

Compensation for accidents that resulted in death in case number 315/Pid.B/2018/Pn. Skt in a restorative justice perspective

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Abstract

This study aims to determine the reasons for the lightness of the criminal sanctions imposed by the judge in case No. 315 / Pid.B / 2018 / PN SKT and the judge's consideration in providing compensation in case No. 315 / Pid.B / 2018 / PN SKT in terms of the concept of restorative justice. This research is a normative legal research, which is juridical-normative in nature. This research is carried out in the following stages: First, interpretation of various laws and regulations used to decide and resolve cases of providing compensation for accidents resulting in death in case No. 315 / Pid.B / 2018 / PN SKT. Second, an assessment of the judges' considerations is carried out to find out the reasons the judge used in his decision based on the concept of restorative justice. Based on the results of the research, it is known that, First, financial assistance and compensation to the victim's family can be the main consideration for the panel of judges in giving a light judgment on the defendant's act of losing a person's life. In the verdict, the judge made new categories of mitigating matters in the form of: (1) Forgiveness of the victim's family; (2) Application for release from the victim's family; (3) Material Compensation; (4) Providing work to the victim's family; and, (5) providing scholarships for the younger siblings of the victim, as a result compensation for the victim's family is the main reason for imposing criminal sanctions that relieve the defendant. Second, in terms of the concept of restorative justice, the considerations in the decision are sectorally appropriate, where the parties settle their cases by restoring peace and peace between the perpetrator and the victim's family, but to restore justice for the community is relatively unrealized. This condition was minimized by the judge as representing the sense of justice in society by convicting the defendant with imprisonment even though the imprisonment decision was light.

Keywords: traffic accidents, compensation, restorative justice

Introduction

Economic activities and transportation are closely related, where both can influence each other because increased mobility requires the quality and quantity of transportation. The increase in economic mobility is due to the transportation, telecommunications and tourism revolutions. However, in other conditions, the increase in economic mobility if it is not supported by adherence to traffic signs and adequate infrastructure will also increase the risk of accidents, therefore reducing accidents is a tangible benefit of the existence of transportation management. If an accident occurs, it is generally processed by litigation or non-litigation, however the settlement made through non-litigation channels or alternative dispute resolution does not apply to accidents that result in death.

In the context of solving cases through litigation, Muhammad Taufik in his research in the Demak area concluded that the application of criminal sanctions imposed on criminal offenders of violations of Article 359 of the Criminal Code and Article 310 paragraph (4) of Law Number 22 Year 2009 concerning Road Traffic and Transportation in accidents the imposition of criminal sanctions for the perpetrators of traffic accidents. Likewise in the Kendal area in Agus Supriyadi's research, (2017) the application of these articles was carried out to decide the perpetrators of an accident under the influence of alcohol, where they were found guilty because their actions could be

accounted for, were aware of the consequences, the perpetrators in carrying out their actions were in a healthy condition and able to consider his actions.

Furthermore, Tricripto Adi Purnomo, (2017) The application of material law in the decision-making process carried out by the Judge is in accordance with the applicable legal rules, namely based on at least two valid evidence, where in this case, the evidence used by the judge is information, witnesses, evidence, visum et repertum and statements of the defendants. Juridically, a judge's duty is only as a law enforcer who applies the law, but judges are also obliged to pay attention to unwritten legal norms that exist in society. It's just that not all judges carry out this because often the judges only decide based on the articles in the law, Moh. Helmi Syarif, (2013), shows the facts even though the criminal responsibility of public transportation companies has been regulated in criminal provisions, in cases of traffic accidents involving public transportation, law enforcers still place vehicle drivers as subjects of criminal acts who must be criminally responsible because of the law. -The law does not clearly regulate in what and when a public transport company can be said to have committed a criminal act and the juridical obstacles have not been recognized by the corporation in the criminal procedure law.

Even the research conducted by Dina Novitasari (2018) in cases involving child offenders is in accordance with Law Number 3 of 1997 concerning Juvenile Justice in

conjunction with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, diversion efforts cannot be implemented because it has not Diversion efforts can be applied in accordance with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, given the tempus or time of the crime before the issuance of the Law. Meanwhile, in the context of non-litigation, research conducted by HM Nurhasan (2017) shows that the factors that hinder investigators from the Laka unit and then the Wonosobo Police in implementing restorative justice are caused because the victim's family does not want to forgive, demands for high compensation, and factors of prejudice against enforcers law that wants to reconcile the parties through the application of restorative justice.

In the decision of the District Court No. 315 / Pid.B / 2018 / PN.SKT which is strengthened by the High Court Decision No. 77 / Pid / 2019 / PT. SMG which sentenced lighter than the first instance court showed a different pattern where during the litigation process the perpetrator who was accompanied by his legal adviser conducted deliberations with the victim's family so that after a consensus was reached the result of the agreement was accommodated by the judge and contained in the judge's verdict. Therefore, the authors put this decision as the object of research because the decision raises juridical problems which can be stated as follows: first, the problem of providing compensation for an accident resulting in death can be the main reason for the lightness of the criminal sanctions imposed by the judge and second, the judge's consideration in The provision of compensation is viewed from the concept of restorative justice.

Compared to previous studies, the research that the authors conducted has similarities, but also significantly different. Previous studies that were based on litigation resolution have similarities with the author in terms of a normative juridical approach and the use of the doctrine of criminal liability, but the author goes a step further by applying sociological jurisprudence theory to have a meaningful impact on improving laws so that judges' decisions fair will be considered by legislators as material to improve the various provisions in the law.

Meanwhile, research with the object of non-litigation settlement has similarities with the author in the use of the concept of restorative justice. But there are differences, even though Nurhasan and Dina Novitasi's research shows that the practice of applying restorative justice theory occurs in the police with different jurisdictions. In contrast to these studies, the research conducted by the author is based on court decisions as a model for the application of restorative justice through judicial processes (judiciary restorative justice) so far the practice of applying restorative justice theory occurs in the police as a way to stop investigations or freeze cases even though the case is can be reopened if at any time the victim's family is sued because the practice of deliberation in the police becomes less effective.

