



## Reconstruction of the regulation of victim compensation in the enforcement of Criminal Law based on justice values

Bambang Tri Bawono<sup>1\*</sup>, Gunarto<sup>1</sup>, Anis Mashdurohatun<sup>1</sup>, Alex Sumarna<sup>2</sup>, Ramon Nofrial<sup>3</sup>

<sup>1</sup> Faculty of Law, Sultan Agung Islamic University Semarang, Indonesia

<sup>2</sup> Doctorate Student of Faculty of Law, Sultan Agung Islamic University Semarang, Indonesia

<sup>3</sup> Faculty of Law, Batam University Batam, Indonesia

### Abstract

The research aims to analyze the weaknesses in the regulations on compensation for victims in criminal law enforcement, and how to reconstruct the rules for the compensation for victims in criminal law enforcement based on the value of justice. This study uses a postpositivism paradigm research method, namely research as a series of logically connected steps, believes in diversity, and perspectives from the participants rather than a single reality, and supports precise and thorough data collection and analysis methods. In this case, the researcher uses various levels of data analysis for accuracy and precision, uses various programs to support computer analysis, to encourages validity approaches, and this research also uses a sociological juridical approach. The data is used in the form of primary data, secondary data, and tertiary data.

The results of the research show that the weakness is that the victim as the party who suffers and is harmed is only involved as a victim witness, victims often feel dissatisfied with the criminal prosecution by the Public Prosecutor and/or the decision handed down by the Judge because it is deemed not in accordance with the values of justice. The criminal justice system is organized to prosecute perpetrators, not to serve the interests of victims, because criminal acts are acts of perpetrators against the state. This causes losses resulting from criminal acts suffered by victims to be a disaster that must be borne by the victim himself. Therefore the reconstruction of regulations for efforts to compensate victims in criminal law enforcement based on the value of justice is in Article 98 of the Criminal Procedure Code which states that (1) If a criminal act causes losses to another person, the Investigator or Public Prosecutor at the request of that person or his heirs, shall apply for compensation in the criminal case, (2) The request for compensation as intended in paragraph (1) is submitted before the case is transferred to the District Court, (3) Regarding requests for compensation as intended in paragraph (1), the Investigator or Public Prosecutor may submit an Application for confiscation of collateral for the suspect's assets to the Court. then, in Article 270 paragraph (2) of the Criminal Procedure Code: Regarding court decisions that have obtained permanent legal force in the form of the convict's obligation to pay compensation to the victim or heir as an additional crime, this is carried out by the prosecutor, the implementation of which can be handed over to the Government Curator (Inheritance Property Office).

**Keywords:** victim compensation, criminal law, justice value

### Introduction

Claims for compensation as a result of being a victim of a criminal act as regulated in Article 98 paragraph (1) of the Criminal Procedure Code, states that: If an act which is the basis for an indictment in a criminal case examination by the District Court causes harm to another person, then the Chief Judge of the Hearing shall determine whether the claim for compensation is combined with the criminal case.

There is a combination of compensation lawsuit cases, namely because there are two aspects to the resolution of a case, namely the civil aspect and the criminal aspect. The existence of both aspects in the same case gives rise to a criminal case with a claim for compensation. Regarding such cases, before the KUHAP was implemented, the resolution by the Court was carried out sequentially and not simultaneously, the criminal case was resolved first and then followed by the settlement of the claim for compensation (civil case) (Toebagus, 2022) <sup>[6, 7]</sup>. Settlement of cases like this takes a long time, and costs more, so the court will not be able to implement the principles of good justice, namely a fast, simple, and low-cost judicial process as stated in Article 4 paragraph (2) of Law Number 48 of the Year 2009 concerning Judicial Power, and will make things more

difficult for poor people who have limited funds. For this reason, it is necessary to find an appropriate way to overcome this problem, namely by merging the compensation claim case.

There is a criminal case followed by a civil case, such as a claim for compensation related to a criminal act by the perpetrator. In the event that the victim submits a claim for compensation and it can be in the form of material or immaterial losses, then the claim for compensation submitted to a civil court will be processed in a civil manner (Tommy, 2022) <sup>[8]</sup>. The victim experiences two judicial processes, namely criminal justice due to criminal acts by the perpetrator against the victim and civil justice due to the victim's claim for compensation. With these two court processes, it will take a long time and may result in relatively large costs. This process does not comply with the principles of fast, simple, and low-cost justice. It is necessary to arrange for criminal compensation to be imposed on the defendant to remedy the suffering of the victim of the crime (Widodo, 2018).

