
The Ideas of Arranging Compensation for Victims of Criminal Actions

Toga Hamonangan Nadeak¹, Roy Rovalino Herudiansyah², Yudy Priyono³, Bambangherry Purnomo⁴

^{1, 3, 4} August 1945 University, Semarang, Indonesia

² Diponegoro University, Semarang, Indonesia

*Corresponding author: togahamonangannadeakk@gmail.com¹

Abstract

This research is aimed to know how other countries should pay attention through compensation for victims of crime. In the social contract which reflected in the constitutions, country has established to protect and provide physical and spiritual well-being to its citizens. The problem that rose in this research uses normative method with comparative approach. Examples of arrangements in some of the countries studied can be references as it must be how the state should intervene in helping to ease the burden on citizens who are victims of crime. Many countries have a regulation of law about giving compensation to them who become victim of crime. The compensation which given to them which become the victims of crime suffers both physical and psychological. The compensation that paid from the state budget through institution is created by law who handles the compensation. There is no regulation about giving compensation on the victim of crime in Indonesia and basically it is opposites with the principals of constitutions as the social contract between citizen and country.

Keywords: Compensation, Victim of Crime, Criminal act, Law, State Budget.

Keywords: Compensation, Victim of Crime, Criminal act, Law, State Budget.

Jell Codes: K14, K15, K33

Introduction

Criminal law in the objectives meaning of (*IusPoenale*) basically understood as a number of legal regulations that contain prohibitions and orders or obligations and therefore the violators are threatened with criminal sanctions (*legal sanctions*). *IusPoenale* is commonly understood as the criminal act material (*substantive criminal law*) or also understood as the (*formeel Strafrecht / Strafprocesrecht*) *formeel* criminal act. While, *formeel* criminal act (*law of criminal procedure*) or Criminal Code Procedure is basically arranged the regulation as how material criminal law is realized in reality when faced with the fact that has been a violation of the prohibition norms (Rammelink, 2003; Farid, 2010). If the civil law instruments and administration law as *premium remedium* is failed to giving the legal protection on the citizen's rights so the criminal act as the *ultimumremedium* facility becomes to be the last door to provide legal protection to community from all forms of crime.

In the criminal justice system is the concerns of legislator or judicator with the law enforcement which basically only focused to the criminals. As a scientific effort which implemented to find a way or method of imposing sanctions that are more strict, fair and authoritative in order to produces a deterrent effect on perpetrators of crime, which aims to prevent people from committing crimes. This is an appearance that the victim of crime concerns is often neglected, because during the *criminal justice process* especially to the investigation stage is lack of concern and lack to get the law protection. The illustration of position and victim of crime role in the *criminal justice system* explained by Nicholas Fyfe as follows:

As a part of the obligations of citizen, witness and victim of crime are expected to be able to report the crime to the police. Likewise, victim witnesses may be asked to provide evidence orally in court about what they saw and answer some questions during a re-examination by the defense (Fyfe, 2006).

The regulation in Article 224 of the Criminal Code even lays down the obligation that whoever is summoned as a witness, expert or interpreter according to the law with intentionally not fulfilling obligation which according to the law, this must be fulfilled and it is threatened in a criminal case with a maximum imprisonment of nine months (Muljatno, 2001). Thus, the victim of crime positions become dilemma because he must to reveal the bad accident which makes traumatic experienced with the aim of punishing the perpetrator (Ansori, 2011). The rest he seemed to be forgotten, to face the process of recovery and the next life. Events and dramas like this almost always happened to every victim of a crime (Widodo, Pranjoto and Efendi, 2018).

The explanations of victim according to regulations in the Article 1 Point 2 Law of Witness and Victim Protection Act determined that victim is someone which experiencing the suffer of physical, Psychological, and/or economic loss which caused by a criminalact. While, the UN General Assembly Resolution No. 40/34 of 1985 defines victims as:

“Victim” means person who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omission that are in violation criminal laws operatives within member states, including those laws prescribing criminal abuse power.

In the United Nation Congress VII/1985 at Milan which is highlighting important topics: *The Prevention of Crime and the Treatment of Offenders* confirmed that victim rights must see as the integral part from the entire of criminal justice system (*“victim rights should be perceived as an integral aspect of the total criminal system”*). Then, in the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* United Nations, (1985) which held by United Nations (*The Seventh United Nation Congress on the Prevention of Crime and the Treatment of Offender* (Milan-Italy, September 1985) recommendation which produced in the declaration there are stated that:

Offenders of the third parties responsible for their behavior should, where appropriate, make their restitution to victims, their families or dependent's. Such restitutions should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, their provision of services and the restoration of rights.

