

Comparison of Protection for Victims of Crime Between Indonesia and France

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Abstract: This type of research is library research. Library research is research that is carried out through library data collection or research carried out to solve a problem which basically relies on a critical and in-depth study of relevant library materials. This research includes library research because data sources can be obtained from libraries or other documents in written form, both from journals, books and other literature. Forms of legal protection that are commonly given to victims of crime in criminal law in Indonesia enforcement include : Giving Restitution and Compensation, Counseling, Medical Services / Assistance, Legal Aid, Information Provision. Forms of legal protection that are commonly given to victims of crime in criminal law in Indonesia enforcement include : Terms of compensation, Party Requesting Compensation, Defendant's Capacity, Compensation Claim Process

Keywords: Comparison, Protection, Victims

1. Introduction

Every crime that occurs will definitely cause losses, especially for the victim. Victims of crime must bear the loss because crimes he received, both materially and non-materially. However, in the settlement of criminal cases, many of the victims are lacking receive adequate legal protection. Protection for every citizen is an obligation that must be fulfilled by a country. Likewise, the Indonesian state is obliged to protect every citizens wherever they are. This is in accordance with the Preamble to the 1945 Constitution of the Republic of Indonesia, the fourth paragraph. The law that regulates the legal protection of victims The crimes that have existed so far are still partial and their existence is scattered in various laws and regulations so that it only applies to certain crimes.

The lack of available legal protection umbrella is not comparable with the complexity of criminal cases leading to impunity, repetition, and frustration of victims in demanding the right to justice, truth, and restoration. The number of criminal cases that occur is not accompanied by the existence of a comprehensive legal instrument. The discussion on the rights of victims has gone unnoticed because all attention seems to be focused on the problem of criminalization. Amount existing laws and regulations only explain in detail actions that can be criminalized, forgetting the portion of the discussion regarding victims and victims' rights. The victim is the party who suffers the most seems to be marginalized.

Discussion about victims of crime is very important. The current criminal justice system is too focused on the perpetrator (investigate, arrest, try and punish perpetrators) and very little pay attention to the victim. Involvement of victims in the criminal justice system only adds to the trauma and increases his sense of helplessness and frustrated because they were not given

adequate protection and legal remedies. The current criminal justice system is indeed too offender centered, so that requires us to improve the victim's position in this system, so what he gets is not only symbolic satisfaction. Until now the protection of victims of crime in the legal system national level seems to have not received serious attention. This can be seen from there are still few rules in the legislation regarding the rights of victims crime. In national legislation, the issue of protection

Victims have indeed been regulated, but they are still partial and not applicable generally for all victims of crime. So far the existing view states that when the perpetrators of the crime have been investigated, tried and sentenced to a criminal sentence, at that time the protection of the victim has been given, even though this opinion is not entirely true. This situation indirectly has created an imbalance between protection of crime victims and criminals. Theoretically and practically in the Indonesian Criminal Justice System the interests of the victims of crime are represented by the public prosecutor as community protection department. While the criminal justice system in France emphasizes that it is possible for victims to play an active role in the process criminal justice such as assisting the public prosecutor. In addition, with actively participate in the criminal justice process, the victim can regain self-esteem and self-confidence. Based on the things described above, the problems that exist include: What is the form of protection for victims of crime in Indonesia?, and What is the form of protection for victims of crime in France?

2. Method

This type of research is library research. Library research is research that is carried out through library data collection or research carried out to solve a problem which basically relies on a critical and in-depth study of relevant library materials. This research includes library research because data sources can be obtained from libraries or other documents in written form, both from journals, books and other literature.

3. Result & Discussion

3.1. Forms of legal protection that are commonly given to victims of crime in criminal law in Indonesia enforcement include :

1) Giving Restitution and Compensation

The provision of restitution and compensation as explained in Article 35 of Law Number 26 of 2000 provides the meaning of compensation, namely compensation provided by the state because the perpetrator is unable to provide full compensation for which he is responsible, while restitution, namely compensation given to the victim or his family by perpetrator or third party. Restitution can be in the form of :

- a. Return of property
- b. Payment of compensation for loss or suffering; or
- c. Reimbursement for action certain.

