



The disparity between the criminal sanctions of the perpetrator and the losses suffered by the owner is reviewed from article 167 of the criminal code

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Abstract

This study analyzes the disparity between the criminal sanctions imposed on the perpetrators of criminal acts entering the yard without permission and the losses suffered by the yard owners, based on Article 167 of the Criminal Code (KUHP). Article 167 of the Criminal Code regulates the prohibition of entering other people's yards without permission and stipulates criminal sanctions in the form of a maximum of nine months in prison or a fine. However, there is an imbalance between the sanctions imposed and the losses experienced by the victims, which can affect the sense of justice and the effectiveness of law enforcement. This study uses a normative juridical method with an approach to analyzing laws and regulations, case studies, and interviews with legal practitioners. The results of the study show that the sanctions regulated in Article 167 of the Criminal Code are often considered disproportionate compared to the impact of losses suffered by yard owners. In addition, this imbalance also affects the public's perception of the criminal justice system and the effectiveness of punishment as a crime prevention tool. This study recommends a review of legal policies related to criminal sanctions in Article 167 of the Criminal Code to ensure harmony between sanctions and losses caused, as well as strengthen the restorative justice approach for the recovery of victims' losses.

Keywords: Disparity of criminal sanctions, victim losses, restorative justice, effectiveness of punishment

Introduction

Fair and proportionate law enforcement is one of the basic principles in the criminal justice system. In Indonesia, the Criminal Code (KUHP) is the main legal basis in handling various criminal acts. Article 167 of the Criminal Code regulates the prohibition of entering other people's yards without permission and stipulates criminal sanctions in the form of a maximum of nine months in prison or a fine for the perpetrator^[1]. However, in practice, there is often an imbalance between the criminal sanctions imposed on the perpetrators and the losses suffered by yard owners. This phenomenon raises questions about whether the existing sanctions are fair and effective enough in providing justice to victims while preventing the recurrence of similar crimes. The disparity between criminal sanctions and losses suffered by victims is a crucial issue that needs serious attention. This imbalance not only has an impact on the sense of justice felt by victims, but also on the public's perception of the criminal justice system as a whole^[2].

Punishments that are too light compared to the losses suffered by victims can give the impression that the legal system is incapable of providing adequate protection, while punishments that are too severe may not be in line with the principle of proportionality and may cause injustice to the perpetrator. This study aims to analyze the imbalance between the criminal sanctions imposed under Article 167 of the Criminal Code and the losses experienced by yard owners. Through a normative juridical approach and analysis of laws and regulations, this study seeks to identify the factors that cause these disparities and their impact on the sense of justice and the effectiveness of punishment. In addition, this study will also explore the restorative justice approach as an alternative to achieve a balance between criminal sanctions and victim loss recovery.

This research is important considering the strategic role of Article 167 of the Criminal Code in maintaining public

order and protecting the rights of yard owners. By understanding and overcoming the disparity between criminal sanctions and the losses suffered by victims, it is hoped that the criminal justice system in Indonesia can become fairer, more effective, and responsive to the needs of the community. In addition, the results of this study are expected to provide constructive policy recommendations for lawmakers and legal practitioners in an effort to improve the criminal law system in Indonesia.

Based on the above presentation, the researcher is interested in discussing how the imbalance between the criminal sanctions imposed on the perpetrators of criminal acts entering the yard without permission and the losses suffered by the yard owner is reviewed from Article 167 of the Criminal Code? What are the factors that cause the disparity between criminal sanctions and losses suffered by victims in cases regulated by Article 167 of the Criminal Code? How can the restorative justice approach be applied to correct the disparity between criminal sanctions and losses suffered by victims in cases regulated by Article 167 of the Criminal Code?

