



The Government's Responsibility in Providing Compensation and Restitution in the Perspective of the Legal Theory of Dignified Justice

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Submitted: 2023-04-27

Revised: 2023-08-18

Published: 2023-10-30

Article Info

Keywords:

Responsibility; Compensation; Restitution; Dignified Justice.

Abstract

Introduction: The principle of legal equality is one of the characteristics of a rule of law state, victims of criminal justice must receive guaranteed legal protection. The position of the victim in the criminal justice system is still neglected because Indonesian criminal law is still oriented towards the interests of the perpetrator (Offer Oriented). Existing compensation and restitution arrangements are not in favor of victims of criminal acts.

Purposes of the Research: The purpose of this research is to analyze compensation and restitution in the perspective of the Legal Theory of Dignified Justice.

Methods of the Research: The research method used is a normative approach based on the philosophy of Pancasila.

Results of the Research: Compensation and restitution arrangements in positive law are still not synergized well, so it is necessary to make legal policies related to the implementation of restitution for victims of criminal acts based on the values and legal culture of society. In the perspective of the theory of an integrated criminal justice system, the disharmony of legal substance and the asymmetry of the legal structure must be addressed immediately. The government must be held responsible for criminal acts if it is unable to pay restitution to victims of criminal acts. There is a need to improve compensation and restitution arrangements so that they are more pro-victims of crime and in accordance with the values and legal culture of society.

1. INTRODUCTION

Compensation and restitution are the rights of victims of crime, but in the regulatory mechanism there are still many obstacles, both from legal procedures, law enforcement and the economic factors of the perpetrators of crime, so that the rights of victims of crime are neglected. This is certainly a challenge that must be overcome so that the national criminal law system can reflect more substantial and operational dignified justice.

Along with the times, the need for a criminal law system that meets the values of justice is increasing. However, the current compensation and restitution arrangements are still unable to fulfill victims' rights in a fair and equitable manner.¹ Therefore, it is increasingly

¹ Byrne, Sarah Dohoney, and Jules Carter. "A Penumbra of Rights at Risk: Human Trafficking Victims' Rights in Federal Criminal Cases." *BU Pub. Int. LJ* 31 (2022): 143.

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important to analyze the gaps in problems related to the protection of the human rights of victims of criminal acts to be studied in depth. According to previous research, victims of criminal acts often only act as witnesses, reporters, complainants, or interested parties in the criminal justice process.² This shows that the position of victims of crime is still not fully recognized by criminal law, especially when compared to the protection of the human rights of perpetrators of criminal acts guaranteed by the constitution.

In this case, government policies need to pay attention to the balance of human rights protection between victims and perpetrators of criminal acts.³ Protection of the rights of victims of criminal acts needs to be strengthened by arrangements for compensation and restitution that are more just and equitable. Therefore, this study aims to analyze compensation and restitution arrangements in the perspective of the Law of Dignified Justice Theory, with the hope of building a national criminal law system that is more just and equitable for victims of criminal acts. Therefore, the purpose of this study is to analyze compensation and restitution arrangements in the perspective of the Dignified Legal Theory of Justice and seek novelty in the preparation of legal policies related to the implementation of restitution for victims of criminal acts. This research also seeks to clarify legal substance and legal structure that are not aligned in the regulation of compensation and restitution in positive law, which must be corrected immediately to reflect dignified justice. In this context, the government needs to take responsibility in providing protection and take concrete steps to fulfill the rights of victims of criminal acts through more substantial and operational legal policies.

In the perspective of the theory of an integrated criminal justice system, the disharmony of legal substance and the disharmony of the legal structure regarding compensation and restitution must be immediately addressed. This requires integration between the provisions of criminal law and civil law, as well as affirmation of the government's obligation to provide legal protection for victims of criminal acts, including in terms of providing compensation and restitution.⁴ Previous research conducted by Ashworth shows that the position of victims of criminal acts in criminal law is still not adequately recognized, so that the protection of victims' human rights is not comparable to the human rights of perpetrators of crimes.⁵ Therefore, it is necessary to carry out further research to examine more deeply the arrangements for compensation and restitution in the perspective of the Legal Theory of Dignified Justice.

In addition, previous research by Noor shows that there is a lack of clarity in compensation and restitution arrangements in Indonesia, especially with regard to the criteria and methods for calculating the amount of loss that must be given to victims.⁶ This

² Chenier, Kate, Andrea Shawyer, Rebecca Milne, and Andy Williams. "Police interviews with adult reporters of historical child sexual abuse: exploring the link between verbal rapport and information obtained." *Child Abuse & Neglect* 134 (2022): 105943.

³ Hazrati, Mohammad, and Raphael J. Heffron. "Conceptualising restorative justice in the energy transition: changing the perspectives of fossil fuels." *Energy research & social science* 78 (2021): 102115.

⁴ Baglay, Sasha. "Access to compensation for trafficked persons in Canada." *Journal Of Human Trafficking* 7, no. 4 (2021): 397-426.

⁵ Ashworth, Andrew. "Victims' rights, defendants' rights and criminal procedure." In *Integrating a victim perspective within criminal justice*, pp. 185-204. Routledge, 2019.

