

Human rights protection for victim of law misapplication in Indonesia based on justice value

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Abstract

This paper will discuss more deeply the issue of implementing human rights protection for victims of misapplication of law which is still far from the mandate of Pancasila. So this paper aims to analyze the problem of implementing the protection of human rights of victims of misapplication of law which is still far from the mandate of Pancasila to find a solution to this problem, while the method used in this writing is non-doctrinal.

Research shows that Law enforcement in Indonesia often results in innocent victims, only because of carelessness in law enforcers. Therefore protection of the human rights of victims of misapplication of law is urgently needed, in Indonesia it is regulated in Article 9 of Government Regulation Number 92 of 2015 concerning the second amendment of Government Regulation Number 27 of 1983 concerning Compensation and Settlement of Amount of Compensation, namely in the form of compensation from the government, but the size is small and the bureaucracy is complicated and often requests for compensation for victims of misapplication of the law are often overturned by the related court decisions. This clearly injures human rights and the mandate of Pancasila and Article 28D of the 1945 Constitution of the Republic of Indonesia.

Keywords: human rights, misapplication of law, pancasila

Introduction

Criminal law in its development can become two blades in implementing law in this country. This means, criminal law is used to punish perpetrators of criminal acts, but in some cases criminal law is also a means for society to impose sanctions on governments who abuse their authority. This can be seen in the implementation of fines. On the one hand, fines can be used to create a deterrent effect for every criminal offender, but on the other hand, can be imposed on the state in the event that the state implements the law against someone.

The crime of fines was first discussed by W. J. Leyds in his dissertation entitled *De Rechtsgrond der Schadevergoeding voor Preventieve Hechtenis*^[1] Meanwhile in Indonesia, in its development, fines have begun to be clearly regulated in Government Regulation Number 27 of 1983 concerning Compensation and Settlement of Amount of Compensation. However, this Government Regulation has various kinds of benefits. This Government Regulation has several problems, namely^[2]:

1. PP No. 27 of 1983 has been far behind, this can be seen with the breath of making PP No. 27 of 1983 is not in accordance with the integrated criminal law system and restorative justice system;
2. The number of renewal of authority of law enforcement agencies that is not regulated in PP. 27 of 1983. This is in line with the opinion of Barda Nawawi Arief. Barda Nawawi's view basically explains that the old regulations have regulated the structure of the judiciary and public prosecutors organization but have not

regulated the structure of the investigating institution;

3. Then regarding the amount of the fine, the provisions as meant in PP. 27 of 1983 is no longer relevant.

The amount of the fine that was replaced, namely in the amount of five hundred thousand rupiahs by the government to victims of misapplication of the law by law enforcers was very small when compared to the labor and costs incurred by the victim. This shows how the implementation of Government Regulation Number 92 of 2015 concerning the second amendment to Government Regulation Number 27 of 1983 concerning Compensation and Settlement of Amounts of Compensation has neglected the value of justice and legal benefits.

Based on the various explanations above, it is clear that the effectiveness of the implementation of a legal regulation is based on factors such as 1) statutory regulations; 2) Law enforcement; and 3) community culture. In the aspect of legal regulations, there is a clear moral order and clear regulatory certainty to regulate people's lives, this also applies to the aspect of law enforcement, it's just that law enforcement demands a legal order capable of concocting the ideal life and real life of society. Meanwhile, in the cultural aspect of society, the most visible order is the order of customs and morals. Based on the various explanations that exist, it can be seen that in the cultural aspect of society it is demanded the realization of legal justice while in the aspect of law enforcement the most basic values are the value of legal certainty and justice, furthermore in the aspect of legal regulation it focuses more on the value of legal certainty and benefit. It is clear that the synchronization of the integrated criminal justice system consists of legal norms, and values. Therefore, it is also clear that the existence of *spannungsverhältnis* on the three basic values as described above will result in *spannungsverhältnis* problems as well as legal arrangements which will

¹ P.J.P Tak. (1970). *Schade Vergoeding voor Ondegane Voorlopige Hechtenis on Straf*, Tijdschrift voor Strafrecht Deel Lxxix afl 1, p.2.

² Julius Ibrani. (2015). *Review Singkat PP No. 27 Tahun 1983 Tentang Pelaksanaan KUHAP*, Taken From <https://ylbhi.or.id/publikasi/artikel/review-singkat-pp-no-27-tahun-1983-tentang-pelaksanaan-kuhap/>, on 12 May 2019

eventually lead to *spannungsverhältnis* problems in synchronizing the integrated criminal justice sub-system as mentioned above.