Likewise, the application of restorative justice at the Prosecutor's Office in accordance with the Republic of Indonesia Prosecutor's Regulation No. 15 of 2020 concerning Cessation of Prosecution based on Restorative Justice in article 5 paragraph (1) states that criminal cases can be closed by law and prosecution is terminated based on restorative justice provided that the suspect has committed a criminal act for the first time, the threat of a fine or imprisonment is not more than 5 (five) years and the value

of the evidence or loss is not more than Rp. 2,500,000.00 (two million five hundred thousand rupiah). Therefore, the application of restorative justice in the prosecutor's office is very limited to certain criminal sanctions.

The application of restorative justice is more effectively carried out by judges based on legal considerations and the wishes of the victim's family must also be considered by the judge because the victim's family is directly affected by the loss of a family member before making a verdict. The judge can consider the desire or agreement between the perpetrator and the victim's family to ease sanctions against the defendant. So far, the reasons for mitigating the defendant are often not related to the criminal act the defendant has committed. Furthermore, the author also proposes in relation to the judge's decision which is considered fair by the community so that it should be considered by lawmakers as material to improve various provisions in the Law.

Researchs Methods

This juridical research focuses on the decision of the Surakarta District Court No. 315 / Pid.b / 2018 / PN.Skt is carried out based on the following stages: First, an analysis of the various laws and regulations used to decide and resolve cases of providing compensation for criminal accidents resulting in death in case No. 315 / Pid.B / 2018 / PN SKT therefore used a statutory approach (Statue Approach); Second, an examination of the judges' considerations is carried out in order to find out the judge's reasons for his decision; and, thirdly, a theoretical sociological jurisprudence approach is used to understand the values or concepts contained in the judge's decision, therefore a conceptual approach will also be used.

Discussion

On August 22 2018, there was a traffic accident case in Surakarta City, Indonesia. With the convict, Iwan Adranacus, who worked as President Director of PT Indaco Warna Dunia, who was suspected of deliberately crashing into a motorbike named Eko Prasetio which resulted in Eko's death in Surakarta. The case which later ended up in court brought Iwan down with three articles including Article 338 of the Criminal Code concerning murder with a penalty of 15 years in prison, followed by a subsidiary charge that charged Iwan with Article 351 paragraph (3) of the Criminal Code regarding persecution resulting in death with the threat of 7 years in prison. and also Article 331 paragraph (5) of Law no. 22 of 2009 concerning Road Traffic and Transportation. However, in the middle of the trial, it was not suspected that the victim's father, Suharto suddenly came to Iwan and said he had sincerely forgiven Iwan. During the trial process, Iwan said that he had given compensation to the victim's family of Rp. 1.1 billion, which was used as mourning money, living expenses and education expenses to the health of Eko's family.

Based on the fact that the defendant had been forgiven by the victim's family and the defendant had given mourning money, money for the education of the victim's child to the victim's wife, the defendant's legal advisor asked the judge to declare valid and useful compensation of Rp. 1,100,000,000.00 (one billion one hundred million rupiah) given by the Defendant to the victim's heirs, as a form of restorative justice. Therefore, the panel of judges with due observance of Article 311 paragraph (5) of Law Number 22

of 2009 concerning Road Traffic and Transportation, and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant statutory regulations shall judge and sentenced the Defendant to imprisonment for 1 (one) year. But after being appealed by the Central Java High Court public prosecutor through decision No. 77 / Pid / 2019 / PT SMG cannot agree on the length of the sentence imposed on the Defendant, for the following reasons below the mitigating factors as mentioned in the decision of the first level Panel of Judges and the biological parents of victim Eko Prasetyo who named Suharto has submitted a handwritten Application Letter to the Panel of Judges at the appellate level dated February 13, 2019 which, among others, expressed objections to the decision of the Surakarta District Court Panel of Judges Number 315 / Pid.B / 2018 / PN Skt which handed down a verdict against the Defendant with 1 (one) years of imprisonment, this is not in accordance with the petitioner's petition during the trial for the Defendant to be released because both the applicant and the victim's wife have been given compensation in the amount of Rp1,100,000,000.00 (one billion and one hundred million rupiah), the appointment of employees to the victim's younger brother, scholarships for the victim's younger brother.

Compensation and the main reason for the judge to impose light sanctions on the crime of accidents resulting in death in Case No. 315/Pid.B/2018/PN SKT

Judges who decide cases in the process at trial cannot be separated from subjectivity. As a result, decision-making is also determined by their physiological and psychological conditions. Crombag, Wijkerslooth and Cohen talked about the psychology of the judge's decision which is referred to as regressive reasoning. Therefore, to guide judges in Indonesia so that their decisions are objective, judges are governed by a number of provisions regarding independent judicial powers to administer the judiciary to uphold law and justice based on Pancasila, for the sake of the implementation of the rule of law of the Republic of Indonesia. The formulation of Article 24 paragraph (1) of the 1945 Constitution is "The independent judicial power to administer the judiciary in order to uphold law and justice". Meanwhile, the Law on Judicial Power requires judges to explore the values that live in society. Article 27 paragraph (1) Law no. 14 of 1970 concerning Basic Provisions of Judicial Power states that "judges as law enforcers and justice are obliged to explore, follow and understand the legal values that live in society". This formula has not changed in Law no. 35 of 1999 concerning Amendments to Law no. 14 of 1970 concerning Basic Provisions of Judicial Power.

Judges' considerations in deciding a case should fulfill juridical, philosophical and sociological aspects. The Supreme Court of the Republic of Indonesia as the highest body for implementing judicial power which oversees the four judicial bodies under it has determined that the judge's decision must consider these three aspects. Sociological considerations, namely the decision does not contradict the laws that live in society (people's habits). Meanwhile, according to M. Solly Lubis, sociological considerations reflect the demands or needs of the community that require solutions as a means of ensuring benefit. According to Soedarto, sociological considerations mean the judge in imposing a sentence is based on the social background of

the defendant and observes that the punishment imposed has benefits for the community.