Definition of restitution and compensation is a deep term their uses are often interchangeable. However, the difference between the two terms is

compensation is more civil. Compensation arising from victim's request, and paid for by society or is a form of public accountability or state, while restitution is more crimes arising and court decisions criminal and paid by the convict or is a form of accountability convict. There are five systems of restitution and compensation to victims of crime, which are as follows :

- a. Compensation (damages) that are civil law, given through a process civil. Mi system separates claim for compensation for victims of the process criminal.
- b. Compensation of a civil nature granted through criminal proceedings.
- c. Restitution of a civil nature and mixed with criminal nature granted through criminal proceedings. Even though the restitution here is still civil nature, no doubt its criminal nature. One of form of restitution according to this system is a "compensation fine" (compensatory fine). This fine is a "valuable obligation" money" (monetary obligation) imposed on the convict as a form of compensation to the victim in addition to the criminal should be given.
- d. Compensation of a civil nature, given through criminal proceedings and supported by sources state income. Here compensation does not have a criminal aspect anything, even if given in criminal proceedings. So, fixed compensation is a civil institution pure, but the state fulfill or bear indemnity obligation charged trial of the perpetrator. This matter is an acknowledgment that the state has failed to do its job protect victims and fail prevent crime.

2) Counseling

In general, this protection is provided to the victim as a result of the emergence of the negative psychological impact of a crime. Assistance in the form of counseling is very suitable given to victims of crimes who leaving long-lasting trauma, such as in cases involving decency. For example in cases domestic violence or cases traumatizing rape prolonged on the victim, generally the victim suffers physically, mentally, and social. Apart from suffering physically, the victim also experiencing mental stress For example, because they feel dirty, sinful, and have no future.

Worse yet, victims are often found rape gained ostracism from society because it is considered to bring disgrace for the family and the surrounding community. By paying attention to the condition of the victim such as above, of course the form of assistance or psychological assistance (counseling) relatively more suitable to be given to the victim rather than just compensation in the form of money.

3) Medical Services / Assistance

Given to victims who suffer medically as a result of a crime. The medical services in question can be in the form of health checks and reports in writing (visa or medical certificate) which has the same legal force with evidence). This medical statement especially when the victim wants to report the crime that happened to him to police for follow-up.

4) Legal Aid

Legal aid is a form of assistance to victims of crime. In Indonesia, noodle assistance is more provided by Non-Governmental Organizations (NGO), for example in the 1998 Trisakti case, the Tanjung Priok case, and so on. Use of legal aid provided by the government is rarely used by crime victims because there are still many people who doubt the credibility legal assistance provided by government. Providing legal assistance to victims of crime must be given good

requested or not requested by the victim. This is important, considering the low level of legal awareness of most victims of this crime. Attitude let crime victims not get proper legal assistance can result in worsening condition of the victim of a crime.

5) Information Provision

Providing information to victims or his family related to the process criminal investigation and examination experienced by the victim. Giving This information plays a very important role important in the effort to make society as a partner of the police because Through this information, it is hoped that the function community control of police performance can run effectively. One of the efforts that have been made by the police in providing information to the victim or his family is through the creation of web sites in several the police station in which it is presented complete police activities, both both policy and operational in nature. Likewise, notifications about progress of an investigation crime and information about the discovery objects resulting from criminal acts (such as stolen motor vehicle), can included in this group.

3.2. Forms of legal protection that are commonly given to victims of crime in criminal law in France

The procedural rights models were carried out by the French government in providing victims' rights. In this model, it is possible for the victim to play an active role in the ongoing judicial process. In this case, the victim of a crime is given the right to file a criminal complaint or to assist the prosecutor. He also has the right to be presented and heard at every level of court proceedings related to his interests in it, including the right to be asked for consultation by the correctional institution before being granted parole, as well as the right to hold peace or civil justice.

In France, this model of procedural rights is called the *pratie civile* model (civil action systems). The procedural approach sees the victim as a subject who must be given broad juridical rights to sue and pursue his interests. The advantage of this model is that it can be considered to fulfill feelings to avenge the victim and the community. In addition, the involvement of the victim like this will make it possible to regain self-confidence and self-esteem. Then, the rights given to the victim to be actively involved in the process of seeking justice can be a counterweight to actions that may occur in the prosecutor's duties, for example in preparing requisitions that are considered too light or setting the case aside in the public interest. This model is also considered to be able to increase the flow of quality information to judges, because usually this information flow is dominated by defendants who through their legal counsel can actually suppress victims/victim witnesses in court. However, this model also has significant weaknesses, where this model is considered to create a conflict between public and private interests; whereas, the criminal justice system must be based on the public interest. In addition, there can be an excessive burden on the administration of criminal justice as opposed to simplifying efforts.

