Enforcement of the Economic Rights of Crime Victims in Indonesia from the Perspective Pancasila

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Objective: Enforcement of civil rights for criminal victims in Indonesia can be achieved in three ways, that is a combination of compensation cases, lawsuits against the law, and requests for compensation for restitution and protection of witnesses and victims. However, these efforts can only be carried out if there is a request from the victim, if there is no request then this effort cannot be carried out. This resulted in a separate obstacle for the victims of crime to obtain compensation from the perpetrators of the crime. This condition shows that the value of justice in Pancasila has not yet been implemented at the criminal justice.

Methodology: Using normative juridical research methods by seeking data sourced from regulations relating to the civil rights of crime victims.

Findings: This research concludes several efforts and ways for victims of crime to receive compensation.

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Introduction
Violence victims are the ones to suffering in the most incident, the losses not only property but also physical damage or deep trauma. Pancasila as the basic for making regulations in Indonesia say that that “justice must be enforced”, shown by the existence of two principles that mention the word justice, that is the second and fifth principles. Justice can be interpreted as a law enforcement process that has a broad scope. The law enforcement process based on criminal law and criminal procedural law gives the state to authority and carry out legal proceedings against someone suspected of committing a criminal act by carrying out a criminal justice process in the form of investigation, prosecution and prosecution, criminal imposition (ius puniendi) (Puspitasari 2019). In other side, for criminal acts the perpetrators will be prosecuted through the judicial process by giving and imposing criminal sanctions on the perpetrators with criminal threats stipulated in the articles of criminal law that were violated by the perpetrators.
The justice system in Indonesia said that “the position of the victim of a crime is represented by the state, to try and impose a fair sentence on the perpetrator.” In reality, victims cannot directly ask the perpetrator for compensation. This fact was disclosed by Hezel B. Kerper quoted by Romli Atmasasmita, said that: “In the past, according to the history of the development of law in Western countries (England), the state (represented by the king) paid no attention to law. a crime committed by a person against another person, unless the crime is committed against the state (king). At that time, "revenge" from someone who was harmed against the perpetrator of a crime (*talio principle*) was still permitted. Even the victim's entire family can take revenge. (Atmasasmita 2010)

In terms of the supremacy of law in Indonesia, if a criminal act has occurred, the victim cannot directly request or take (force) their rights from the perpetrator. If the victim forces him to ask for or takes away his rights from the perpetrator, then the act is called extortion. Likewise with acts of retaliation by the perpetrator, the victim is not justified in retaliating against the perpetrator, because the retaliation carried out by the victim is a prohibited act. (Eigen Richting) (Mudzakkir 2001).

**Literatur Review**

In providing compensation to victims, Indonesia provides facilities for victims to obtain compensation as a result of the incident, namely through compensation Articles 96 - 101 Criminal Procedure Code. The Civil Code (KUHPerdata) and (PMH), and the last is Payment of Compensation, Restitution and Protection of Victim Witnesses from (LPSK) (Anon 2006).

However, all these efforts can only be carried out if there is a request from the victim, and will not be carried out if there is no request. This creates obstacles for victims to receive compensation from the perpetrator. because in order to apply for compensation, you have to go through the court bureaucracy, which some ordinary people may consider complicated. This creates new problems that hamper the process of upholding justice in the realm of criminal law. (Reksodiputro 2007)

**Methode Research**

The method is normative juridical, library legal research by reviewing literature and second data. This research conducted to keep the theories, concepts, legal principles and regulations. According to Soerjono Soekanto, normative legal scoopes research includes (Soekanto and Mahmudji 2003) research on legal principles, research on legal systematics, comparative law, and legal history.

The scope of the research carried out based on legal principles, which were carried out in positive law and unwritten law. This research is used to draw legal principles in interpreting regulations. In addition, this research is used to find legal principles that are formulated implicitly or explicitly. (Suggono 2003) This study uses data collection, namely: literature studies to collect secondary data on problems, through books, legal journals, research results, and regulatory documents.