In this case the burden of recovery costs and the responsibility to provides restitution to victims of criminal acts as a result of a crime and must give to the victim, family or people which are in his charge, placed on the perpetrators of crime. However, if it turns out that the perpetrators of the crimes which caused the victims are people who live a mediocre life with very limited economic and educational capabilities. So, disability of perpetrators to pay the recovery cost and the restitutions will become the beginning of a nightmare for victims to obtain legal remedies and protection for their rights.

According to Paulus Hadisuprpto in the Indonesian criminal justice paradigm in the future, there are indicators towards a criminal justice model in the form of a interests' model balance (interests of the State, society, and victims) regarded as the model which reflected in the ideology values and socio-cultural values of Indonesian citizen which is characterized by harmony, harmony and balance as contained in Pancasila (Hadisuprpto, 2011). Indeed, there is a mechanism where the crime victim can apply for compensation to the defendant who is found guilty of causing victimization against him, through the process of merging criminal and civil cases. Although, in the regulation shows that there is a weakness position of witness and victim Harkrisnowo, (2002), it is known that the regulation of compensation request which has been stipulated in the Article 98 KUHAP pointed out that:

(1) If an act which becoming the basis of indictment in an examination of a criminal case by a district court causes harm to other people so the presiding judge above the request of the people which can be set to combine the lawsuit for compensation to the criminal case;

(2) The request as it means in the paragraph (1) only can be submitted no later before public prosecutor files criminal charges. In the event that the public prosecutor is not presented, the request is submitted no later than the judge renders a decision.

It is clear that the provisions of Article 98 of the Criminal Procedure Code are very detrimental to the victim, because without the victim's request so the rights of criminal victim are not getting the adequate protection of law. The country is must taking over to gives the compensation for victim of crime. This is not yet set in the Constitutions No. 13 of 2006 concerning about the protection of sanction and victim, so it found the legal vacuum in providing certainty to the victims of crime.

For the previous research which implemented by I Made Juliarta, (2017) entitled *Provision of Compensation as an Effort to Protect Victims of Riots* also discuss that the absence of legal protection instruments or laws and regulations that specifically and clearly provides protection for victims of riots, especially concerning about giving compensation. Compensation arrangements in Indonesian positive law are only given to victims of gross human rights violations and terrorism crimes.

Then, the research entitled the *Mechanism of Giving Compensation and Restitution for Victim of Criminal Act* by Alvianto R. V. Ransun, (2012), this research is explained that for the protection guarantee of law on the crime victim with the mechanism of giving compensation and restitution on the crime victim. Through the law and regulations on the protection guarantee of the victim's right needed to get the certain law and justice as a result of a crime.

Thesis entitled the *Compensation and Restitutions for the Victims of Serious Human Rights Violations* by Zulkipli, (2011) explained that the victim's right to the fulfillment of compensation has been recognized in the statutory provisions in Indonesia. This also applies to crime victim in general, which until now there has never

been any compensation for the victims. One of the factors which caused there is no fulfillment of compensation for the victim is the lack of understanding and knowledge of the society on their rights in the criminal justice system regarding claims for compensation. Because his ignorance related to the existence of such compensation demands, the victim does not file a claim for compensation to the court.

Based on the description above, the problems raised and investigated in this research: How other countries pay attention through the provision of compensation to victims of crime, how should the arrangement of compensation for victims of crime. This research aims to find out how other countries should pay attention through providing compensation to victims of crime.

Method

This research is used the normative method with comparative approach. The comparative approach is one way in normative research which is to comparing one legal institution from one legal system with legal institutions that are more or less the same from other legal systems (Widodo *et al.*, 2019).

According to Sunaryati Hartono with implementing the legal comparison, so it can be concluded that universal needs will lead to the same ways, while the special needs based on differences in atmosphere and history which is lead to different ways (Hartono, 1991).