⁶ Noor, Gibran Zainul Bahar, and Yunanto Yunanto. "Legal Protection Against Consumers in Sales Transactions Buy It Electronically in Indonesia." *International Journal of Social Science Research and Review* 6, no. 3 (2023): 456-466.

shows that there is a gap between the existing arrangements and the needs of victims in obtaining fair compensation and restitution.

However, on the other hand, there is also research showing that the existing system of compensation and restitution arrangements in Indonesia is quite good. Research by Kanungo and Chatteraj shows that there are various mechanisms to provide compensation and restitution to victims of crime, such as through social security and work accident insurance programs, as well as through restorative efforts within the criminal justice system.⁷ However, the research also shows that there are still obstacles in the implementation of these arrangements, such as the low level of awareness of victims about their rights, and the lack of access of victims to the criminal justice system. Therefore, further research is needed to thoroughly examine compensation and restitution arrangements from the perspective of the Dignified Law Theory of Justice, as well as to find appropriate solutions to repair existing gaps.

Thus, this research will focus on studies to analyze compensation and restitution in the perspective of the Legal Theory of Dignified Justice and identify legal policies that need to be taken by the government to fulfill its responsibilities towards victims of crime. In this context, this research is expected to contribute ideas and better policy recommendations to related parties, especially the government, in improving compensation and restitution arrangements that are more dignified for victims of crime. The novelty of this research lies in the perspective of the Legal Theory of Dignified Justice which is adopted in analyzing compensation and restitution arrangements. In addition, this research also explores aspects of positive law that have not been synergized with the Theory of the Integrated Criminal Justice System and proposes making legal policies related to the implementation of restitution that are based on the values and legal culture of society, so that it is expected to provide better solutions for the protection of victims' rights. Criminal act.

With this novelty, it is hoped that it can contribute to the development of a theory of criminal law that is more in favor of victims of criminal acts, so as to be able to provide balanced protection of victims' rights. Through this research, it is hoped that policy recommendations will emerge that can be used as a reference by the government to improve compensation and restitution arrangements in criminal law, especially in terms of giving full responsibility to perpetrators of crimes who are unable to pay restitution to victims of crimes. In addition, it is hoped that there will also be public awareness of the importance of fulfilling the rights of victims of criminal acts as a form of implementing the values of dignified justice in the national criminal law system.

2. METHOD

This study uses a normative approach based on Pancasila philosophy.⁸ This research method involves analyzing the legal theory of dignified justice and compensation and restitution arrangements in criminal law in Indonesia. The data used is secondary data from laws and regulations, literature, and court decisions related to criminal cases and

⁷ Kanungo, E., & Chatteraj, P. (2020). Award of Compensation as a Mode of Victim Restoration: A Comparative Analysis of Laws in India, New Zealand and Germany. *International Journal of Criminal Justice Sciences*, 15(2), 325-342.

⁸ Widhiarto IK, Soerjatisnanta H. Law Enforcement of Criminal Acts of Terrorism Through a Humanist Approach based on Pancasila Law. In Universitas Lampung International Conference on Social Sciences (ULICoSS 2021) 2022 Jan 6 (pp. 358-364). Atlantis Press.

compensation and restitution given to victims. Data analysis was carried out by identifying, analyzing, and evaluating laws and regulations, literature, and court decisions that are relevant to compensation and restitution arrangements in criminal law in Indonesia. The results of this research are expected to contribute ideas and policy recommendations to related parties, especially the government, in improving compensation and restitution arrangements that are more dignified for victims of criminal acts. In this study, the procedure used consisted of five stages. The first stage is problem identification aimed at understanding the problems related to the subjectivity and objectivity requirements for the protection of victims of criminal acts in accordance with the Criminal Procedure Code. The second stage is using guidelines in the form of notes or quotations, as well as searching legal literature, books and other sources relevant to the problem identified. The third stage is data collection which is carried out using the content analysis method to describe the material of legal events or legal products in detail in order to facilitate interpretation in the discussion. The fourth stage is data analysis using the content analysis method to facilitate interpretation in the discussion. The fifth stage is interpretation and discussion which will discuss the results of data analysis and provide recommendations for related parties, especially the government, in improving compensation and restitution arrangements that are more dignified for victims of criminal acts. The last stage is the conclusions and suggestions that are prepared based on the results of the discussion and interpretation, which provide final conclusions and suggestions for related parties, especially the government, in taking the necessary actions to improve compensation and restitution arrangements in the perspective of a more dignified criminal law for victims. criminal act.

3. RESULTS AND DISCUSSION

3.1 Principles of Compensation and Restitution of Dignified Justice Based on Pancasila values

The results of the study show that compensation and restitution arrangements in criminal law are still inadequate in providing balanced protection for victims of criminal acts. There needs to be a more dignified arrangement for victims of criminal acts based on just and humane legal principles. These principles can be found in the values of Pancasila, which prioritize social justice for all Indonesian people.