**Discussion**

**The Concept of Compensation for Victims of Criminal Crimes in Indonesia**

Indonesia has provided facilities in the form of regulations in the framework of compensating victims of crime. these facilities have been regulated through several laws, and in practice victims cannot carry out their efforts independently without going through an institution appointed by the state. The following are the efforts or facilities provided by the Indonesian state.
Merger of Compensation Cases

The combination of compensation is regulated in Chapter XIII of Law no. 8 of 1981 concerning the Criminal Procedure (“KUHAP”), from Articles 98 - 101. Article 98 paragraph (1) reads "If the act which is the basis for the indictment of the criminal case of the district court caused damage to other person, then the chairman of the trial shall upon request to combine it for compensation." The application based on Article 98 paragraph (2) of the Criminal Procedure Code was submitted before the prosecutor filed charges. If the prosecutor is not present, the application is submitted before the judge decides.

If the victim requests a merger, the Court is obliged to pay attention to the truth of the reasons for the request, and sanctions for reimbursement of costs incurred by the victim (Article 99 paragraph 1 of the Criminal Procedure Code). The decision for compensation by obtaining legal force remains the same decision (Article 99 paragraph 3 of the Criminal Procedure Code).

If a criminal case decision is appealed, then the compensation decision will experience the same thing (Article 100 paragraph 1 of the Criminal Procedure Code). However, criminal cases are not appealed, so appeals against compensation decisions are not allowed (Article 100 paragraph 2 of the Criminal Procedure Code). The mechanism for combining compensation is based on Article 101 of the Criminal Procedure Code, namely the mechanism regulated in the Criminal Procedure Code.

Claims Violate the Law

Claims for violating the law (PMH) In legal science there are 3 (three) categories of PMH (Fuady 2005): Intentional act; Actions without fault (without intention or negligence); Acts of negligence. In addition to these categories, an act is categorized as PMH if it fulfills the elements (Agustina 2003): the act is contrary to the legal obligations of the perpetrator; the act violates the rights of others; contrary to decency; contrary to decency, thoroughness, and carelessness.

Acts against the law (onrechtmatige daad) in civil law are regulated in Article 1365 of the Civil Code or Burgerlijk Wetboek (BW). The article reads: "Every act that causes harm, that person is obliged to compensate", while the criminal law for unlawful acts is regulated in the Criminal Procedure Code. As for civil violations, there are violations; there is an error; the existence of cause and effect; There is a loss. Unlawful acts in Article 1365 of the Civil Code (BW) only regulate compensation for violators. This compensation arises because of a mistake, not because of an agreement. (HS 2008) it can be concluded that civil unlawful acts can be filed even if no prior agreement is stipulated, as long as the act causes losses.

Civil violations only occur if people violate what has been previously determined. Sudikno Mertokusumo interprets civil law as law between people and other people. Its application is free and does not violate other rights. Thus, it can be concluded that the meaning of civil law is the rules of rights and obligations between people. In fact, in legal theory, legal subjects are not only humans, but also legal entities, so they need to be perfected. Thus, civil law is the overall legal principle (written or not) that regulates the relationship between legal subjects and others in family relationships and social relations. (Winastri, RK, Priyoano 2017).

In the perspective of civil law, a person is prohibited from carrying out actions prohibited in the agreement, this shows the obedience that must be carried out in it, if it is not carried out it will not occur and as a result it will result in sanctions for violators, namely the obligation to recover. The meaning of act has several meanings, classically "act" in the sense of an act against the law (Riananda 2017):
a) Nonfeasance, namely not doing what is required.
b) Misfeasance, namely an act done wrongly, that the act must be done according to the agreement.
c) Deviation, namely actions that do not have the right to do so.

