



Restitution challenges in the implementation of the Indonesian criminal code

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Abstract

The victim is the most disadvantaged party of a criminal event. So restitution is expected as a solution to restore the victim's condition to its original state. This research is a Juridical Sociological Research that will examine the implementation of restitution made by the Government to victims of criminal acts as regulated inside the Criminal Code and the Regulation on Witness and Victim Protection with daily practices in the community. The studies concluded that the implementation of restitution in Indonesia has not fulfilled the sense of justice for victims. The solution to overcome this is that the Public Prosecutor needs to be authorized to assess the amount of restitution that should be paid through the perpetrator to the sufferer of a criminal offense. In addition, the prosecutor must also have a method to assess the victim's loss. Then, if the convicted person is unable to pay restitution, the Government should not approve his/her conditional release application.

Keywords: Restitution, victim, criminal code

Introduction

Victims are people, whether individually, in groups or communities, who suffer injuries, physical, mental, emotional, economic or human rights damage as a result of actions / inactions committed by perpetrators in violation of criminal law in a country. A victim of crime can also be described as someone who suffers loss because of a criminal offense. A victim also can be described as a person whose experience of justice has been impaired because of their reveal in as a target of crime ^[1].

Victims as parties who suffer and are harmed with the aid of criminal offenses or crimes are uncommonly handiest worried while providing testimony as sufferer witnesses. Victims of crime are not authorized to be actively involved in the investigation and trial process ^[2]. During the trial, victims feel dissatisfied with the charges filed by the public prosecutor and the verdict imposed by the judge because it is considered not balanced with the losses experienced by the victim. That is due to the fact the modern criminal justice system is organized most effective to prosecute perpetrators of criminal acts. This is one of the reasons why victims have very little rights.

The position of victims in the criminal justice system is not given enough attention. This is because the procedural law in Indonesia nevertheless is based on the protection of offenders (offender oriented) ^[3]. In fact, in line with Andrew Ashworth, "primary an offense towards the sufferer and simplest secondarily an offense in opposition to the broader community or nation" which can be interpreted by the author that the rights of crime victims are the main thing compared to the losses experienced by the community or state ^[4].

The criminal justice system in place is intended for the benefit of the state and society in general and not for the personal interests of its citizens. This causes the losses suffered by victims of criminal acts to be a disaster that must be borne by the victims themselves ^[5]. Laurensius Arliman argues that in the settlement of a criminal case, it is often found that victims of criminal acts do not receive

adequate legal protection ^[6]. Victims of rape also suffer great losses such as trauma and fear of others, so restitution is something that is needed by victims ^[7].

To overcome this, the Government has provided a way out in the form of restitution which is regulated in Law Number 31 of 2014 concerning Witness and Victim Protection, and Law Number 1 of 2023 concerning the Criminal Code. However, in practice, these laws only regulate restitution for some criminal offenses, while there are many other criminal offenses that require restitution. For example, in the Decision of the Tegal District Court in Slawi Number 067/Pid.B/2023/PN. Slw in a murder case. Referring to the decision, the Panel of Judges only imposed imprisonment on the perpetrator for 10 (ten) years without any determination of restitution that must be made by the defendant to the victim's family. Whereas the victim is the most disadvantaged party.

Based on this, the motive of this observe is to analyze and examine the implementation of restitution by the government of Indonesia for sufferers of criminal acts and find what challenges will be faced and how the Government can overcome them in implementing the Criminal Code?

Research methods

This research method is empirical legal research ^[8]. Empirical legal research is a legal research method that capabilities to see the regulation in actual phrases and observe how the regulation works in society ^[9]. This studies examines people in their relationships in society, so the empirical legal research approach can be stated to be sociological legal research.

This studies will observe the legal process each at the extent of system and implementation when it comes to social, cultural, economic and political dynamics. In this research, the author will examine the implementation of restitution made by the Government to victims of criminal acts as regulated in the Criminal Code and the Law on Witness and Victim Protection with daily practices in the community.

Discussion

1. Implementation of restitution by the Indonesian government for victims of crime

In general, victims have the proper to obtain physical and mental protection from threats, harassment, terror, and violence, receive restitution, compensation, recovery, and health or social rehabilitation. In addition, victims have the proper to have their identity saved private within the information in print and digital media, to receive legal assistance and assistance by community counselors or other assistants at every level of examination, to receive spiritual guidance, repatriation, social reintegration from the government, and easy access to information about the progress of the case they reported. The government then passed Law No. 31/2014 on Witness and Victim Protection which pursuets to offer protection to witnesses and/or sufferers in presenting testimony in each criminal justice system.

This law also regulates restitution as one of the solutions to offer justice to victims of criminal acts. Restitution is compensation given by the perpetrator of a criminal offense to the victim or his family. Restitution is an effort to return the victim of a crime to their original condition, despite the fact that the victim's condition will not return to its original state. This principle emphasizes that restitution to sufferers of criminal acts should be as entire as feasible and cowl numerous factors springing up from the results of criminal acts ^[10]. Restitution is a demand for compensation made through a criminal court decision and paid by the perpetrator of the crime ^[11].