Another disadvantage is the possibility that the rights granted to the victim can actually cause a mental burden for the person concerned and open up opportunities to make him a second victim (risk of secondary victimization). Practically psychologically and financially, this model is sometimes considered not to be profitable. Anxiety, depression and indifference of the victim are not possible for him naturally, especially if his education is low. The tight and repeated trial schedule will disturb him, both practically and financially. In addition, it can also be said that a free atmosphere based on the preassumption of innocence can be disturbed by

the victim's opinion about the sentence that will be imposed. It is based on emotional thinking in terms of retaliation.

One form of restorative justice that is getting attention specifically in France is the provision of compensation for victims crime. Law January 17, 2008 regarding Reimbursement Loss to the Victim makes it easier to implement the decision court that gives the victim the right to receive compensation. Victims get compensation for a maximum of two months after the court's decision. Some important things related to the provision of compensation to victims of criminal acts in France, namely : Provision of Compensation for Victims of Crime through Court. Basically there is no attempt to return the condition of the victim to the state before the crime occurred, however at least reduce the negative impact arising from a criminal act.

One of the efforts that can be made to reduce the suffering of victims of criminal acts is to provide compensation to victims due to losses suffered both materially and immaterially as a result of perpetrator's actions. Not only within the scope of civil law, France has also recognize the compensation process for compensation for victims within the scope of criminal law. This gift not even only given to individual victims, but also to associations because of the collective loss. Loss by collectively can override the members of the association directly- i.e. e.g. worker associations or unrelated losses directly members of associations, for example: associations for protect animals. In the context of this discussion, it will focused on providing compensation to individual victims.

(1) Terms of compensation

There are several conditions to be able to be given compensation, both in the form of material and immaterial losses, namely : First, the crime committed is punishable according to French law. Second, crime/crime it attacks the interests protected by law. Third, the damage (suffering) suffered by the victim has direct relationship with the crime that occurred.

(2) Party Requesting Compensation

The claim for compensation by the victim can be represented by : his heirs (la reparation de la victim par ricochet) According to the decision of the French Supreme Court (Cour de Cassation). Submission of compensation by the heirs will be more may be accepted if it has been started first claim for compensation by the victim before death. Change losses that will be obtained by the heirs or in Other compensation that will be granted is that of a material. As for the application for compensation that is immaterial rejected by the French Supreme Court. Besides that, The heirs can only apply for compensation if : between the crime that occurred and the death of the victim there is time span, but if the victim died instantly, then heirs cannot claim damages on behalf of the victim. In addition to the heirs, parties who can apply for compensation is a third party. The third party in question is the who have predefined rights over the victim, such as victim creditors, which of course is limited to the losses incurred suffered a material victim.

(3) Defendant's Capacity

If the defendant does not have the capacity, for example, has psychological disorders, the defendant can still be asked accountability for his actions that cause loss to the victim. As for children who are still minors or minors, the French Supreme Court (as in a ruling of 9 May 1984) think that they can still be sued to replace loss suffered by the victim. Technically, the party

who responsible for the child (eg parents) who required to carry out the compensation. If there are several defendants who are both cause harm, each of which is known to have different contributions, in principle the victim can file a claim for all the losses to the defendant whichever. On the other hand, victims can also file lawsuits against all defendants with the amount of losses not the same for each defendant.

As for the case against several defendants and it is not known, definitely each contribution, then it can be applied the principle of collective responsibility (collective legal) liability). This means that the victim can file a claim against any of the defendants. The law passed on July 11, 1966 stipulates that if the one who has made a mistake is not known existence or has been declared bankrupt, then the state has an obligation to pay for the loss. For example the Law of September 9, 1986 provide compensation for victims of acts of terrorism. Besides that The law of 6 July 1990 allows victims to receive compensation due to crimes/criminal acts committed make the victim unable to work for more than one month.

(4) Compensation Claim Process

Basically the victim can file a lawsuit through criminal court or civil court. In principle, if the victim already has a civil court, he can't change it to criminal court. The filing of a claim for damages has an expiration date. For the type of crime, the expiration date is after 10 years the occurrence of a crime, as for minor crimes during 3 years, and for violations for one year. Submission the lawsuit in principle is filed in the Court of residence defendant or one of the defendants.

4. Conclusion

Forms of legal protection that are commonly given to victims of crime in criminal law in Indonesia enforcement include :

- a. Giving Restitution and Compensation
- b. Counseling
- c. Medical Services / Assistance
- d. Legal Aid
- e. Information Provision

Forms of legal protection that are commonly given to victims of crime in criminal law in Indonesia enforcement include :

- a. Terms of compensation
- b. Party Requesting Compensation
- c. Defendant's Capacity
- d. Compensation Claim Process

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