Methods

The research methods used in this study include normative and empirical juridical approaches. The following are details of the research methods that can be used: 1. Normative Juridical Approach This approach involves analyzing relevant laws and regulations, legal literature, and other official documents. Legal Literature Studies: Analyze legal literature related to Article 167 of the Criminal Code, criminal law theory, and the concept of justice. Analysis of Laws and Regulations: Review Article 167 of the Criminal Code and other relevant regulations to understand the legal basis and its application. Review of Court Decisions: Analyze court decisions related to cases of violation of Article 167 of the Criminal Code to see how criminal

sanctions are applied and how disparities between sanctions and losses are identified in practice.

Result and Discussion

Criminal sanctions imposed on the perpetrator of a criminal act entering the yard without permission with losses suffered by the yard owner are reviewed from Article 167 of the Criminal Code

Criminal law should be able to protect the human rights of both perpetrators and victims of crime and protect the interests of society and the state with a harmonious balance. This protection is the essence of justice that is expected to be realized in every law enforcement process. Human rights must be safeguarded at every stage of criminal justice, from investigations, investigations, prosecutions, to court decisions and executions^[3].

This includes the rights of perpetrators to fair and non-discriminatory treatment as well as the rights of victims to receive justice and compensation for losses suffered. However, this is not entirely in accordance with reality. In practice, there are often inequalities in criminal law enforcement, where the rights of perpetrators are more concerned than the rights of victims. The existing justice system sometimes focuses more on legal processes and formalities without considering the impact it has on victims of crime. This creates the impression that the law protects the perpetrator more than the victim, which should not happen in a fair legal system^[4].

This problem occurs due to various factors. One of the main factors is that the existing legal framework does not fully support adequate protection for victims of crime. The provisions in existing laws often do not pay enough attention to the needs and rights of victims. For example, in many cases, victims do not receive proper psychological support, legal assistance, or compensation, so they often feel neglected in the judicial process. Substantially, Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) does not provide good or adequate protection for victims of crime. The Criminal Procedure Code regulates more procedures for handling criminal cases from the perspective of formal law, with the main focus on the rights of perpetrators^[5].

Although there are several provisions that mention the rights of victims, their implementation in practice is often less than optimal and does not provide significant protection. The lack of protection for victims of crime in the Criminal Code also reflects a lack of awareness and attention to the importance of victims' rights in the criminal justice system. Victim protection should not only be in the form of formal recognition in the law, but also must be realized through effective and well-functioning mechanisms. This includes the existence of victim assistance services, access to information about the judicial process, and opportunities to actively participate in the judicial process.

To address this problem, revisions to the Criminal Code and other related laws are needed to ensure that the rights of crime victims are properly protected. This revision should include the addition of more detailed provisions regarding victims' rights and mechanisms to ensure their implementation. In addition, there is a need to increase capacity and awareness among law enforcers about the importance of protecting victims' rights. Thus, it is hoped that the criminal justice system in Indonesia can be fairer

and more effective in protecting all parties involved, both perpetrators and victims^[6].

The criminal sanctions imposed on the perpetrators of criminal acts entering the yard without permission with losses suffered by the yard owner reviewed from Article 167 of the Criminal Code reflect a legal effort to maintain order and protect private property rights. Article 167 of the Criminal Code stipulates that whoever illegally enters another person's yard without permission, can be subject to imprisonment for a maximum of nine months or a maximum fine of four thousand five hundred rupiah. This sanction is designed to provide a deterrent effect to perpetrators and protect the rights of yard owners to their property. However, the application of these criminal sanctions in practice is often disproportionate to the losses suffered by yard owners. Losses experienced by yard owners can be in the form of material losses, such as damage to property, or non-material losses, such as a disturbed sense of security and comfort. In many cases, the criminal sanctions imposed are considered too light compared to the impact caused by the perpetrator's actions on the victim. This has caused dissatisfaction among victims who feel that their rights are not fully protected by the legal system.

The disparity between criminal sanctions and the losses suffered by victims can be caused by several factors. One of them is the provision in the Criminal Code that has not explicitly regulated compensation or restitution for crime victims. In addition, in the law enforcement process, more attention is often paid to procedural aspects and the rights of perpetrators, while the rights of victims receive less adequate attention. This results in an imbalance in the provision of justice between the perpetrator and the victim. To overcome this disparity, improvement measures are needed in the criminal law system. One of them is by revising the Criminal Code and other laws and regulations to accommodate the need for better protection for crime victims^[7].