Furthermore, philosophical considerations, namely considerations or elements that emphasize the value of justice for the defendant and the victim. Meanwhile, according to Bagir Manan, it reflects the philosophical values or values contained in the ideals of law (*rechtsidee*). It is needed as a means of guaranteeing justice which is generally interpreted as a just act or actor, while being fair is impartial, does not take sides with the right. Justice in philosophy as stated in the basic values of the State, this can be exemplified if two principles are fulfilled, firstly not to harm a person and secondly to the treatment of each human being what is his right.

So seen from the juridical aspect, it turns out that the legal decision has accommodated legal norms which function to overcome legal problems by considering existing articles or legal substances in which definite legal sanctions have been stated. The juridical aspects contained in the consideration of District Court Judges and High Court Judges in this case In this case are the provisions of Article 311 paragraph (5) of Law Number 22 of 2009 concerning Road Traffic and Transportation and Law Number 8 of 1981 concerning KUHAP as well as the relevant laws and regulations.

The juridical element is also fulfilled because this decision is actually decided by a judge appointed by the district court of first instance and on appeal. Juridically, it has fulfilled (Article 1 point 8 of the Criminal Procedure Code) which states that judges are state court officials who are authorized according to law to adjudicate every case presented to them which are formulated in a legal decision. Therefore it is also understood that the verdict of a judge or panel of judges was originally a decision of an individual or a panel nature, but when the judge's hammer is knocked as a sign of the verdict, at that time the judge's decision must be seen as a court decision of an institutional nature, because after the judge's ruling. or the decision of the panel of judges is pronounced in a trial which is open to the public, then such a decision has been transformed into a judgment by a court institution and has become public property. The philosophical aspect is an aspect that is core to truth and justice. The public has a strong interest that in implementing or enforcing the law, it must pay attention to and uphold justice. So the implementation or enforcement of the law must be fair. But law is not synonymous with justice. The general law binds everyone, is generalized. Emphasis on the principle of justice, the Judge must consider the laws that live in society. The philosophical aspect contained in the consideration of District Court Judges and High Court Judges in this case is that the judge has compiled legal facts based on the testimony of witnesses submitted by both the public prosecutor and the defendant's legal advisor. The decision describes the chronology of the case at the scene of the case systematically and objectively. Also in the aspect of legal reasoning, the judge proved that the elements contained in the demands of the public prosecutor had been carried out. It's just that the judge's decision did not consider the First Primary charge from the public prosecutor. Where it should also be proven that the first primary indictment of the public prosecutor is false. Therefore, this judge's decision is objectively flawed in that there is no argumentative evidence found regarding the judge's refusal to the first primary indictment by the public prosecutor.

Therefore, there are two perspectives in assessing this decision, namely procedural justice and substantive justice. In the verdict above, the aspect of formal justice has been fulfilled by the case examination process on behalf of the Defendant Iwan Adranacus who was arrested on August 22, 2018 and held in detention by:

1. Investigators from 23 August 2018 to 11 September 2018
2. Extension Investigator by the Public Prosecutor from 12 September 2018 to 21 October 2018
3. Public Prosecutor from 18 October 2018 to 6 November 2018
4. Judges of the Surakarta District Court, from 29 October 2018 to 27 November 2018;
5. Extension of the Chairperson of the Surakarta District Court, from 28 November 2018 to 26 January 2019;
6. Extension of Detention I by the Chair of the Central Java High Court, from 27 January 2019 to 25 February 2019;

Meanwhile, the substantive justice aspect was carried out by the panel of judges examining the case both at the first level and on appeal by considering the request of the victim's family as explained by witness Wahyu Fajar Waspodo that the witness representing the Defendant had delivered condolences to the family of the first victim on September 27 2018 amounting to IDR 100,000,000 00 (one hundred million rupiah) and secondly on 12 November 2018 in the amount of Rp1,000,000,000.00 (one millia rupiah), and based on the statement of Sutardi, SH which confirmed that the mourning money had been received by the victim's wife, thus assistance from the Defendant. is legitimate.

Whereas in the appeal decision it is stated that in addition to mitigating matters as mentioned in the decision of the first level Panel of Judges, among others:

- a. The biological parents of victim Eko Prasetyo, whose name is Suharto, have submitted a handwritten Application Letter to the Panel of Judges at the appeal level dated February 13, 2019, requesting that the Defendant be released;
- b. The applicant and the victim's wife have been given compensation in the amount of Rp. 1,100,000,000.00 (one billion and one hundred million rupiah);
- c. Appointment of employees to the victim's younger sibling;
- d. Scholarships for younger victims.

Sociological aspects are considerations or reasons that illustrate that regulations are formed to meet community needs in various aspects. The sociological aspect actually concerns empirical facts regarding the development of problems and needs of society and the state. Sociological considerations of judges are regulated in Article 5 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power stipulates that Judges are obliged to explore, follow and understand legal values and a sense of justice that lives in society. Sociological aspects, which relate to people who expect benefits in the implementation or enforcement of law. In this context, law is for humans, so law enforcement or law enforcement must benefit or benefit society. Therefore, do not let the law be enforced or enforced to cause unrest in the community. Besides that, it is in accordance with the doctrine in criminal law, namely that the law has a subsidiary function and criminal sanctions as

the ultimate remedium. This means that criminal law or criminal sanctions should only be used if other (alternative) means are not able to solve them.