Realizing the return of victims' losses through criminal compensation cannot easily adapt to changes in the system, especially in the field of law enforcement. Restoring losses caused by criminal acts through criminal compensation is in

line with the theory of the aim of punishment to realize restorative justice. The main concept of realizing restorative justice is to restore the situation resulting from a criminal act to the way it was before the crime occurred (Widodo, 2019).

Compensation, thus, is an effort to protect victims, or more broadly, a form of community protection, which is one of the targets to be achieved by the aim of punishment (Tarnavskiy, 2023) [5].

Victim protection can be interpreted as protection from obtaining legal guarantees/compensation for the suffering/losses of people who have been victims of criminal acts. (Identical to victim compensation). Forms of compensation can be in the form of restoration of their reputation (rehabilitation), restoration of inner balance (including forgiveness), provision of compensation (restitution, compensation, security/compensation/social welfare), and so on.

Based on the basic idea of being victim-oriented, it gives a separate status/place to compensation crimes, namely as a type of additional crime. Even though it has additional criminal status, this concept policy is an effort to increase the status of criminal compensation as a general criminal policy for all offenses. The penalty for compensation, even though it has the status of an additional penalty (imposed together with the main crime), can also be imposed independently in addition to (as an alternative) the main crime, namely if the offense concerned is only punishable by a single fine.

Indonesia as a country based on law and not based on mere power (*machtsstaat*) is obliged to synergize law enforcement efforts based on the value of justice with efforts to achieve the national goal of realizing the general welfare of society. Based on this kind of thinking, the handling of criminal acts must be carried out using a just approach for society by returning the proceeds and instruments of criminal acts for the benefit of the victim. In line with the development of human civilization, the handling of criminal acts continues to experience updates, both the objectives of punishment and types of punishment.

Therefore, In this study, the authors wish to further examine the problem in with the title "Reconstruction Of The Regulation Of Victim Compensation In The Enforcement Of Criminal Law Based On Justice Values". With the main problem discussed as follows:

1. What are the current weaknesses in the regulation of The Regulation of Victim Compensation In the Enforcement of Criminal Law in Indonesia?
2. How is the reconstruction of The Regulation of Victim Compensation In the Enforcement of Criminal Law based on the value of justice?

### Research Method

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020) [6,7].

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010) [3].

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

### Research Results and Discussion.

#### 1. Weaknesses In The Regulation Of The Regulation Of Victim Compensation In The Enforcement Of Criminal Law In Indonesia

In the case the provisions in the Criminal Procedure Code are carefully observed, then compensation can be given to victims of criminal acts by observing Article 98 paragraph (1) which states that if an act is the basis for an indictment in a criminal case examination by a district court causes harm to another person, then the presiding judge at the hearing may decide, at the person's request, to combine the claim for compensation with the criminal case.

The meaning of the loss to other people (subjects) is not limitation, that is, in accordance with the provisions of civil law, anyone who suffers a loss resulting from a criminal act, including loss to the victim (explanation of Article 98 paragraph (1) of the Criminal Procedure Code), while the type Losses arising from a criminal act are limitation, that is, they are limited to material losses in the form of costs or replacement costs incurred by interested third parties (Article 99 of the Criminal Procedure Code) which is strengthened by the jurisprudence of the Supreme Court of the Republic of Indonesia Number 976 K/Pid /1988 dated 24 September 1991.

The provisions regarding this type of loss are not in accordance with the aspirations of Article 101 of the Criminal Procedure Code, namely that the provisions of the rules of civil procedural law apply to claims for compensation. Civil law does not limit the type and amount of loss experienced by the injured party (plaintiff) if the loss is truly in accordance with the principle of causality as regulated in Article 1365 of the Civil Code.