Result and Discussion

Giving the compensation on the victim of crime is not a new thing because many countries has previously implemented, whereas in the social contract as reflected in the Constitution, country established to protect and provide physical and spiritual well-being to its citizens. Examples of arrangements in several countries that analyzed can be a reference for how the state should intervene in helping to ease the burden on citizens who are victims of crime. The following are some countries that have laws and institutions that regulate compensation for victims of crime:

Table 1.Countries that Regulate the Provision of Compensation to Victims of Crime

No	Country Name		
A	Civil Law System	Laws and Regulations	Compensation Regulatory Agency
1.	Netherland	Criminal Injuries Compensation Fund Act/ Victim Act Terwee	National Victim Support Organization
2.	Germany	Crime Victim Compensation Act	Ministry of Work and Social Order
3.	France	Criminal Injuries Compensation Act	National d'AideauxVictimes et de Mediation
4.	Japan	Basic Act on Crime Victim	The National Public Safety Commission
B	Common Law System		
1	England	Criminal Injuries Compensation Act 1995	Criminal Injuries Compensation Authority
2	United States	Criminal Injuries Compensation Act	Criminal Injuries Compensation Agency/ Office of Crime Victim
3	Australia	Victim Compensation Act	Victim Support Agencies
4	Canada	Criminal Injuries Compensation Act 1996	Criminal Injuries Compensation Board
5	Malaysia	Domestic Violence Act 1996	Department of Justice

Sources: Processed from various

The United States as a Federal State has a rule called *the Criminal Injuries Compensation Act*, but it turns out that almost all of its states have institutions or agencies that handle the provision of compensation and treatment for victims of crime. Thus, the provision of compensation in the United States besides being carried out by the Central Government has also been decentralized to the states as arranged in alphabetical order as follows:

1. Alaska Violent Crime Compensation Board

2. Arizona Criminal Justice Commission
3. Arkansas Crime Victim Reparation Board
4. California Victims of Crime Program
5. Colorado Division of Public Safety
6. Connecticut Office of Crime Victim Services
7. Florida Division of Victim Services and Criminal Justice Program
8. Illinois Crime Victim Compensation Bureau
9. Indiana Violent Crime Victim Compensation Fund
10. Iowa Crime Victim Assistance Division
11. Kansas Crime Victim Compensation Board
12. Louisiana Crime Victim Reparation Board
13. Maine Victims Compensation Program
14. Maryland Criminal Injuries Compensation Board
15. Massachusetts Victim Compensation and Assistance Division
16. Minnesota Crime Victim Reparation Board
17. Michigan Crime Victim Service Commission
18. Mississippi Crime Victim Compensation Program
19. Montana Crime Victim Unit Board of Crime Control
20. Nebraska Crime Victim Reparation Program
21. New Hampshire Victims' Assistance Commission
22. New Jersey Victim of Crime Compensation Agency
23. New Mexico Crime Victim Reparation Commission
24. New York Crime Victim Board
25. North Carolina Crime Victim Compensation Division
26. Ohio Office of the Attorney General Crime Victim Services
27. Oklahoma Crime Victim Compensation Board
28. Oregon Crime Victim Assistance Section
29. Pennsylvania Crime Victim Compensation Program
30. Rhode Island Crime Victim Compensation Program
31. South Carolina Office of Victim Assistance
32. Tennessee Criminal Injuries Compensation Program
33. Texas Crime Victim Compensation Division
34. Utah Office of Crime Victim Reparations
35. Vermont Center of Crime Victim Services
36. Virginia Criminal Injuries Compensation Board
37. Washington State Crime Victim Compensation Program
38. West Virginia Court of Claims
39. Wisconsin Office of Crime Victim Services
40. Wyoming Division of Victim Services

The institutions that deal with crime victims in these states are quite varied, but it seems clear that the Federal and State Governments are prepared compensation which is a form of realization of state responsibility to citizens who are crime victim. So, the problem of compensation does not solely depend on the criminal or civil justice process (restitution), but is the responsibility of the state to help its citizens who are affected by the disaster.

Similar to the United States, Australia as a Federal State also pays a great attention to its citizens who are crime victim. Although, it is already having a rule from the Federal Government, but all states have their own laws and regulations. This illustrates how much attention is given by the State to its citizens who are the crime victim. The following is described the laws and regulations of each state in Australia where some of these rules have even been amended several times to remove any obstacles required by citizens who are crime victim to obtain compensation from the state.

Table 2. Australian State Legislation Rules governing the Provision of Compensation to Crime Victims

No	State	Laws and Regulations
1	Victoria	Victims of Crime Assistance Act 1996
2	New South Wales	Victims Compensation Act 1996
3	South Australia	Criminal Injuries Compensation Act 1978
4	Western Australia	Criminal Injuries Compensation Act 1995

5	Queensland	Criminal Offence Victims Act 1995
6	Tasmania	Criminal Injuries Compensation Act 1976
7	Australian Capital Territory	Criminal Injuries Compensation Act 1983 Victim of Crime Financial Assistance (Amendment) Act 1999
8	Northern Territory	Crime Victim Assistance Act

Source: Processed from primary legal materials.