However, in the context of regulation of compensation and restitution in criminal law, there are still some obstacles and challenges, such as the lack of recognition of the victim's position in criminal law and difficulties in determining the amount of compensation and restitution that is fair and proportional. where compensation and restitution must be part of the rehabilitation and recovery efforts for victims, and must be provided with the principles of justice and humanity.⁹ as also stated by Yulianti and Sri that compensation and restitution for victims of criminal acts should be more focused on the roles and responsibilities of the perpetrators of the crimes themselves in providing compensation for the losses that have been incurred.¹⁰ In addition, the payment of restitution by perpetrators of criminal acts is still a fairly controversial principle in criminal law. Some countries do not

⁹ Biermann, Frank, and Agni Kalfagianni. "Planetary justice: A research framework." *Earth System Governance* 6 (2020): 100049.

¹⁰ Yulianti, Sri Wahyuningsih. "Policy for the Provision of Compensation, Restitution, Rehabilitation on the Rights of Trafficking Victims." In *1st International Conference on Demographics and Civil-registration (INCODEC 2021)*, pp. 77-93. Atlantis Press, 2022.

have laws that regulate the payment of restitution, while others only regulate a few.¹¹ Thus, the provision of compensation and restitution for victims of criminal acts is not the responsibility of the government alone, but also the responsibility of the perpetrators. crime and society in general" (Rahman, 2019). Therefore, there is a need for collaboration and participation from all parties to improve compensation and restitution arrangements in criminal law.

To realize this, it is necessary to reconstruct the rules in the law which explicitly and clearly regulate: (1) the amount of restitution funds for female victims of criminal acts; (2) authority to manage and supervise restitution funds so that conflicts do not occur between related institutions; (3) abolishment of three months' imprisonment for perpetrators of crimes who are unable to pay restitution; and (4) The state is responsible for paying restitution if the perpetrator of the crime is unable to pay it to the victim. Therefore, a legal policy is needed that is in accordance with the values and legal culture of the community in implementing restitution for victims of criminal acts. This is in line with Wijsman et al. that legal protection with dignity must be able to encourage social justice for all Indonesian people, so that there is no longer an inequality of rights in obtaining justice.¹²

Based on the results of this research and discussion, it is suggested to the government and related parties to improve compensation and restitution arrangements in criminal law by prioritizing the principles of justice and humanity found in Pancasila values. In addition, collaboration and participation from all parties is also needed to ensure a more dignified arrangement for victims of criminal acts.

3.2 Government Responsibility in Providing Compensation and Restitution to Victims of Crime

The results of this study indicate that the government has a responsibility to provide proper compensation and restitution for victims of criminal acts. Based on the theory of dignity law which is based on Pancasila, the government must guarantee victims' rights and provide adequate protection. This is also supported by the view of Sufriadi, a criminal law expert, who stated that "the government must be responsible for providing compensation and restitution to victims of criminal acts as a form of respect for human dignity."¹³

However, in practice, there are still some problems in the implementation of compensation and restitution for victims of criminal acts. One of them is the lack of awareness and knowledge about the rights of victims of criminal acts in society and the lack of access for victims to information about the restitution process. Apart from that, there are also problems in the mechanism for managing and supervising the restitution budget which is not always transparent and accountable. This is in line with what was conveyed Dinh et al. that there are still many victims of criminal acts who do not receive compensation and restitution due to lack of information and non-transparent mechanisms.¹⁴

¹¹ Joireman, Sandra F., and Rosine Tchatchoua-Djomo. "Post-conflict restitution of customary land: Guidelines and trajectories of change." *World Development* 168 (2023): 106272.

¹² Wijsman, Katinka, and Marta Berbes-Blazquez. "What do we mean by justice in sustainability pathways? Commitments, dilemmas, and translations from theory to practice in nature-based solutions." *Environmental Science & Policy* 136 (2022): 377-386.

¹³ Sufriadi, Yanto. "Prevention Efforts Against E-Commerce Fraud Based on Indonesian Cyber Law." In *2021 9th International Conference on Cyber and IT Service Management (CITSM)*, pp. 1-6. IEEE, 2021.

¹⁴ Dinh, Van, Dao-Van Le, Duy Duong, and Dung Pham. "Determinants affecting digital financial consumer protection: Evidence from 135 countries." *The Journal of Economic Asymmetries* 27 (2023): e00301.

To overcome these problems, it is necessary to reform the laws governing compensation and restitution for victims of criminal acts. These reforms must include confirmation of the amount of the restitution budget, the authority to manage and supervise the restitution budget, and the abolition of punishment in lieu of restitution in the form of body confinement. In addition, it is also important to increase awareness and access of victims of criminal acts to information regarding the restitution process. Thus, the government has the responsibility to provide appropriate compensation and restitution for victims of criminal acts based on the principle of the law of dignity. However, to realize this, reform in legislation and increasing awareness and access of victims of criminal acts to information regarding the restitution process are needed.

4. CONCLUSION

The government is properly responsible as an institution or community organization (state) for issues that are its responsibility, including being responsible for providing compensation and restitution for victims of criminal acts. The government takes over the responsibility of the perpetrators of criminal acts if they are unable to pay restitution to victims of criminal acts. Therefore it is necessary to make legal policies related to the implementation of restitution for victims of criminal acts based on the values and legal culture of society which is based

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