The possibility of claims by third parties or victims of criminal acts that can be combined with criminal cases is a new form introduced in criminal procedural law in Indonesia. The examination and decision on whether or not the request for compensation is granted is assessor in nature,

meaning that the decision to grant or reject the request for compensation depends on the decision of the main case, namely the criminal act charged by the Public Prosecutor. Compensation decisions to third parties can only be executed if the main decision has permanent legal force. However, it turns out that there are several shortcomings in the Criminal Procedure Code regarding the provision of this compensation.

The lack of regulations regarding restitution will certainly make it difficult for victims of criminal acts to submit requests for restitution. First, the victim does not know for certain the losses for which restitution can be requested. Second, the victim does not know when the request for restitution is submitted: can the victim immediately submit the request for restitution to the LPSK immediately after the crime occurs, or before the public prosecutor files a criminal complaint, or before the judge renders a decision? Third, the victim does not know the mechanism that can be taken if the perpetrator of the crime is unable or unwilling to pay the compensation requested by the victim. Fourth, the victim also does not know the time period for paying restitution from the perpetrator of the crime since the judge's decision requiring the perpetrator to pay restitution to the victim has permanent legal force (Daigle, 2016) <sup>[2]</sup>.

These various ambiguities were only answered two years later when the government issued Government Regulation Number 44 of 2008 concerning Providing Compensation, Restitution, and Assistance to Witnesses and Victims.

If you look closely, the provisions regarding restitution still contain a number of problems. Law Number 31 of 2014 has indeed accommodated several provisions regarding restitution mechanisms for victims of criminal acts which were previously regulated in Government Regulation Number 44 of 2008 so it can be said that these provisions are now parallel to the Criminal Procedure Code.

Law enforcement officers can now be forced to use the restitution mechanism regulated in Law Number 31 of 2014, which has a wider scope of restitution than the KUHAP because the provisions of this restitution mechanism now have the same force as those regulated in the KUHAP. However, in this law, there is a new provision which actually limits the granting of restitution rights to victims of criminal acts. Article 7A paragraph (2) states that criminal acts as intended in paragraph (1) are determined by the LPSK Decree. This means that the right to obtain restitution cannot apply to all victims of criminal acts. This right only applies to victims of certain criminal acts whose determination is unclear because it is only stated to be determined by the LPSK Decree.

In the explanation section, this paragraph is stated to be quite clear, even though there is no clarity regarding this paragraph considering that there is no such provision in Law Number 13 of 2006 and Government Regulation Number 44 of 2008. The next question is what is the reason for this limitation?

This is inversely proportional to the aim of establishing LPSK to protect witnesses and victims of criminal acts in Indonesia. This is certainly a setback for efforts to protect victims of criminal acts. With regulations that limit victims of criminal acts from obtaining their rights to restitution, of course, it would be better for victims of criminal acts if law enforcement officials use the restitution mechanism regulated in the Criminal Procedure Code because all victims of criminal acts can get the same opportunity to obtain their rights to restitution.

## 2. Reconstruction Of The Regulation Of Victim Compensation In The Enforcement Of Criminal Law Based On The Value Of Justice

Article 1 point 3 of Law Number 13 of 2006 states that the Witness and Victim Protection Agency, hereinafter abbreviated as LPSK, is an institution tasked and authorized to provide protection and other rights to Witnesses and/or Victims as regulated in law. This. Then Article 12 states that LPSK is responsible for handling the provision of protection and assistance to Witnesses and Victims based on their duties and authorities as regulated in this law. In Law Number 13 of 2006 there is not a single article that states that one of the LPSK's powers is to carry out court decisions or judge's determinations regarding restitution submitted by victims of criminal acts through the LPSK.

Government Regulation Number 44 of 2008 which outlines provisions regarding restitution for victims of criminal acts also does not clearly regulate the authority of LPSK to implement court decisions or judge's decisions regarding restitution. Furthermore, in Law Number 31 of 2014, there is no change regarding the definition of LPSK. However, in relation to restitution, this law adds a provision stating that in carrying out the duties as intended in Article 12, LPSK has the authority to assess compensation in providing restitution and compensation (Article 12A paragraph (1) letter j).