This revision may include additional provisions regarding compensation and restitution that must be given by the perpetrator to the victim. In addition, there is a need to increase awareness among law enforcement regarding the importance of paying attention to the rights of victims at every stage of the judicial process. The restorative justice approach can also be a solution to overcome this disparity problem. Restorative justice focuses on recovering losses suffered by victims and restoring relationships between perpetrators and victims. Through this approach, the perpetrator is not only punished but also obliged to take responsibility for the losses incurred and repair the damage that has occurred. This can provide a greater sense of justice for victims and encourage perpetrators to better understand the impact of their actions^[8].

Therefore, it is important for the criminal law system in Indonesia to continue to adapt and make improvements in order to provide balanced and fair protection for all parties involved. Ensuring that criminal sanctions are in line with the losses suffered by victims is an important step in creating a justice system that is more responsive to the needs of the community and strengthens public trust in law enforcement.

Factors that cause disparity between criminal sanctions and losses suffered by victims in cases regulated by Article 167 of the Criminal Code

The factors that cause the disparity between criminal sanctions and losses suffered by victims in cases regulated by Article 167 of the Criminal Code are quite complex and multidimensional. One of the main factors is the imbalance in the existing legal framework. The Criminal Code regulates more about the rights of perpetrators and formal procedures in handling criminal cases, but pays less attention to the rights of victims, especially in terms of compensation or restitution. This makes victims often not get a recovery that is balanced with the losses they have experienced^[9].

One of the main factors is the imbalance in the existing legal framework, especially in Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP). The Criminal Procedure Code focuses more on the rights of perpetrators in the judicial process, while the rights of victims are often ignored. For example, although the Criminal Procedure Code provides clear procedures for handling criminal cases, it does not regulate in detail compensation or restitution for victims who suffer losses.

The second factor is the inconsistent implementation of the law. Although Article 167 of the Criminal Code regulates criminal sanctions for perpetrators who enter the yard without permission, the application of these sanctions often does not reflect the losses experienced by the victim. The judge may consider a variety of factors, including the intention of the perpetrator, socio-economic conditions, and the extent of the loss, but this assessment can be highly subjective. As a result, the sanctions imposed can vary significantly and are not always proportional to the losses suffered by the victim.

The third factor is the lack of awareness and attention to the rights of victims in the criminal justice system. Law enforcement, including police, prosecutors, and judges, are often more focused on law enforcement and criminalizing perpetrators without paying close attention to the impact experienced by victims. This can create a sense of injustice among victims, who feel that the legal system protects the perpetrators more than those who are harmed.

The fourth factor is the limited resources and facilities available to support crime victims. In many areas, crime victims do not have adequate access to legal help, psychological services, or other support that can help them recover from the losses they have suffered. Without this support, victims often have to face the consequences of crime alone, which exacerbates the impact of the crime and reinforces the disparity between the criminal sanction and the losses they suffer^[10].

The fifth factor is the lack of an effective mechanism for restitution or compensation for victims. Although there are some provisions governing restitution, in practice, this mechanism is rarely applied. This can be due to a variety of reasons, including difficulties in assessing losses, the lack of ability of the perpetrator to pay compensation, and the lack of enforcement of restitution decisions. Without a clear and effective mechanism, victims do not get proper recovery for the losses they suffer. The sixth factor is the influence of culture and public perception of justice.

In some cases, society may have different views on what is considered fair and proportionate. For example, in some cultures, non-material losses such as shame or loss of

security may be considered more serious than material losses. However, the formal legal system may not always reflect these values, which can add to the sense of dissatisfaction among victims. Therefore, it is important to take into account the cultural and social context in any analysis regarding the disparity between criminal sanctions and the harm suffered by the victim^[11].

