases for compensation claims found by the author include: a) Lawsuits can only be filed at the first level; b) The public prosecutor who enters the request for compensation in the case file, making the process difficult; c) The decision on compensation demands is very dependent on the criminal case.
2. Based on the foregoing, the legal reconstruction as intended by the author is by adding a new article, namely article 98 paragraph (3) which reads: "*That the Public Prosecutor is obliged to ask the victim whether he wants to make a claim for compensation*" and also revises Article 100 paragraph (2) so that it reads: "*If a criminal case is not filed for an appeal, then an appeal regarding the decision for compensation is still permitted.*"

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