Thus this sociological aspect is a benefit for the wider community. The doctrine of legal usefulness was introduced by Jeremy Bentham that the happiness of every individual in life deserves to be protected, maintained and preserved. Meanwhile, in the context of punishment, it is based on the principle of utility. In his phenomenal book (published in 1960) entitled Introduction to the Principles of Morals and Legislation, Bentham outlines the direction and vision of law from a deep psychological perspective on the principle of utilitarianism that punishment can be justified if its implementation results in two main effects, namely: First, the consequences of punishment it is to prevent in the future the convict's crimes will not be repeated. Second, the punishment gives a sense of satisfaction to both the victim and the other person. This characteristic of punishment is preventive in the future so that people do not repeat their actions and fulfill the pleasure of those who are related to the legal case. In addition to the primary purpose of punishment above, Bentham also outlined secondary objectives of punishment which are closely related to the probability or possibility of future law violations. In this context, Bentham talks about legal satisfaction. Satisfaction through punishment can be achieved through material compensation and release of resentment. Although the first type is difficult to apply to all legal cases, according to Bentham, the material compensation penalty brings a lot of pleasure to humans. Money is the perfect compensation for many crimes. Bentham categorizes that money is only possible for cases of theft and robbery, but cannot be applied to cases of criminal offenses such as murder and rape.

In the case on behalf of the defendant Iwan Andranacus, the panel of judges determined that the defendant was not proven to have committed as the public prosecutor charged in the first primary and subside indictment, namely committing a criminal act regulated and threatened in Article 338 of the Criminal Code or had committed a crime that was regulated and threatened in Article 351 paragraph (3) of the Criminal Code. So the decision turned out to be in accordance with the utilitarian legal doctrine which emphasizes the existence of material compensation which is considered happier for the victim than imprisonment or the death penalty as a way to wreak revenge.

Likewise, when viewed from the benefits of the decision, it can be explained that it is only individual or sectoral in nature to provide benefits to the victim's family. The panel of judges paid less attention to the objectives of these benefits in relation to social goals. According to Von Jhering, the law emerged to protect interests, this was influenced by Bentham. The meaning of interest here is defined as the pursuit of pleasure and avoiding suffering, to be precise individual interests are made part of social goals by connecting one's personal goals with the interests of others. In order to pay attention to these social interests, the panel of judges still sentenced the defendant to a light sentence. Based on Article 311 paragraph (5) of Law Number 22 of 2009 concerning Traffic and Road Transportation, the Defendant Iwan Adranacus is legally and convincingly proven guilty of committing a criminal act "Deliberately driving a motor vehicle in a manner or condition that is endangering to life or which results in

people others passed away”. Any party who violates the articles as mentioned above will be punished with imprisonment of up to 12 (twelve) years or a maximum fine of Rp. 24,000,000.00 (twenty four million rupiah)

The panel of judges has created new categories on matters that alleviate criminal sanctions, where in general, mitigating matters include the defendant being good at trial, the defendant is the backbone of the family and the defendant has never been convicted before. Meanwhile the verdict found additions in the form of: (1) Pardon of the victim's biological parents and wife; (2) the request of the parents and wife of the victim for the defendant to be released; (3) Material compensation of Rp. 1,100,000,000.00 (one billion and one hundred million rupiahs); (4) the defendant also promised to appoint the victim's younger brother as his employee in the defendant's company; and, (5) the defendant would also provide scholarships for the younger brother of the victim which These things were included as mitigating matters for the defendant. Therefore, in the case decision No. 315 / PID.B / 2018 / PN SKT, compensation was the main reason for imposing criminal sanctions that relieve the defendant.

Legal Considerations in Providing Compensation for Accident Crime which Resulted in Death in Case No.315/Pid.B/2018/PN.SKT viewed from the concept of Restorative Justice

In verdict No.315 / Pid.B / 2018 / PN.SKT it was stated that Wahyu Fajar Waspodo on behalf of the defendant had delivered the funeral money to the victim's family. While in decision No. 77 / Pid / 2019 / PT SMG stated that there were mitigating matters and the biological parents of victim Eko Prasetyo, named Suharto, submitted a handwritten Application Letter to the Panel of Judges at the appeal level dated February 13, 2019, which among other things objected to the decision of the Panel of Judges. Surakarta District Court Number 315 / Pid.B / 2018 / PN Skt which gave a verdict against the Defendant with 1 (one) year imprisonment, this is not in accordance with the petitioner's petition at the trial for the defendant to be released because both the applicant and the victim's wife have been compensated in the amount of Rp.1,100,000,000.00 (one billion and one hundred million rupiah), for the appointment of employees to the victim's younger brother, a scholarship for the victim's younger brother.

In the aforementioned decision, the panel of judges has a difference in interpreting the legal action of the defendant where the judge at the court of first instance means that what the defendant does to ease his sentence is solely grief money, which is interpreted as a death security which includes:

- 1) Death benefit, lump sum of IDR 14,200,000 (fourteen million two hundred thousand rupiah);
- 2) Funeral expenses, lump sum of IDR 2,000,000 (two million rupiah); and
- 3) Periodic compensation is paid in the amount of IDR 200,000 (two hundred thousand rupiah) per month for 24 (twenty four) months, or -if paid in advance at once amounting to IDR 4,800,000, - (four million eight hundred thousand rupiah) for the choice of (the) heirs - (vide Article 12 and Article 13 of Law No.3 of 1992 on Labor Social Security or the Social Security Law in conjunction with Article 22 PP No. 14 of 1993 concerning the Implementation of the Workers' Social Security Program as

already most recently amended by PP No. 53 of 2012 or the so-called PP Implementation of Social Security).

The right to death security is the obligation of PT Jamsostek if workers are included in the Jamsostek program. However, when employers do not include their workforce in the Jamsostek program, it is the responsibility (and obligation) of the company to comply (Articles 17 and 18 paragraph (3) of the Jamsostek Law). Providing life insurance of Rp. 1,000,000,000.00 (one billion rupiah) is actually not the defendant's obligation when viewed from the various existing laws, so the mourning money and life insurance must be understood from the perspective of other legal regulations.