This shows additional authority for LPSK in terms of victim restitution, only in the form of authority to assess compensation in providing restitution. LPSK has not yet been given the authority to implement court decisions or judge determinations regarding requests for restitution submitted by victims of criminal acts through this institution. Regarding parties who are given the authority to carry out court decisions or judge's decisions, the KUHAP strictly regulates this in Article 6. Article 6 letter a of the KUHAP states that the Prosecutor is an official who is authorized by this law to act as a public prosecutor and carry out court decisions that have been made. obtain permanent legal force. Then Article 6 letter b of the Criminal Procedure Code states that the Public Prosecutor is a Prosecutor who is authorized by this law to carry out prosecutions and carry out the Judge's determination (Ali, 2022) <sup>[1]</sup>. The authority of the Prosecutor as executor is reaffirmed in Article 1 number 1-2441 and Article 30442 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia.

Based on this, for the Republic of Indonesia, it would be more appropriate if the authority to apply for restitution for victims of criminal acts falls under the Prosecutor's Office of the Republic of Indonesia. Because it will be easier and faster for victims of criminal acts if requests for restitution are submitted before the charges are read out, the victim can submit the request directly to the Public Prosecutor. For this reason, in amending the KUHAP, it is necessary to provide provisions regarding the mechanism for submitting requests for restitution, which of course will be different from the mechanism for merging compensation claims cases as regulated in Articles 98-101 of the KUHAP.

In order to achieve this, Article 98 of the Criminal Procedure Code needs to be reconstructed in to: (1) If a criminal act causes losses to another person, the Investigator or Public Prosecutor at the request of that person or his heirs, shall apply for compensation in the criminal case, (2)

The request for compensation as intended in paragraph (1) is submitted before the case is transferred to the District Court, (3) Regarding requests for compensation as intended in paragraph (1), the Investigator or Public Prosecutor may submit an Application for confiscation of collateral for the suspect's assets to the Court. then, in Article 270 paragraph (2) of the Criminal Procedure Code: Regarding court decisions that have obtained permanent legal force in the form of the convict's obligation to pay compensation to the victim or heir as an additional crime, this is carried out by the prosecutor, the implementation of which can be handed over to the Government Curator (Inheritance Property Office).

This concept of a mechanism for submitting requests for restitution will directly eliminate the provisions of Article 7A paragraph (3) of Law Number 31 of 2014 which states that submission of requests for restitution can be made before or after a court decision that has obtained permanent legal force through the LPSK. Apart from replacing the role of the LPSK with that of the Prosecutor's Office, this concept also only regulates requests for restitution submitted by victims of criminal acts before the demands are read out by the Public Prosecutor. This is to avoid legal uncertainty and provide a sense of security for victims of criminal acts that their rights as victims will be fulfilled.

This is possible because if the perpetrator of a crime is unwilling or unable to pay restitution in the amount decided by the judge, the Public Prosecutor can force the perpetrator by confiscating and auctioning off the perpetrator's property to pay restitution to the victim of the crime. Apart from that, if the perpetrator is unable to pay restitution, the perpetrator will be subject to additional imprisonment. Meanwhile, if the perpetrator tries to avoid paying compensation to the victim, the perpetrator will not be entitled to a reduction in the sentence and will not receive parole (Khmelov, 2015) <sup>[4]</sup>. In the case of eliminating provisions regarding requests for restitution submitted after a court decision has obtained permanent legal force, this is done in order to avoid problems in implementing the Judge's decision. On the other hand, the Public Prosecutor as the party who has the authority as executor will feel burdened if he has to carry out the Judge's decision regarding a request for restitution that he is not aware of.

Apart from that, this is also intended to avoid objections from perpetrators of criminal acts who feel that they have been punished several times, considering that they have already been sentenced, perhaps have already served it for some time, but then they are faced with new legal demands related to cases in which they have already been found guilty. Judge.