Inconsistent legal implementation is also a significant cause of this disparity. In practice, although Article 167 of the Criminal Code regulates criminal sanctions for perpetrators who enter the yard without permission, the application of these sanctions often does not reflect the losses experienced by the victims. The judge may consider various factors, including the intention of the perpetrator, socio-economic conditions, and the extent of the loss. However, these assessments can be highly subjective and vary between cases, resulting in sanctions not always being proportional to the losses suffered by the victim. The lack of awareness and attention to the rights of victims in the criminal justice system by law enforcement also exacerbates this condition. Police, prosecutors, and judges are often more focused on law enforcement and criminalizing perpetrators without paying close attention to the impact experienced by victims. The limited resources and facilities available to support victims of crime also exacerbate the disparity between criminal sanctions and the losses suffered by victims. In many areas, crime victims do not have adequate access to legal help, psychological services, or other support that can help them recover from the losses they have suffered. Without this support, victims often have to face the consequences of crime alone, which exacerbates the impact of the crime and reinforces the disparity. In addition, the lack of an effective mechanism for restitution or compensation for victims is also a serious problem. Although there are several provisions governing restitution, in practice, this mechanism is rarely applied optimally. This can be due to a variety of reasons, including difficulties in assessing losses, lack of ability of the perpetrator to pay compensation, and lack of enforcement of restitution awards^[12].

In addition to the factors already mentioned, cultural influences and people's perception of justice also play an important role in creating this disparity. In some cases, society may have different views on what is considered fair and proportionate. For example, in some cultures, non-material losses such as shame or loss of security may be considered more serious than material losses. However, the formal legal system may not always reflect these values, which can add to the sense of dissatisfaction among victims. Therefore, it is important to take into account the cultural and social context in any analysis regarding the disparity between criminal sanctions and the losses suffered by the victims, so that the legal system can be more responsive and fair in handling these cases.

Restorative justice approach to correct the disparity between criminal sanctions and losses suffered by victims in cases regulated by Article 167 of the Criminal Code

The restorative justice approach can be an effective solution to correct the disparity between the criminal sanctions imposed on the perpetrators and the losses suffered by the victims in cases regulated by Article 167 of the Criminal Code. Restorative justice emphasizes the recovery of losses

suffered by victims through active involvement between perpetrators, victims, and communities. This approach aims to achieve more holistic justice and restore social relations damaged by criminal acts.

First, restorative justice offers a mechanism that allows victims to actively participate in the judicial process. In the context of Article 167 of the Criminal Code, where the perpetrator enters the yard without permission, the victim can have the opportunity to convey the impact of the crime directly to the perpetrator. This can include material as well as non-material losses, such as feelings of insecurity or psychological disorders they experience. Thus, this process not only punishes the perpetrator but also acknowledges and addresses the victim's suffering ^[13].

Second, through restorative justice, perpetrators are encouraged to take full responsibility for their actions and understand the consequences. This process often includes mediation or dialogue between the perpetrator and the victim, where the perpetrator can hear firsthand how their actions have harmed the victim. This can encourage perpetrators to show genuine remorse and commit to repairing the damage they have caused. As a result, the sanctions given can be more relevant and proportional to the losses experienced by the victim ^[14].

Third, this approach also introduces an element of recovery for the victim. For example, the perpetrator may be required to take remedial actions such as paying compensation, repairing physical damage to the property, or performing community services that benefit the victim or community. Thus, restorative justice not only punishes the perpetrators but also provides a means for victims to obtain real recovery for their losses. This helps reduce the disparity between criminal sanctions and the losses suffered by the victim.

