
THE IDEAS OF ARRANGING COMPENSATION FOR VICTIMS OF CRIMINAL ACTIONS

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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.

Jel Codes: K14, K15, K33.

Introduction

Criminal law in the objectives meaning of (*Ius Poenale*) is understood as several legal regulations that contain prohibitions and orders or obligations. Therefore, the violators are threatened with criminal sanctions (*legal sanctions*). *Ius Poenale* is commonly understood as the criminal act material (*substanti ve criminal law*) or the (*formeel Strafrecht / Strafprocesrecht*) *formeel* criminal act. While, *formeel* criminal act (*law of criminal procedure*) or Criminal Code Procedure has arranged the regulation as how material criminal law is realized in reality when faced with the fact that it has violated the prohibition norms (Farid, 2007; Rammelink, 2003). Suppose the civil law instruments and administrative law as a *premium medium* failed to give legal protection to the citizen's rights so the criminal act as the *ultimum remedium* facility becomes the last door to provide legal protection to the community from all forms of crime. In the criminal justice system, the concerns of legislators or judicators with law enforcement only focus on the criminals. A scientific effort is implemented to find a way or method of imposing stricter, appropriate and authoritative sanctions to produce a deterrent effect on perpetrators of crime, which aims to prevent people from committing crimes. It gives the impression that the victim of crime is frequently disregarded because of a lack of consideration and protection from the law throughout the criminal justice's investigative stage. Nicholas Fyfe provides the following explanation of the place and function of crime victims in the criminal justice system:

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 lays down the obligation that Anyone who is legally required to be called a witness, an expert, or an interpreter with intentionally not fulfilling obligation according to the law

must be fulfilled and threatened in a criminal case with a maximum of nine months' imprisonment (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 et al., 2018).

The explanations of the victim according to regulations in Article 1 Point 2 Law of Witness and Victim Protection Act determined that the victim is experiencing the suffering of physical, Psychological, and economic loss caused by a criminal act. 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. 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 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.

Paulus Hadisuprpto claims that in the Indonesian criminal justice paradigm of the future, signs are pointing to a criminal justice model in the form of an interests model balance (interests of the State, society, and victims) regarded as the model that is reflected in the ideology values and socio-cultural values of Indonesian citizens and are 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 that becomes the indictment basis of the criminal case investigation by a district court harm other persons, the chief justice may, above the request of the people, combine the action for compensation with 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. If the public prosecutor is absent, the request must be made before the judge makes a decision.

he provisions of Article 98 of the Criminal Procedure Code are very detrimental to the victim because, without the victim's request, the rights of crime victims are not getting adequate protection from the law. The country is just taking over to give compensation to victims of crime. This is not yet set in Constitution No. 13 of 2006 concerning the protection of sanction and victim, so it found the legal vacuum in providing certainty to the victims of crime. The previous research implemented by Juliarta (2017), entitled *Provision of Compensation as an Effort to Protect Victims of Riots*, also discusses the absence of legal protection instruments or laws and regulations that protects victims of riots explicitly, especially concerning giving compensation. Compensation arrangements in positive Indonesian law are only given to victims of gross human rights violations and terrorism crimes.

Ransun (2012) explained that the process for providing compensation and restitution to crime victims is part of the law's protection assurance for them. 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 victims' compensation:

Table 1. The provision of victim compensation in some countries

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'Aideaux Victimes 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 crime victims. Thus, in addition to being carried out by the Central Government, compensation provision in the United States has been devolved to the states, which are listed alphabetically.

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 in the state's responsibility to help its citizens who are affected by the disaster.

Similar to the United States, Australia, as a Federal State, also pays great attention to its citizens who are crime victims. Although it already has a rule from the Federal Government, all states have their own laws and regulations. It demonstrates the attention the state pays to its citizens. The Australian laws and regulations of each state in Australia are described in table 2 below. Some of the provisions have been revised multiple times to eliminate any impediments required to claim 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 based, some rules and regulations control financial lending schemes required by crime victims (Victim of Crime Financial Assistance Act 1999), in addition to legislation governing the payment of crime victim compensation (Criminal Injuries Compensation Act 1983). Sections 8 and 12 of the Victim of Crime Assistance Act of 1996 enable the Victoria state to pay up to \$100,000 to persons who are principal victims.

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 (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 given by the government, with the state paying up to \$10,790,000 in compensation for those who pass away and up to \$12,730,000 in compensation for those who were harmed. The victim or his family may submit requests for compensation to The National Public Safety Commission by filing a complaint and completing the form that is made available by the closest 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) 50.000². 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 legal entitlement to compensation from both the perpetrator and the state³. Thus, the country also asks to be liable for providing compensation which is the right of community members who are the crime victim.

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

Conclusion

From the explanation above, it can be seen that there is a legal vacuum in Indonesia's criminal justice system. While in the criminal rates in Indonesia are increasing as the consequence of crime victims also falls. Crime is happened both in the city and the countryside. The crime often occurs because the security forces are not located in the place to keep its citizens safe; instead, they secure demonstrations or secure strong corporate interests. When there is slight negligence from the security forces, the criminogenic elements in society seem strengthen. The fact shows that criminal law as the instrument of *Ultimum remedium* has often failed to deter criminals.

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

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