Article 29 of Law No. 13/2006 on Witness and Victim Protection and Article 7A paragraph (3) of Law No. 31/2014 stipulate that requests for restitution are submitted in writing by the Witness and/or victim involved, both on their personal initiative or on the request of a certified professional to the Witness and victim safety organization (LPSK). The utility can be submitted earlier or after the court decision. If submitted before the verdict, restitution must be included in the Public Prosecutor's Indictment. Based on the LPSK Annual Report for 2023, the data shows that the restitution fulfillment program in 2023 was distributed to 5,570 victims. Of this number, the fulfillment of restitution was mostly given to victims of Money Laundering Crimes (4,362) cases, Sexual Violence Crimes (591), Human Trafficking Crimes (433) and Serious Maltreatment (101). The rest were victims of other crimes such as Terrorism (1), Torture (2), Domestic Violence (6), Violence Against Children (25) and Other Crimes (49). From this facts, it's far recognized that the range of restitution awards primarily based on criminal offenses in 2023 is 5,570.

This is certainly not in accordance with the number of criminal cases decided by the Supreme Court in 2023 of 144,368 criminal cases. In addition, this data also shows that restitution only applies to several criminal offenses that are prioritized by LPSK while there are still many victims of other criminal offenses that require restitution such as victims of murder, kidnapping, theft, embezzlement, fraud, prostitution, criminal offenses in the environmental sector, in the banking sector, in the capital market sector, in the insurance sector, and criminal offenses in the marine and fisheries sector that also require restitution. This is also the impact of the enactment of Article 5 paragraph (2) of Law 13/2006 on Witness and Victim Protection which states that

sufferers of criminal acts obtain various rights based on the LPSK Decree.

The law stipulates that LPSK is the only institution in Indonesia authorized to assess how much restitution the perpetrator must pay. Therefore, law enforcement officials such as the Police and Public Prosecutors are obliged to send a letter requesting restitution to LPSK. However, the results of the research show that LPSK only sent a reply letter after 2 (two) months after the letter was submitted. Of course, this is very troublesome for the Public Prosecutor because the period of time the Prosecutor has in the trial is very short, so it is far from the principles of effectiveness and efficiency in providing assistance.

2. Restitution challenges in the implementation of the Indonesian criminal code

The criminal system is a system that includes substance, structure, and criminal subculture. Thus, the legal system is a study of legal material concerning legislation (legal products), structure, and legal culture ^[12]. The substance includes all legal rules, both written and unwritten, such as material law, formal law, and customary law. Meanwhile, the legal structure consists of the Police, the Attorney General's Office, the Supreme Court and the Correctional Institution.

The results showed that from January 2023 to April 2024, the police, prosecutors and judges in the court who proposed restitution for victims were very few. The efforts made were limited to bringing together the perpetrator and the victim of the crime in an effort to Restorative Justice. If restorative justice is not achieved, the case proceeds to the next stage as stipulated in Law Number 8 of 1981 concerning the Criminal Procedure Code without including restitution in the Minutes of Examination, Indictment or Court Decision.

The next research result is restitution proposed by the prosecutor only focuses on victims of human trafficking, terrorism and children. In addition, the Prosecutor does not have a method to assess the victim's loss so they have to ask LPSK for assistance to calculate the victim's loss, while the response from LPSK is quite long. The next obstacle is that the number of LPSK representative offices throughout Indonesia is only in 2 (two) cities, namely Medan and Yogyakarta. This number is certainly insufficient to handle criminal cases throughout Indonesia. In addition, although digital applications have been developed, most restitution applicants still feel more confident when coming directly to the LPSK office.

Based on the LPSK Annual Report in 2020, challenges to the fulfillment of restitution rights in the judicial process include:

1. The calculation of restitution was not included in the prosecutor's charges because the prosecutor argued that he did not have a legal basis for demanding restitution,
2. The prosecutor argued that he knew the defendant's inability to pay restitution to the sufferer or the defendant was not the main perpetrator,
3. The calculation of restitution was not granted by the judge because the judge did not pay attention to the losses suffered by the victim,
4. The judge did not have a victim's perspective, and the judge considered that the defendant did not have the ability to pay restitution. And,
5. The legal process was stopped, but the restitution claim file had been submitted to the police or prosecutor.

This report also outlines the condition that the police, prosecutors and judges do not understand restitution as a right of victims of crime. On the other hand, victims in the legal process are often only placed as objects of evidence, and are not the concern of law enforcement. Laws regulating restitution are also still limited, although the Law on Witness and Victim Protection has regulated restitution for victims of criminal acts, but in practice there is still a reluctance of the police and prosecutors to accommodate restitution in the investigation and prosecution process.

According to LPSK restitution data for 2021, out of IDR 3,718,591,408, the restitution decided by the judge for 59 victims, only IDR 279,533,330, or equivalent to 7.5% was paid by the perpetrator, others chose not to pay. Legal substance related to the victim's right to obtain restitution is also regulated in Article Sixty six paragraph (1), Article Eighty one paragraph (3), and Article Ninety four paragraph (1) of Law Number 1 of 2023 regarding the Criminal Code (KUHP). This regulation emphasizes that restitution is included as an additional punishment and must be paid by the defendant to the victim or their heirs. If the convicted person does not pay the restitution determined by the judge, then a fine is imposed. If the exceptional isn't paid within a predetermined time period, the wealth or profits of the convict can be confiscated and auctioned via the Prosecutor to repay the unpaid exceptional.