This also happens in the implementation of compensation where Article 9 of Government Regulation Number 92 of 2015 concerning the second amendment of Government Regulation Number 27 of 1983 concerning Compensation and Settlement of Amount of Compensation. If only based on Article 9 of Government Regulation Number 92 of 2015 concerning the second amendment to Government Regulation Number 27 of 1983 concerning Compensation and Settlement of the Amount of Compensation ormatify it will result in the neglect of justice for the victim, this is due to the labor and costs incurred and the losses on misapplication of the law is not proportional to compensation of only Rp. 500,000.00. It is clear that this will also result in a mismatch of the objectives of the criminal law which should bring justice to society as a whole.

Based on the explanation provided, it is necessary to carry out further discussion in a research to analyze the relevance of the value of Pancasila justice in the implementation of compensation for victims of errors in law enforcement.

Method of Research

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge^[3]. Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research type used in writing this paper is a qualitative research. Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach method used in this research is *Empirical-Juridical*^[4], which is based on the norms of law and the theory of the existing legal enforceability of a law viewpoint as interpretation.

As for the source of research used in this study are:

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, the author use data collection techniques, namely literature study, interviews and documentation where the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data^[5]. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing,

compiling into patterns, selecting important names and what will be studied and make conclusions.

Research Result and Discussion

Regulations for Compensation for Victims of Errors in the application of the law

The implementation of compensation policies for victims of misapplication of law in Indonesia is carried out based on the provisions concerning legal protection for victims of misapplication of the law which are regulated in various laws and regulations. Are as follows:

a. Law Number 48 of 2009 concerning Judicial Power (Law on Judicial Power)

The basis for the implementation of compensation for victims of misapplication of the law in the Law on Judicial Power is regulated in Article 9 paragraphs (1), (2) and (3) which states that:

1. Every person who is arrested, detained, prosecuted, or tried without reason based on law or because of an error regarding the person or the law it applies, has the right to demand compensation and rehabilitation;
2. An official who deliberately commits an act as referred to in paragraph (1) shall be punished in accordance with the provisions of laws and regulations;
3. Provisions regarding the procedures for claiming compensation, rehabilitation and imposition of compensation are regulated in a law.

The provisions of Article 9 clearly reaffirm the principle of presumption of innocence, that even if a person is suspected of having committed a criminal act, he must be considered not guilty until the court declares his guilt and the decision has permanent legal force, and thus the person accused has committing a criminal act must be guaranteed human rights.

b. Human Rights Law

Talking about mistakes in the application of the law, of course, we will intersect with the human rights that the person has as stated earlier. In the history of efforts to protect human rights in Indonesia, the Decree of the People's Consultative Assembly of the Republic of Indonesia No. XVII / MPR / 1998 dated 13 November 1998 mandated that State High Institutions and all government officials respect, enforce and disseminate understanding of human rights to all communities^[6].

The formulation of legal protection for victims of misapplication of law itself in the Human Rights Law is based on the provisions stipulated in Article 3 paragraph (2), Article 4, Article 5, Article 7, Article 17, Article 33, and Article 34 of the Human Rights Law

In addition to being based on the principle of presumption of innocence, the compensation policy for victims of misapplication of the law is also based on the principle of equality before the law, which is reflected in the giving of equal opportunities between the public prosecutor and the suspect / defendant in a legal fight.

The formulation of protection for victims of misapplication of law in the Criminal Procedure Code is contained in Article 1 point 10 and Chapter X, the first part in Article 77

³ Faisal, (2010), *Menerobos Positivisme Hukum*, Rangkang Education, Yogyakarta.

⁴ Johnny Ibrahim, (2005), *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia, Surabaya.

⁵ L. Moleong, (2002), *Metode Penelitian Kualitatif*, PT Remaja Rosdakarya, Bandung.

⁶ Syarif Abdul Rohmani, Umi Rozah. (2020). Kebijakan Kriminal Mengenai Pemberian Ganti Kerugian terhadap Korban Kesalahan penerapan hukum, *Jurnal Pembangunan Hukum Indonesia Program Studi Magister Ilmu Hukum Volume 2 Nomor 1*, p.121.

to Article 83, regarding requests for compensation and / or rehabilitation which includes pretrial authority submitted by the suspect, his family or legal adviser in relation to a person whose criminal case is terminated at the level of investigation or prosecution, in other words who has not and has not been submitted to court.