Fourth, restorative justice also plays a role in strengthening community involvement in the criminal justice process. Communities can act as facilitators or mediators in the restoration process, ensuring that the interests of all parties are represented and heard. In cases of violation of Article 167 of the Criminal Code, the community can help monitor the implementation of the recovery agreement and support both victims and perpetrators in the reintegration process. This can strengthen social bonds and prevent the recurrence of similar crimes in the future. The restorative justice process allows victims to actively participate in the judicial process ^[15]. In the context of Article 167 of the Criminal Code, where the perpetrator enters the yard without permission, the victim can have the opportunity to convey the impact of the crime directly to the perpetrator. This includes material losses such as damage to property, as well as non-material losses such as feelings of insecurity or psychological disorders. By allowing victims to express their suffering, this process provides a greater sense of justice and recognizes the harm suffered by victims more comprehensively.

Fifth, the implementation of restorative justice can increase public trust in the criminal justice system. By paying greater attention to victim recovery and the responsibility of perpetrators, the justice system can be seen as fairer and more responsive to the needs of all parties involved. This can help overcome criticism of the criminal justice system that is considered too focused on perpetrators and ignores the interests of victims. Restorative justice offers a more balanced and humane approach to handling criminal acts. Restorative justice also encourages perpetrators to take full

responsibility for their actions and understand the consequences. In this process, perpetrators often have to hear directly from the victim about the negative impact of their actions. This process can involve mediation or dialogue between the perpetrator and the victim, which allows the perpetrator to show genuine remorse and commit to repairing the damage they have caused. Thus, the sanctions given are not only punitive but also help perpetrators realize and bear the moral burden of their actions ^[16].

Sixth, to integrate the restorative justice approach in cases regulated by Article 167 of the Criminal Code, policy changes and training for law enforcers are needed. Regulations need to be adjusted to allow the use of restorative methods, and law enforcers such as police, prosecutors, and judges need to be trained to understand and apply the principles of restorative justice. With the right support, this approach could be an integral part of Indonesia's criminal justice system, helping to correct the disparity between criminal sanctions and the harm suffered by victims and create more comprehensive justice.

The restorative justice approach focuses not only on criminalization but also on recovering the losses suffered by the victims and the responsibility of the perpetrators, creating a more holistic and inclusive justice. This approach can reduce the disparity between criminal sanctions and losses suffered by victims, strengthen community engagement, and increase public trust in the criminal justice system ^[17]. With proper implementation, restorative justice can be an effective solution to handle cases regulated by Article 167 of the Criminal Code and create a fairer and more humane justice system.

Conclusion

Criminal law should be able to protect the human rights of both perpetrators and victims of crime and protect the interests of society and the state with a harmonious balance. This protection is the essence of justice which is expected to be realized in every law enforcement process. Human rights must be maintained in every stage of criminal justice, from investigation, investigation, prosecution, to court decisions and executions. However, reality shows that there is an inequality in criminal law enforcement, where the rights of perpetrators are more concerned than the rights of victims. The justice system is often more focused on legal procedures and formalities without considering the impact it has on victims of crime. This creates the impression that the law protects the perpetrator more than the victim, which should not happen in a fair legal system.

The factors that cause the disparity between criminal sanctions and losses suffered by victims in cases regulated by Article 167 of the Criminal Code are very complex and multidimensional. The imbalance in the existing legal framework, especially in the Criminal Code, is one of the main factors that cause victims not to get a recovery that is balanced with the losses they have suffered. Inconsistent implementation of the law, lack of awareness and attention to victims' rights, limited resources and facilities to support victims, and lack of effective mechanisms for restitution or compensation for victims contribute to this disparity. In addition, cultural influences and people's perceptions of justice also play an important role in creating this disparity, since cultural and social values are not always reflected in the formal legal system.

The restorative justice approach can be an effective solution to correct the disparity between the criminal sanctions imposed on the perpetrators and the losses suffered by the victims in cases regulated by Article 167 of the Criminal Code. Restorative justice emphasizes the recovery of losses suffered by victims through active involvement between perpetrators, victims, and communities, and aims to achieve more holistic justice. This process not only punishes perpetrators but also acknowledges and addresses victims' suffering, encourages perpetrators to take full responsibility, introduces elements of restorative for victims, and strengthens community involvement in the criminal justice process. In addition, the application of this approach can increase public trust in the criminal justice system.

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