In this case, the term mourning money stated by the first level panel of judges in verdict No.315 / Pid.B / 2018 / PN.SKT is not appropriate because the victim Eko Prasetyo was not an employee of the defendant Iwan Andranacus. However, if seen from the provisions of Article 235 (1) of Law no. 22 of 2009 concerning Road Traffic and Transportation (hereinafter referred to as LLAJ) which states that if the victim dies as a result of a Traffic Accident as referred to in Article 229 paragraph (1) letter c, the Driver, owner, and / or Public Transportation Company is obliged to provide assistance to the victim's heirs in the form of medical expenses and / or funeral costs without dropping the criminal case charges. Based on this provision, the provision of funeral money can be said to be legal if it is carried out based on a court decision as stated in article 236 (1) of Law No. 22 of 2009 concerning road traffic that the Party causing a Traffic Accident as referred to in article 229 is obliged to compensate for the loss, the amount of which is determined based on a court decision.

Furthermore, in the first level decision, it is mentioned regarding peace money and life insurance. The term peace money is an amount of money given at the time of making a peace effort by the disputing parties and is part of an agreement / agreement, both written and unwritten, agreed by the parties to fulfill a peace agreement. However, even though the peace has been made and the victim's family has stated that they will not sue the defendant, the prosecution or process is still carried out on the basis of the criminal provisions, this is stated in article 230 of the LLAJ Law which states that the Traffic Accident case as referred to in Article 229 paragraph (2), paragraph (3), and paragraph (4) of the LLAJ Law are processed with criminal justice procedures in accordance with the provisions of the statutory regulations. Therefore, in this case the investigator has carried out the proper procedure if the case is still brought before the court as in the provisions of Article 235 paragraph (1) of the LLAJ Law which reads:

“If the victim dies as a result of a Traffic Accident as referred to in Article 229 paragraph (1) letter c, the Driver, owner, and / or Public Transportation Company is obliged to provide assistance to the victim's heirs in the form of medical expenses and / or funeral costs by not dropping the lawsuit. criminal.”

Therefore, on a contrario basis, it is possible for the panel judge to give consideration in deciding the sentence of the defendant to be light due to the severity of the criminal sentence imposed by the judge on the defendant, according to the provisions of Article 8 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, it is the judge's duty to judge. the good and bad qualities of the defendant. While the victim's family only has the status of a party that is

specifically harmed, the criminal act committed also has the potential to bring general effects (*sui generis*) in which the public is harmed, therefore according to the explanation of Article 8 paragraph (2) of Law 48/2009, the objective from the assessment of the good and bad character of the defendant by the judge, it is intended that the verdict rendered is appropriate and fair with the mistakes he committed

By achieving peace between the defendant and the victim's family, the panel of judges at the first level considered mitigating matters as follows:

1. The accused was polite and did not make the proceedings difficult;
2. The defendant and the Defendant's family have apologized to the victim's family;
3. The defendant has given grief money to the victim's family / victim's wife for the cost of education for the victim's child, and the victim's wife has received compensation / mourning money of Rp. 1,100,000,000.00 (one billion one hundred million rupiah);
4. The victim's father has agreed to the victim's death and will not ask for a penny, and besides that the victim's father asks the Defendant to be released or punished as light as possible and the victim's younger brother will be put to work at the Defendant's company..

Meanwhile, in the appeal decision Number 77 / Pid / 2019 / PT SMG, which became the basis for the consideration of the high court judges, as mentioned in the decision of the first level panel of judges, the biological parents of victim Eko Prasetyo named Suharto have submitted a handwritten Application Letter to the Panel of Judges. on the appeal level dated February 13, 2019, which among others stated objection to the decision of the Panel of Judges at the Surakarta District Court Number. 315 / Pid.B / 2018 / PN Skt which sent a verdict against the Defendant with 1 (one) year imprisonment, this is not in accordance with the applicant's request at during the trial for the Defendant to be released because both the applicant and the victim's wife have been given compensation in the amount of Rp1,100,000,000.00 (one billion one hundred million rupiah), the appointment of employees to the victim's younger brother, scholarships for the victim's younger brother, so that the appellate panel of judges ask for an acquittal. for the Defendant.

In the decision Number 77 / Pid / 2019 / PT.SMG is different from the decision at the first level No.315 / Pid.B / 2018 / PN.SKT, it turns out that the money in the amount of Rp1,100,000,000.00 (one billion one hundred million rupiah), the appointment of employees to the victim's younger siblings, and scholarships for the younger siblings of the victim are criminal compensation for the victim by the perpetrator. With the existence of this term of compensation, decisions at the first level mentioning mourning money, peace money and life insurance are automatically annulled. So juridically the notion of compensation is based on the provisions contained in Compensation in Indonesia which have been regulated in several special criminal laws outside the Criminal Code, such as Law no. 26 of 2000 concerning Human Rights Courts, Law no. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, and Law no. 21 of 2007 concerning the Eradication of the Crime of Trafficking in

Persons. Compensation and restitution are also regulated in an umbrella law related to the protection of witnesses and victims, namely Law no. 13 of 2006 as amended by Law no. 31 of 2014 concerning Protection of Witnesses and Victims. Compensation is compensation provided by the state because the perpetrator is unable to provide full compensation for which he is responsible. " (Article 1 Number 4 PP 44 of 2008 concerning Compensation, Restitution, and Assistance to Witnesses and Victims). In Case No. 77 / Pid / 2019 / PT.SMG the notion of compensation is not based on existing laws and regulations and regulates compensation for victims who die, therefore the compensation is the result of the judge's interpretation of the legal facts that have occurred. The definition in accordance with the compensation above is the meaning of Law no. 31 of 2014 concerning Protection of Witnesses and Victims where Restitution is defined as compensation given to victims or their families by the perpetrator or a third party, while compensation is defined as compensation provided by the state because the perpetrator is unable to provide full compensation which is his responsibility to the victim or his family. It's just that the restitution in this law applies in cases involving human rights violations.