Other formulations are regulated in Article 95 to Article 97 of the Criminal Procedure Code, namely compensation and rehabilitation for victims as a result of wrongdoing the person or victims due to administrative law violations, who are tried without reasons based on law or there is an error regarding the person or the law, who have reached the level of examination at court proceedings, become the authority of the district court judge.

The formulation of compensation in Article 95 paragraph KUHAP is as follows:

1. A suspect, defendant or convict has the right to demand compensation for being arrested, detained, prosecuted and tried or subject to other actions, without any reason based on law or because of mistakes regarding the person or the law applied.
2. Claims for damages by the suspect or his heirs for arrest or detention as well as other actions without reasons based on law or because of mistakes regarding the person or law applied as referred to in paragraph (1) whose case has not been filed at a district court, shall be decided. at the pretrial hearing as referred to in Article 77.
3. A claim for compensation as referred to in paragraph (1) shall be submitted by the suspect, defendant, convict or his heir to the court which has the authority to try the case in question.
4. In order to examine and decide the case for compensation claim as referred to in paragraph (1) the chairman of the court shall appoint the same judge who has tried the criminal case concerned as far as possible.
5. An examination of the compensation as referred to in paragraph (4) shall follow the pretrial procedures.

The formulation of article 95 of the Criminal Procedure Code shows that the reasons for a suspect / defendant or convicted person to demand compensation, apart from the arrest, detention, prosecution or trial of the person, also if he is subjected to other actions which are for no reason based on law or because error regarding the person or the law applied. What is meant by other acts in this regard are other acts of coercion, such as house entry, search, confiscation which is against the law and causes material loss^[7].

Providing compensation to a person who is wrongly arrested, detained and so on is imperative, this can be seen from the use of the word "obligatory" in number 3 paragraph 3 letter d in the general explanation chapter of the Criminal Procedure Code which reads^[8]:

"Anyone who is arrested, detained, prosecuted or tried without reasons based on law and / or because of mistakes regarding the person or the law applied must be compensated and so on".

Other provisions in the Criminal Procedure Code that need

to be known regarding compensation for victims of Mis Application of the law are as follows:

- a. Article 77 (b) KUHAP: "The District Court has the authority to examine and decide, in accordance with the provisions stipulated in this law, regarding compensation and or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution."
- b. Article 81 of the Criminal Procedure Code: "Requests for compensation or rehabilitation as a result of the validity of an arrest or detention or due to illegitimate termination of an investigation or prosecution are submitted by the suspect or by a third party concerned to the Chairman of the District Court by stating the reasons."
- c. Article 82 paragraph (3c) of the Criminal Procedure Code: "The contents of the decision in addition to containing the provisions contained in paragraph (2) also contain the following: in the case of a decision stipulating that an arrest or detention is illegal, then in the case of the decision the amount of compensation is stated. and rehabilitation provided, whereas in the event that a termination of an investigation or prosecution is legal and the suspect is not detained, the judgment shall state his rehabilitation. "
- d. Article 96 paragraph (1) of the Criminal Procedure Code: "The decision to grant compensation is in the form of a ruling."
- e. Article 96 paragraph (2) of the Criminal Procedure Code: "The determination referred to in paragraph (1) contains in full all the things considered as reasons for the decision."
- f. Article 98 paragraph (1) of the Criminal Procedure Code: "If an act which forms the basis of an indictment in a criminal case examination by a district court causes harm to another person, the head judge at the request of that person may decide to combine the claim for compensation with criminal case. "
- g. Article 98 paragraph (2) of the Criminal Procedure Code: "The request as referred to in paragraph (1) can only be made not later than before the public prosecutor submits a criminal charge in the event that the public prosecutor is not present; the request is submitted at the latest before the judge submits a verdict. "
- h. Article 99 paragraph (1) of the Criminal Procedure Code: "If the injured party requests a merger of his lawsuit case in the criminal case as referred to in article 98, the district court considers his general authority to try a lawsuit regarding the correctness of the lawsuit basis and on the penalty for reimbursement of costs that have been incurred by the court. the aggrieved party. "
- i. Article 99 paragraph (2) of the Criminal Procedure Code: "Except in the case of a district court declaring that it is not authorized to hear a lawsuit as referred to in paragraph (1) or the lawsuit is declared unacceptable, the judge's decision only contains the stipulation of compensation for costs incurred by the injured party. "
- j. Article 99 paragraph (3) of the Criminal Procedure Code: "Decisions regarding compensation automatically have permanent strength, if the criminal verdict also has permanent legal force."
- k. Article 100 paragraph (1) of the Criminal Procedure Code: "In the event of a merger between a civil case and a criminal case, the merger automatically takes

⁷ Djoko Prakoso. (1988). Masalah Ganti Rugi Di Dalam KUHAP, Bina Aksara, Jakarta, p.98

⁸ Soedirjo. (1986). Peninjauan Kembali Dalam Perkara Pidana Arti dan Makna, Akademika Pressindo, Jakarta, p.61.