In the Australian State of Capital Territory where the Federal Government is located, there are even laws and regulations that regulate financial loan schemes required by victims of crime (*Victim of Crime Financial Assistance Act 1999*), in addition to laws governing the provision of crime victim compensation (Criminal Injuries Compensation Act 1983). The Victoria state pays up to Aus \$100,000 to those who are primary victims as provided for in sections 8 and 12 of the Victim of Crime Assistance Act 1996.

Canada as the Federal State with Common Law System also has the comprehensive legislation namely Criminal Injuries Compensation Act 1996 which also regulates the existence of an institution called the Criminal Injuries Compensation Board which specifically handled giving the Provision of compensation on the Crime victim. But in addition to federal rules, each state also has independent laws as shown in the following table:

Table 3.Independent Rule of Law in the State

No	State	Laws and Regulations
1	Alberta	Criminal Injuries Compensation Act R.S.A. 1980,c.C-33
2	British Columbia	Criminal Injuries Compensation Act R.S.B.C 1979,c.C-83
3	Manitoba	Criminal Injuries Compensation Act R.S.M. 1988,c.C-305
4	New Brunswick	Compensation for Victim of Crime Act R.S.N.B. 1973,c.C-14
5	New Foundland	Criminal Injuries Compensation Act R.S.N. 1970,c.68
6	N.W.T	Criminal Injuries Compensation Act R.S.N.W.T. 1988,c.C-25
7	Nova Scotia	Compensation for Victim of Crime Act R.S.N.S. 1989, c. 83
8	Ontario	Compensation for Victim of Crime Act R.S.O. 1990, c. C-24
9	P.E.I	Victim of Crime Act R.E.P.E.I. 1988, c. V-3.1
10	Quebec	Crime Victim Compensation Act R.S.Q. 1977, c.I-6.
11	Sask	Victim of Crime Act S.S. 1192, c. V-6.01.
12	Y.T	Compensation for Victim of Crime Act R.S.Y., 1986, c 10.1

United Kingdom has a statutory rule called the Victim of Crime Assistance Act 1996 (CicaGov, 1996), the last amendment was which enacted on 17 December 1996, in Section 8 providing compensation of £60,000 and an additional £20,000 for loss of income during treatment for victims who called as primary victim is a person who becomes a victim as a direct result of a crime committed against him, either seriously injured or killed. The total amount of compensation that provided by the State for a crime victim is up to £500,000 or the equivalent of around IDR. 7,500,000,000,- (seven billion five hundred million rupiah) (CicaGov, 1996). The compensation arrangement provisions and/or compensation in the United Kingdom are carried out carefully with relevant officials which already have a Tariff of Injuries, table of compensation is based on the light weight of the injured body part which is an integral part of The Criminal Injuries Compensation Scheme (2008) issued by Criminal Injuries Compensation Authority (CICA). What is done by the United Kingdom is imitated by the countries in the common law system.

The crime victim compensation in Japan is regulated in the Basic Act on Crime Victim No. 161 (2004). The Funds are provided by the State and the amount of compensation as much as ¥10.790.000,- for those who die, while the injured victims which are received compensation of up to ¥12.730.000,-. Requests for compensation can be made by the victim or his family addressed to The National Public Safety Commission, by making a report and filling out the form are provided by the nearest police station.¹.

Netherland in Criminal Injuries Compensation Fund Act which is promulgated on 26 June 1975 (*Staatsblad*. 382) and amended by Parliament on 24 December 1997 (*Staatsblad*. 773) which provides for the provision of compensation to victims of crimes. Furthermore, the implementing regulations regarding the Criminal Injuries Compensation Fund which were made on April 14, 1994 (*Staatsblad*. 504) for compensation to victims of crime or their families in the amount of NLG. (No Lapse Guarantee) 50.000,-². The compensation fund is borne by the State and carried out by the Ministry of Justice.

Internationally, the provision of compensation to crime victim has also been mandated in The United Nations Congress on Prevention of Crime and Treatment of Offenders which held in Vienna on April 10, 2000 in the paragraph (g) of the Declaration of Basic Principles which affirmed that: "the right of compensation from both the offender and state"³. Thus, the country also asks to be liable for providing compensation which is the right of community members who are the crime victim.