## Conclusion

1. Weaknesses in regulations on efforts to compensate victims in criminal law enforcement at this time, namely that basically the mechanism for providing compensation for victims of criminal acts is regulated in the Criminal Procedure Code. Apart from that, Law Number 31 of 2014 concerning Witness Protection and Victims has also provided a way for victims of criminal acts to obtain compensation in the form of restitution from the perpetrators of criminal acts. However, these two provisions have a number of problems in their implementation, including Limited types and amounts of damages that can be claimed by victims of criminal acts if they use the

mechanism for combining compensation claims as regulated in the Criminal Procedure Code. Not to mention that the application procedure is not simple and requires an active role from the crime victim himself in the process. If the application for restitution uses the process regulated in Law Number 31 of 2014, then not all victims of criminal acts can apply for restitution as their right, because not all criminal acts can be submitted for restitution. The determination of a crime for which the victim can apply for restitution is determined by the Witness and Victim Protection Agency. Another thing that causes problems is the mechanism and procedures for submitting restitution and implementing restitution considering that the Witness and Victim Protection Agency is not included in the criminal justice system, and is not a law enforcement apparatus that has executive authority.

2. Reconstruct regulations for anti-victim loss efforts in criminal law enforcement based on the value of justice, namely by carrying out reconstruction first, in Article 98 of the Criminal Procedure Code to: (1) If a criminal act causes losses to another person, the Investigator or Public Prosecutor at the request of that person or his heirs, shall apply for compensation in the criminal case. (2) The request for compensation as intended in paragraph (1) is submitted before the case is transferred to the District Court. (3) Regarding requests for compensation as intended in paragraph (1), the Investigator or Public Prosecutor may submit an Application for confiscation of collateral for the suspect's assets to the Court. Second, in Article 270 paragraph (2) of the Criminal Procedure Code: Regarding court decisions that have obtained permanent legal force in the form of the convict's obligation to pay compensation to the victim or heir as an additional punishment, this is carried out by the prosecutor, the implementation of which can be handed over to the Government Curator (Inheritance Property Office).

## References

1. Ali, Mahrus & Mulyono, Andi & Sanjaya, Wawan & Wibowo, Ari. (2022). *Compensation and restitution for victims of crime in indonesia: Regulatory flaws, judicial response, and proposed solution*. Cogent Social Sciences. 8. 10.1080/23311886.2022.2069910.
2. Daigle, Leah & Guastafarro, Wendy & Azimi, Andia. (2016). *Victims' Compensation as a Tool of Therapeutic Justice: Examining the Physical and Mental Health Needs of Victim Compensation Applicants and the Role of Health in Receiving Compensation*. *Violence and victims*. 31. 10.1891/0886-6708.VV-D-14-00037.
3. Faisal. *Menerobos Positivisme Hukum*. Rangkang Education, Yogyakarta, 2010:56.
4. Khmelov H. *Problems of realization of the rights of victims of crimes to compensation by the state*. *Problems of Legality*, 2015:122-129. 10.21564/2414-990x.129.52037.
5. Tarnavskiy, Oleg. *Protection of the rights of the victim: methodological foundations of the institute of compensation for harm*. *Man: crime and punishment*, 2023:(31):85-93. 10.33463/2687-1238.2023.31(1-4).1.085-093.
6. Toebagus Galang Windi Pratama. *The Urgency for Implementing Cryptomnesia on Indonesian Copyright Law*, *Saudi Journal of Humanities and Social*

- Sciences,2020:5(10):508-514,  
DOI:10.36348/sjhss.2020.v05i10.001.
7. Toebagus Galang Windi Pratama. *Peran Integrasi Teknologi dalam Sistem Manajemen Peradilan*, Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum,2022:4(1). DOI: <https://doi.org/10.37631/widyapranata.v4i1.583>.
  8. Tommy, Tommy & Febrian, Febrian & Nashriana, Nashriana & Achmad, Ruben. *Immaterial Compensation Not Criminal Losing Lives as an Implementation of Victim Protection*. Fiat Justisia: Jurnal Ilmu Hukum,2022:(16):239-252. 10.25041/fiatjustisia.v16no3.2656.
  9. Wahyu Widodo, Sapto Budoyo and Toebagus Galang Windi Pratama. *The Role of Law Politics On Creating Good Governance And Clean Governance For A Free-Corruption Indonesia In 2030*. The Social Sciences,2018:(13):1307-1311.
  10. Wahyu Widodo, Toebagus Galang. (2019). *Poverty, Evictions And Development: Efforts To Build Social Welfare Through The Concept Of Welfare State In Indonesia*, 3rd International Conference On Globalization Of Law And Local Wisdom (Icglow 2019), Dx.Doi.Org/10.2991/Icglow-19.2019.65.