- place in an examination at the appeal level."
- l. Article 100 paragraph (2) of the Criminal Procedure Code: "If there is a criminal case an appeal request is not filed, then an appeal request for compensation is not allowed."
 - m. Article 101 of the Criminal Procedure Code: "The provisions of the civil procedural law apply as a claim for damages as long as the law does not provide otherwise."
 - n. Article 274 of the Criminal Procedure Code: "In the event that a court also passes a judgment for compensation as referred to in Article 99, the implementation will be carried out according to the procedure for a civil judgment."
 - o. Article 275 KUHAP: "If more than one person is convicted in one case, the court fee and / or compensation as referred to in Article 274 shall be given to them together equally."

Weaknesses in the Implementation of Compensation for Victims of Misapplication of law

Compensation for victims of the wrong application of the law is basically necessary in order to realize the authority of the law, however in practice this is often difficult to achieve due to obstacles, both internally and externally. The author in this paper tries to examine the weaknesses of these weaknesses, where through the results of the research that has been carried out, facts about the weaknesses of this application are found, namely as follows:

a. The small amount of compensation

In its development, Government Regulation Number 92 of 2015 concerning the second amendment of Government Regulation Number 27 of 1983 concerning Compensation and Settlement of Amounts of Compensation has problems related to the amount of fines regulated in Government Regulation Number 92 of 2015 concerning the second amendment of Government Regulation Number 27 of 1983 Regarding Compensation and Settlement of Amount of Loss. This is as explained in Article 9 of Government Regulation Number 92 of 2015 concerning the second amendment to Government Regulation Number 27 of 1983 concerning Compensation and Settlement of Amount of Compensation which states that:

- a. The amount of compensation based on the reasons referred to in Article 77 letter b and Article 95 KUHAP is at least Rp. 500,000.00 (five hundred thousand rupiah) and a maximum of Rp. 100,000,000.00 (one hundred million rupiah).
- b. The amount of compensation based on the reasons as referred to in Article 95 of the Criminal Procedure Code which resulted in serious injury or disability resulting in unable to perform work, the amount of compensation is at least Rp. 25,000,000.00 (twenty five million rupiah) and a maximum of Rp. 300,000,000.00 (three hundred million rupiah).
- c. The amount of compensation based on the reasons referred to in Article 95 of the Criminal Procedure Code which resulted in death, the amount of compensation is at least Rp. 50,000,000.00 (fifty five million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah).

The amount of the fine that was replaced is five hundred

thousand rupiahs by the government to victims of misapplication of the law by law enforcers was very small when compared to the labor and costs incurred by the victim. This shows how the implementation of Government Regulation Number 92 of 2015 concerning the second amendment to Government Regulation Number 27 of 1983 concerning Compensation and Settlement of Amounts of Compensation has neglected the value of justice and legal benefits.

If only based on Article 9 of Government Regulation Number 92 of 2015 concerning the second amendment to Government Regulation Number 27 of 1983 concerning Compensation and Settlement of Amounts of Compensation in a normative manner it will result in the neglect of justice for the victim, this is due to the labor and costs incurred and the losses on misapplication of the law is not proportional to compensation of only Rp. 500,000.00. It is clear that this will also result in a mismatch of the objectives of the criminal law which should bring justice to society as a whole.

This situation is increasingly a dilemma with an expensive and convoluted mechanism to obtain compensation for acts of misapplication of the law, which must be filed in court. In addition, there is no threat to the government who commits an act of misapplication of the law through its apparatus to people who are victims of misapplication of the law.

b. The Difficulty to Access Legal Aid for Victims of Misapplication especially for the Poor

In its development, most of the victims of misapplication of the law are poor people, this is because most of the standards in society see that street children and homeless people have a habit of committing crimes. However, in reality, not all poor people can commit crimes.