If the compensation is seen based on the mechanism listed in Law no. 5 of 2018 concerning Amendments to Law Number 15 of 2003 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism Into Law article 36 reads:

The compensation as referred to in paragraph (1) shall be borne by the state. (2) The compensation as referred to in paragraph (1) shall be submitted by the Victim, their family, or their heirs through the institution which manages the affairs of witness and victim protection, starting from the time of the investigation (2) In the event that a Victim, family, or their heirs do not apply for compensation as referred to in paragraph (3), the compensation shall be submitted by the institution which deals with the protection of witnesses and victims. The public prosecutor conveyed the amount of compensation based on the amount of losses suffered by the Victim as a result of the Criminal Acts of Terrorism in the prosecution.

So the provision of compensation is borne by the State by means of submission by the families of the victims or their heirs through the institutions that carry out matters in the field of witness and victim protection (LPSK), or by the LPSK itself. But in decision No. 315 / Pid.B / 2018 / PN Skt, the provision of compensation is carried out in the following ways:

1. Witness Wahyu Fajar Waspodo, on behalf of the Defendant, has delivered condolences to the victim's family in the amount of Rp. 100,000,000.00 (one hundred million rupiah), the witness came alone at the victim's wife's house in Aspol Manahan who met the victim's wife and the victim's father-in-law was given peace money and life guarantee amounting to Rp1,000,000,000.00 (one billion rupiah);
2. The victim's wife made the statement letter, the victim's family did not demand anything in the future;
3. When the money is received in the form of a check according to its due date, and after the witness checks the balance, the balance has indeed been reduced (it has been cashed by the victim's family
4. A statement letter is submitted to the court with the aim

of pursuing the petition in the statement letter, namely to release the defendant and request the lightest sentence.

5. The judge decides based on the consideration of the statement letter and puts it in mitigating matters.

Meanwhile in the appeal decision Number 77 / Pid / 2019 / PT.SMG this consideration was also strengthened by the reduction in the period of detention of the defendant in his decision which meant improving the decision of the Surakarta District Court No. 315 / Pid.B / 2018 / PN Skt, dated January 29, 2019, the request for the appeal is only regarding the length of the sentence imposed on the Defendant and the sentence against the Defendant is imprisoned for 8 (eight) months lower than the first instance court decision. who decides imprisonment for 1 (one) year.

Compensation for victims in the aforementioned criminal offenses is not in accordance with the compensation stipulated under the laws and regulations in Indonesia because if you look at the procedures for giving compensation as stipulated in the law or laws in force in Indonesia, compensation does not include the definition of the loss of life victims can be replaced with compensation for money or certain jobs in the provisions of Article 310 paragraph (4) of the LLAJ Law which states that:

"In the event of an accident as referred to in paragraph (3) which results in the death of another person, the punishment shall be a maximum imprisonment of 6 (six) years and / or a maximum fine of Rp. 12,000,000.00 (twelve million rupiah)".

The fine referred to in this article is not the amount of compensation received by the victim's family / heirs, but rather the fine that must be paid to the state, in this case represented by the court, as punishment for the crime. As for article 35 of Law no. 26 of 2000 concerning Human Rights understands that compensation and restitution is limited to perpetrators of human rights violations who give rights to every victim and witness in serious human rights violations and / or their heirs to receive compensation, restitution and rehabilitation. So seen from the absolute authority to decide on compensation, restitution and rehabilitation is the human rights court. However, in the consideration of the Surakarta District Court judges, it was stated that:

Considering, that regarding Pledoi number 2 of the Defendant's Legal Counsel, the Panel of Judges will consider the following:

Considering, whereas based on the testimony of witness Wahyu Fajar Waspodo that the witness representing the Defendant had delivered the condolences to the first victim's family on September 27 2018 amounting to Rp. 100,000,000.00 (one hundred million rupiah) and secondly on November 12, 2018 amounting to Rp. 1,000,000,000.00 (one billion rupiah), and based on the statement of Sutardi, S.H which confirmed that the funeral money assistance had been received by the victim's wife, thus the assistance from the Defendant was valid..

Because the consideration was related to Pledoi No. 2 the defendant's legal adviser who basically requested the panel of judges to declare legal and useful compensation amounting to Rp. 1,100,000,000.00 (one billion one hundred million rupiah) given by the Defendant to the victim's heirs, as a form of restorative justice. Although in

this consideration the panel of judges at the first level court did not mention that the money given by the defendant to the victim's family was compensation, the judge wrote that this money was cash assistance received by the victim's wife. therefore the term money assistance can be interpreted based on Article 235 paragraph (1) of Law no. 22 of 2009 concerning Road Traffic and Transportation (UULLAJ), if the victim dies as a result of a heavy traffic accident as referred to in Article 229 paragraph (1) letter c, the driver, owner, and / or Public Transportation Company must provide assistance to the heirs. the victim in the form of medical expenses and / or funeral expenses without dropping the criminal case charges.

However, in the decision of the Central Java high court, the cash assistance provided by the defendant was understood as compensation as in the consideration that in addition to the mitigating matters as mentioned in the decision of the first level panel of judges, the biological parents of victim Eko Prasetyo, Suharto, have submitted an Application handwritten to the Panel of Judges at the appellate level dated February 13, 2019, which among others expressed objections to the decision of the Surakarta District Court Panel of Judges Number 315 / Pid.B / 2018 / PN Skt which sentenced the Defendant to 1 (one) year in prison, it is not in accordance with the petitioner's petition during the trial for the Defendant to be released because both the applicant and the victim's wife have been given compensation in the amount of Rp1,100,000,000.00 (one billion and one hundred million rupiah), the appointment of employees to the victim's younger brother, scholarships for the victim's younger brother.