Then, if the confiscation and auction of the property or profits of the convicted person is insufficient or impossible to be carried out, then the unpaid fine is replaced with substitute imprisonment, at least one month and most of one year. This means that if the perpetrator does not pay restitution, it is only replaced with imprisonment or confinement, while the victim does not get any reimbursement from either the Government or the perpetrator. Thus, this regulation still focuses on punishing the perpetrators of criminal acts and does not pay attention to the victims. So restitution for victims of crime is currently difficult to realize.

Based on these findings, the solution to overcome them is Public Prosecutors need to be authorized and must have a method to assess restitution that must be paid by the perpetrator. This is because the Public Prosecutor's Office is in every city/regency in Indonesia so that the assessment of restitution does not depend on the LPSK. In addition, with this authority, it will facilitate coordination with Police Investigators. So that since the Investigation Process, restitution demands have been attached to the Minutes of Investigation and forwarded by the Prosecutor in the trial. At the trial, the Prosecutor will demand restitution to the Defendant along with a substitute imprisonment or confinement if the Defendant is unable to pay. Furthermore, if the convicted person is unable to pay, then the Government will not approve the conditional release application. This solution can be implemented if the Government immediately revises Law Number Eight of One Thousand Nine Hundred and Eighty One concerning the Criminal Procedure Code and Law Number Thirty One of Two Thousand and Fourteen concerning Witness and Victim Protection.

Conclusion

1. The implementation of restitution by the Government of Indonesia towards victims has not fulfilled the sense of justice. This is because restitution only applies to

several criminal offenses that are prioritized by LPSK while there are still many victims of other criminal offenses who need restitution. In addition, the amount of restitution does not match the number of criminal cases decided by the Supreme Court. And, LPSK is slow in responding to requests for restitution assessments.

2. The challenges of restitution in the application of the Criminal Code in Indonesia include: The Police, Public Prosecutors and Judges are aware of the regulations on the victim's right to restitution but in practice it is rarely applied. Regarding restitution, the efforts made are only limited to Restorative Justice and if it is not achieved then the case is continued to the next stage. In addition, the Public Prosecutor does not yet have a method for assessing or calculating the victim's loss so they must ask LPSK for assistance. Meanwhile, LPSK itself is overwhelmed in fulfilling requests from all police and prosecutors in Indonesia.

References

1. Muladi dan Barda Nawawi Arief, *Bunga Rampai Hukum Pidana*, Alumni, Bandung, 2007.
2. Arfan Kaimudin, *Perlindungan Hukum Korban Tindak Pidana Pencurian Ringan Pada Proses Diversi Tingkat Penyidikan*, *Jurnal Arena Hukum*, 2015, 8(2).
3. Lilik Mulyadi, *Upaya Hukum Yang Dilakukan Korban Kejahatan Dikaji Dari Perspektif Sistem Peradilan Pidana Dalam Putusan Mahkamah Agung Republik Indonesia*, *Jurnal Hukum dan Peradilan*, 2012, 1(1).
4. Andrew Ashworth, *Victim Impact Statements and Sentencing*, *The Criminal Law Review*, 1993.
5. Fauzy Marassabesy, *Restitusi Bagi Korban Tindak Pidana: Sebuah Tawaran Mekanisme Baru*, *Jurnal Hukum dan Pembangunan Tahun*, 2015, 45(1).
6. Laurensius Arliman S, *Reformasi Penegakan Hukum Kekerasan Seksual terhadap Anak Sebagai Bentuk Perlindungan Anak Berkelanjutan*, *Kanun Jurnal Ilmu Hukum*, 2017, 19(2).
7. Rodhi Agung Saputra, *Providing Ideal Restitution to Rape Victims Based on the Principle of Justice*, *Formosa Journal of Multidisciplinary Research (FJMR)*, 2023, 2(8).
8. Soetrisno Hadi, *Metodologi Riset*, Pustaka Pelajar, Yogyakarta, 2015.
9. Guba EG, Lincoln. *Competing Paradigms In Qualitative Research*, In N. K. Denzin & Y. S. Lincoln (Eds), *The Handbook of Qualitative Research*, 1994.
10. Irene Marlen Dira Tome, *Pemberian Restitusi Terhadap Anak Sebagai Korban Tindak Pidana Kekerasan Seksual Berdasarkan Putusan Hakim di Pengadilan Negeri Atambua*, *Jurnal Ilmu Hukum dan Politik*, 2023, 1(4).
11. Maya Indah, *Perlindungan Korban Suatu Perspektif Viktimologi dan Kriminologi*, *Kencana Prenadamedia Group*, Jakarta, 2014.
12. Lawrence M. Friedman, *Sistem Hukum Perspektif Ilmu Sosial*, terjemahan M. Khozin, Nusa Media, Bandung, 2009.