Negative attitude towards society that often results in misapplication of the law. This can be seen in the case of misapplication of the law in Cipulir. In case number 98 / Pid.Prap / 2016 / PN.Jkt.Sel, the Judge granted part of the claim for compensation from Andro and Nurdin who were victims of misapplication of the law. Andro and Nurdin are victims of wrongdoing in the application of the law by officers who did not work professionally, both Andro and Nurdin were accused of murdering Dicky, this made Andro and Nurdin have to follow a series of deviant trials. The discrepancy between regulations, implementation, and community needs in this matter is very visible. From the perspective of the regulation, the amount of compensation is very large and in the provision of compensation it is also quite complicated because you have to submit a formal application to the community, even though there has been a judge's decision that has permanent legal force, these two things are ultimately out of sync with the needs of the community, especially victims.

It is clear that there has been a problem with the law enforcement bureaucracy. This is further complicated by the difficulty of accessing legal aid for the poor who are victims of misapplication of the law, such a situation is caused by the confusion between the large LBH operational costs that cannot be obtained from cases involving the poor.

c. Lack of Government Role

In its development, the government has an obligation to disseminate the existence of compensation for victims of misapplication of the law. However, this did not work well,

the evidence from this statement is that most people do not know that there is compensation for victims of misapplication of the law, even if they do know, the community also does not understand the mechanism for obtaining such compensation^[9].

The Relevance of the Value of Justice in the Implementation of Protection of Human Rights of Victims of Erroneous Application of Law

Based on the various kinds of explanations above, it can be seen that the implementation of compensation for victims of law enforcement errors has not been effective; this has resulted in a disposition of the value of legal justice.

Moch. Koesnoe considered that in the Preamble of the 1945 Constitution of the Republic of Indonesia contained basic values of our national legal system which are the *rechtsidee* of law which includes the first basic value, namely the law to protect and not just rule and the second basic value, law aims to realize social justice for all. Indonesian people and social justice is not merely a goal but a concrete guide in making legal regulations^[10].

Based on the existing explanation, it is clear that the implementation of compensation for victims of misapplication of the law is not in accordance with the mandate of Pancasila and the 1945 Constitution of the Republic of Indonesia, so that automatically the value of justice has not been realized in the implementation of compensation for victims of misapplication of the law.

This can be seen from the inadequacy of the implementation of compensation for victims of misapplication of the law with the values of Pancasila. These values are accumulated in the principles of Pancasila which are reflected in the form of:

- a. Religious-moral values, this means that the ideals of Pancasila law will give birth to a national law based on and oriented towards religious values in the context of a religious nation state, but not a religious state. Religious moral values mean that every Indonesian person is God according to his religion and belief, all religions must receive the same treatment, all people can practice their religion and beliefs in a civilized manner and with mutual respect.
- b. Humanistic value, This means that the ideals of Pancasila law are laws that are oriented towards human values, namely the recognition that all Indonesian people are equal so that every human being must recognize, accept, maintain and protect the personality of every human being a member of society, have the same position before the law regardless of ethnicity. Nation, race and religion.
- c. Nationalistic / unity values, this value means that the ideals of Pancasila law are nationalism-oriented laws that close the opportunity for national disintegration. Pancasila is the driving force and controller of the realization of Indonesian unity.
- d. Democratic values, This means that the legal ideals of Pancasila are laws that are oriented towards democratic

democracy, namely the values that are believed, respected and obeyed by the Indonesian people or nation.

- e. The value of social justice, this value means that the ideals of Pancasila law are laws oriented towards substantive social justice and are reflected in every national legal policy.

Conclusion

1. The implementation of compensation for victims of misapplication of the law is not yet fair, this is indicated by the amount of compensation which is only Rp. 500,000.00.
2. The reasons for the implementation of compensation for victims of misapplication of the law are not yet fair, namely weaknesses in terms of legal regulations, difficulty in accessing legal aid for the poor, and the lack of the government's role;
3. So that it is clear that the implementation of compensation for victims of wrongdoing of law is contrary to the mandate of Pancasila and the 1945 Constitution of the Republic of Indonesia, so that the implementation of compensation for victims of misapplication of law has not been able to bring justice.

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¹⁰ Achmad Irwan Hamzani. (2019). Cita Hukum Pancasila di antara Pluralitas Hukum Nasional, Prosiding Seminar Nasional Hukum Transendental Program Doktor Ilmu Hukum Universitas Muhammadiyah Surakarta, p. 224-225.