Based on the legal facts at the trial it was also evident that the party requesting the release of the defendant was the victim's parents or biological father, and with this compensation the feeling of justice for the victim's family who was directly affected by the crime committed by the defendant Iwan Andranacus has been restored and The panel of judges also continued to provide sentences for the defendant as an attempt to deter and protect the community as indirectly affected parties.

Thus, the judge as the party representing the state or public law has tried to restore the sense of justice in society even though for the public prosecutor the decision was felt to be lacking due to the light sentence. Therefore, substantially this decision has fulfilled part of the concept of restoring justice because the concept of restorative justice requires the recovery of the situation between the perpetrator and the victim's or victim's family and the community, where two conditions have been fulfilled by the presence of an approach process to the victim's family, including compensation.

In line with this, restorative justice is a model approach in efforts to resolve criminal cases as a response to the criminal justice system, which is often considered unable to accommodate the aspirations of victims and perpetrators. This restorative justice differs from the criminal justice system in that it emphasizes the concepts of mediation and reconciliation as mechanisms for resolving conflicts or disputes in criminal cases of action. It is something that does not exist in the criminal justice system.

Restorative Justice is viewed from the perspective of Law Number 7 of 2012 concerning Social Conflict Resolution in its implementation actualizing values and institutionalizing local wisdom in resolving social conflicts, and has fulfilled

the stages of conflict prevention, conflict cessation and post-conflict recovery. In a criminal case, the conflict that occurs between the victim and the perpetrator will decrease to the child and the victim's family as well as people close to the victim, so that there is the potential for future revenge, restorative justice in this section prevents and stops widespread conflicts including racial conflicts. Restorative Justice also acts as a recovery after the occurrence of a criminal act in which according to the family of the victim the crime committed by the defendant is replaced with kindness. Therefore, the word "compensation" contained in decision No. 77 / Pid / 2019 / PT SMG as a result of deliberation between the victim and the defendant, the consideration of the decision not only means material compensation, but also kindness, life insurance and brotherhood.

The application of the concept of restorative justice in the view of Masahiro Suzuki and Tameri Jenkins is indeed like that. Restoration of justice has the potential to facilitate forgiveness because one of the most important elements in restoring justice is through interaction between victims and actors of face-to-face dialogue (deliberation). Offenders are given the opportunity to be held accountable for the losses they have inflicted on the victims, while victims are given the opportunity to reveal the losses they experienced as a result of the perpetrator's actions. That's why according to Suzuki and Jenkins:

Ideally, it is in this bilateral process of RJ that forgiveness may occur. Humanistic communication with offenders may allow victims to deal with their negative feelings caused by the crime, to see offenders as a real human beings, and to promote their empathy towards offenders (Umbreit et al., 2015; see also Mauss, 1966; Stein, 1989 for how empathy arises through interactions between people).

Suzuki and Jenkins continue that empirical research shows that forgiveness occurs in restorative justice studies conducted in 2005 at various locations in Australia and the UK, Sherman reported that the rate of victims who forgive offenders at RJ conferences ranges from 30 to 70 percent in all research locations. While at a youth justice conference in Northern Ireland in 2006, Campbell observed that about 80 percent of victims 'expressed some level of forgiveness toward the young person [the offender]'. They interviewed victims of serious violence crimes who participated in victim-perpetrator mediation in the US. In 2006, Umbreit noted that of the 24 referred to in the amnesty interview, 15 victims reported that they had forgiven the offenders. Furthermore, in their evaluation of family group conferences in New Zealand, it was reported that about half of young offenders felt they were forgiven.

The consequences of forgiveness will provide an opportunity for victims to avoid feelings of guilt and in the end will be able to develop themselves in a better direction, while in the legal context it will reduce punishment through imprisonment where the defendant has been able to reconcile with the community before the verdict is passed and at the same time granting shorter prison terms. The increase in the criminal period that the convict must serve makes the prison over capacity and will result in an increase in the budget ceiling and the realization of the budget for foodstuffs of prisoners so that the prison condition becomes very inappropriate. According to the Minister of Finance Regulation Number 78 of 2017 concerning Standard Input Cost for Fiscal Year 2017 for the cost of food for detainees,

starting from Rp. 14,000, - up to Rp. 22,000, - / person in one day in all cities of Indonesia. Meanwhile, according to the Minister of Finance Regulation Number 78 of 2017 concerning Standard Input Cost for Fiscal Year 2017, the cost of food for detainees starts from Rp. 14,000, - up to Rp. 22,000, - / person in one day in all cities of Indonesia.

In accordance with Supanto's opinion, criminal law policy is a process consisting of three stages, namely: the formulation or legislative stage, the implementation or judicial stage, and the implementation or executive / administrative stage. At the formulation stage, it is necessary to pay attention to the central problems that involve determining: 1) what action should be a criminal act, and 2) what sanctions should be used or imposed on the offender. Criminal law needs to be implemented and enforced by involving the police, prosecutors and officials. judges who are summarized in the criminal justice system (SPP). Understanding SPP related to the legal system which includes substantial, structural, and cultural aspects. Substantial aspects concern various applicable positive criminal law regulations, structural aspects refer to law enforcement officers and their institutions concerned with SPP, as well as various views, thoughts and philosophies that underlie them as cultural aspects. This requires synchronization in its work, because SPP is an open system, in connection with the influence of the community environment and areas of human life in achieving its goals (short term: resocialization), medium term: crime prevention, and long term: social welfare.