Conclusion

From the explanation above, it can be seen that there is any legal vacuum in the criminal justice system in Indonesia. While, in the criminal rates in Indonesia are increasing as the consequence of crime victim also falls. The crime is happened both in the city and countryside. The crime is often occurred because the security forces is not located in place of keeping its citizens safe but instead, they are securing demonstrations, or secures strong corporate interests. When, there is a slight negligence from the security forces, the criminogenic elements in society seems strengthen. The fact shows that the criminal law as the instrument of *Ultimum re medium* has often failed deterrent effect on criminals.

Ideally, as it mandates in the Article 28G Paragraphs (1) and Article 28H Paragraph (1) of 1945 Constitution is the country's obligation to give the protection on the citizen among others, against the threat of fear (crime), and obtaining health services. The mandates in the Social Contract which contained in the constitutions is needed to be follow up in the rule of law which guarantees the provision of compensation by State due to the State's negligence in providing the protection for the safety of its citizens. It has been explained above that there are many countries which has the law and regulation that giving compensation on the citizen who become the crime victim, although it creates the institutions that are handles the compensation. This is not yet regulated in the Constitution No. 13 of 2006 concerning about Protection of Witnesses and Victims, because those who received compensation in Article 1 paragraph (1) of the regulation are only those who are victims of serious human rights violations.

References

- [1] Ansori (2011) *Perlindungan Hukum Terhadap Korban Perkosaan Dalam Peradilan Pidana di Indonesia*. Universitas Brawijaya.
- [2] CicaGov (1996) *Criminal Injuries Compensation Authority*, GOV.UK. Available at: <https://www.gov.uk/government/organisations/criminal-injuries-compensation-authority> (Accessed: 8 September 2021).
- [3] Farid, Z. A. (2010) *Hukum Pidana I*. Jakarta: Sinar Grafika.
- [4] Fyfe, N. R. (2006) *Perlindungan Terhadap Saksi Terintimidasi*. Jakarta: ELSAM.
- [5] Hadisuprpto, P. (2011) *PEMBERIAN MALU REINTEGRATIF" SEBAGAI SARANA NONPENAL PENANGGULANGAN PERILAKU DELINKUENSI ANAK (Stud' Perilaku Delinkuensi Anak dan Penanggulangannya di Semarang dan Surakarta)*. Universitas Diponegoro.
- [6] Harkrisnowo, H. (2002) *Urgensi Pengaturan Perlindungan Korban dan Saksi*. Jakarta.
- [7] Hartono, S. (1991) *Kapita Selekta Perbandingan Hukum*. Bandung: Citra Aditya Bakti.
- [8] Juliarta, I. M. (2017) 'Pemberian Kompensasi Sebagai Upaya Perlindungan Terhadap Korban
- [9] Kerusuhan', *Kertha Wicara : Journal Ilmu Hukum*, 6(1). Available at: <https://ojs.unud.ac.id/index.php/kerthawicara/article/view/26563>.
- [10] Muljatno (2001) *Kitab Undang-undang Hukum Pidana*. Cetakan ke. Jakarta: Bumi Aksara.
- [11] Rammelink, J. (2003) *Hukum Pidana*. Jakarta: Gramedia Pustaka Utama.

¹ The National Public Safety Commission, 2 Chome, Kasumigaseki, Chiyodaku, Tokyo.

² Victim Care Manual 1999/ General/ Appendix 3/ Regulations, <http://www.victimology.nl>

³ Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offender, United Nations, Vienna, 15 December 1999, Page 3.

- [12] Ransun, A. R. V (2012) 'Mekanisme Pemberian Kompensasi dan Restitusi Bagi Korban Tindak
- [13] Pidana', *Lex Crimen*, 1(1). Available at:
<https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/348>.
- [14] United Nations (1985) *The Seventh United Nation Congress on the Prevention of Crime and the Treatment of Offender*. United States.
- [15] Widodo, I. G. *et al.* (2019) 'Constraints on Enforcement of Environmental Law Against Corporate Defendants', *Environmental Policy and Law*. doi: 10.3233/EPL-190129.
- [16] Widodo, I. gunadi, Pranjoto, E. W. and Efendi, J. (2018) 'Law Liability of Construction Failure in Indonesia', *International Journal of Civil Engineering and Technology*, 9(11), pp. 2363–2371.
- [17] Zulkipli (2011) *Kompensasi dan Restitusi Bagi Korban Pelanggaran Hak Asasi Manusia yang Berat*. Universitas Indonesia. Available at: [http://lib.ui.ac.id/file?file=digital/20277515-T29299-Kompensasi dan.pdf](http://lib.ui.ac.id/file?file=digital/20277515-T29299-Kompensasi%20dan.pdf).