Roscoe Pound discusses in a detailed, thorough and broad manner of sociological jurisprudence. In America, he is known as the main thinker of this school. Pound is broad-minded, but prioritizes practical goals, namely by:

1. Discussing the real social impact and role of institutions and the enforcement of legal doctrines;
2. Proposing sociological studies with regard to legal studies to prepare legislation; because the law is considered a social institution which sensible social enterprises can improve their best way;
3. Developing the effectiveness of studies on how to make regulations that place more emphasis on social goals to be achieved by law, and not on sanctions;
4. To study the history of sociological law about the social impacts caused by legal doctrine and how to develop it;
5. Defend the fair implementation of the law, by insisting that the teachings of the law must be considered as a guide to a just outcome for society
6. Striving for the effectiveness of achieving legal objectives

More than that according to Muhammad Jamin, Law no. 48 of 2009 concerning Judicial Power adheres to the politics of legal pluralism and recognizes the existence and validity of unwritten law, however, the politics of legal pluralism used are still quasi-legal (weak legal pluralism), which results in that in fact the dominance of state law still occurs and unwritten law is only a complement to state law, in the future, the politics of legal pluralism in the Law on Judicial Power should ideally not be made conditional, namely unwritten law can only be applied and used as a basis for decisions if state law does not regulate. Political pluralism should adhere to what is called strong legal pluralism so that the pluralistic legal order in society (state law and unwritten law) is considered to have the same position.

The agreement that occurs between the victim and the perpetrator in the form of a written statement in principle reflects that the judge's decision contains unwritten legal values in society which are manifested in a culture of deliberation and accountability. The tradition of Rembug Desa or musyawarah aims to achieve unanimity of will or unanimity, which can also be interpreted as the whole or unanimity of the wishes and opinions of the participants. Unanimity is a guarantee of the truth and accuracy of the decisions to be taken, because the truth is contained in the unity and harmony of the deliberative groups. Decision-making that begins with a deliberation will be obeyed by all concerned citizens and any personal wishes that are inconsistent with the results of the joint decision must be far removed. Because the deliberations require the participants to dare to give in and give priority to larger interests, namely the achievement of social harmony.

As one of the nation's cultures, the deliberation contained in Pancasila forms strong roots in the customs, culture and life of the Indonesian people for hundreds of years, becoming a way of life for the Indonesian nation. Diversity should not be understood as contested differences but must be explored and examined to find the potential, strength or strength of these differences that can be harnessed to remain united as Indonesians. In line with this, according to Elizabeth Ayu Puspita Adi, Gusti Ayu Ketut Rachmi Handayani and Supanto, in the Indonesian Legal System, the making of laws and regulations must be based, sourced, and must not conflict with Pancasila, as the source of all sources of law (see Article 2 Law Number 12 Year 2011 concerning the Formation of Legislation or Law P3), and the 1945 Constitution as the basic law (see Article 3 paragraph (1) of the P3 Law). So the formation of statutory regulations in Indonesia must be in accordance with Pancasila and the 1945 Constitution. The Constitution 8 UUD 1945 is the highest normative foundation that must be used as the basis for guidelines and references in the making of statutory regulations so that these laws and regulations have legitimacy. Therefore the values of Pancasila must be reflected in court decisions because according to Law no. 12 of 2011 a legal decision has a position as an Institution, or Commission which is the same level as established by the Law or the Government at the behest of the Law, which has the legal force of the statutory regulations as referred to in Article 7 paragraph (I) of the Law in effect. hierarchically.

Anti Mayastuti, Mohammad Jamin and Mulyanto looked deeper into the implications of admitting the deliberation process included in Law no. 6 of 2014 concerning Villages, basically the provisions in the article show that the traditional legal system which in the heyday of the modern legal system experienced marginalization, is currently being re-displayed on the stage of the legal world. This can be seen in the principle of dispute resolution with village head mediators which is also carried out by the Customary Law Community in Indonesia, by prioritizing peaceful means through deliberation to reach consensus. Thus, what appears on the stage of the legal world today is the juxtaposition of the modern legal and judicial systems with the traditional legal and judicial systems. This form of integration will continue to develop over time.

In the view of sociological jurisprudence, which holds that the essence of law is basically an in-concreto judge's decision, so the term compensation becomes something formal because it is included in the judge's decision. Based

on sociological jurisprudence, the judge's decision was also considered to be of benefit to the victim or felt better than the verdict that had been decided in general, where in previous decisions the judge rests on the law and only functions as a law enforcer. Then the decision will be placed as a new source of law that is utilized to improve existing legal norms and become the basis for making laws and policies. According to Pound, social engineering can be streamlined in the judicial and administrative processes. Therefore, for the sociological jurisprudence adherents, it is very important to examine the extent to which judge / administrative decisions have a positive effect on society. However, Mochtar realizes that in Indonesia, which follows the civil law tradition, the role of legislation in the social engineering process is more prominent when compared to the United States which relies more on the judge made law. Moreover, the influence of classical legal positivism was deeply rooted in Indonesia. Social engineering then relies more on the formation of laws through the making of laws and regulations.

In the perspective of sociological jurisprudence, the task of judges in implementing law is not only understood as a formal social control effort in resolving conflicts, but at the same time designing the application of the law as a social engineering effort. The judicial duties of judges are no longer understood as simply applying laws to concrete events (in the form of various cases and conflicts) or as merely a mouthpiece for legislation (*boncha de la loi*) but also as a social engineering driver. Legal administrators must pay attention to the functional aspects of the law, namely to achieve change, by making changes to the law always by using all kinds of interpretive techniques (functional legal theory). In other words, the decision was positivized by the regulators to revise the law so that the judge's decision contributed to a broader legal reform than just resolving cases, which would further serve as a reference frame for other law enforcers..

Conclusion

Compensation for an accident that resulted in death in case No. 315 / Pid.B / 2018 / PN SKT can be the main reason for the lightness of criminal sanctions imposed by judges because the duties of judges and judges' powers are independent in nature aimed at enforcing law and justice. In addition, judges as law and justice enforcers are obliged to explore, follow, and understand the legal values that live in society. Compensation for an accident that resulted in death in case No. 315 / Pid.B / 2018 / PN SK has fulfilled the elements of restorative justice. These elements are full participation and consensus, trying to heal the damage or loss that exists as a result of a crime, giving direct accountability to the perpetrator as a whole, and providing resilience to the community in order to prevent further criminal acts. In this verdict, the judge also continued to give prison sentences to the accused as a way to protect the interests of the community.

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