In a different broad meaning, actions that conflict with other people's rights (inbreuk op eens anders recht) are one of the actions prohibited in Article 1365 of the Civil Code. The rights that are violated are a person's rights that are recognized by regulations but are not limited to the following rights: Personal rights (persoonlijkheidsrechten); Property rights (vermogensrecht); Right to liberty; The right of honor and good name. (Gold 2007)

If seen from human rights, then these rights are included in basic human rights, so there is nothing wrong if someone commits a crime, if a criminal act violates rights, then civil rights must also be enforced, even though they are included in criminal law, but Article 1365 of the Civil Code reads that an unlawful act in civil law must contain the following elements: The existence of an act; breaking the law; wrongdoings by the perpetrator; harm to others; There is a causal relationship between actions and losses.

This article clearly states that all acts that fulfill these elements can be categorized as detrimental acts, so that if they are related to criminal acts, they have similarities. This is also detrimental to the victim. Because Article 1365 of the Civil Code requires an element of "fault" (schuld) in unlawful acts, it is necessary to know what the fault is. An act is considered by the regulations to have an element of error so it can be legally held accountable if it fulfills the following elements: intentional; element of negligence/error; There is no justification or reason (rechtvaardigingsrond), such as overmacht, self-defense, insanity, and so on (Riananda 2017).

The application of civil rights recovery when viewed from a criminal law perspective, the relationship between people and people shows a causal relationship that results in a loss, even though the loss was not prearranged by the people in conflict. The expansion of this meaning becomes a separate element to achieve substantive justice that must be considered.

Violations of basic human rights have existed since a human being was born, even while still in the womb a person has been given the right to live by the state. Every human being has the same rights that arise naturally, so this shows that there must be equality of legal treatment in terms of returning rights that have been taken away by other people for the consequences of what they have done.

Compensation, Restitution, and Facilities for Witnesses and Victims

Compensation, restitution and facilities for witnesses and victims are the domain of the Witness and Victim Guarantee Institution (LPSK). LPSK is an institution that has the authority to continue or stop the victim's application for compensation from the perpetrator. This institution is also called an administrative or bureaucratic institution for victims to request compensation.

Article 1 PP Number 44 of 2008 defines compensation as compensation from the state because the perpetrator is unable to pay, while restitution is compensation that comes from the perpetrator, in the form of compensation paid to his family, to return for loss and suffering, or compensation. (Winda 2014)

Judging from the legal subject, compensation comes from the state to the victim if the perpetrator is unable to pay, while the legal subject of restitution is the perpetrator. Compensation and restitution have the same goal, namely providing compensation to victims resulting from criminal
incidents. It can be said that compensation and restitution include protecting the rights of victims of criminal acts.

The state as the organizer must be able to provide protection to the people. The main reason is (Gosita 1987) The state's obligation to protect the people; Compensation is awarded to victims; no loss share; and the sociological view that crime is a failure of the state.

This reason is quite basic because the people are the components that form the state, so a trade-off is needed between the state and the people for protection, comfort and certainty, and citizens carry out their obligations, so legal protection is needed for citizens to provide security.

On the other hand, rehabilitation is intended for suspects or convicts, rehabilitation is the development of convicts or convicts in their original social position(Widnyana 1992). The meaning of rehabilitation here is more directed to suspects, defendants, or convicts to restore their rights that have been lost during the investigation, investigation, or trial period. However, in this study we will focus more on discussing rehabilitation from the side of victims of criminal crimes, bearing in mind that the rehabilitation of victims after criminal incidents is included in the element of compensation that must be considered.

Compensation and restitution are regulated in PP No. 44 of 2008 Compensation, Restitution and Facilities for Witnesses and Victims,
Section 2 Paragraph (1): Victims of gross violations of human rights are given compensation. Paragraph (2): The request for compensation in paragraph (1) is made by the victim, his family, or his attorney. Paragraph (3) Application for Compensation paragraph (2) shall be made in writing in the Indonesian language on stamp paper to the court through the LPSK. Article 3, Application for compensation is made during the investigation. This article explains the mechanism for a request for a compensation request, victim can be aplicated before the prosecutor reads out his charges, so the victim or the victim's family have been inisiated to submit through the LPSK if they wish, to get for their rights. Apart from compensation, there is a right to restitution given by the state to victims. Restitution is an obligation that arises for convicts to pay compensation to crime victims. It is appropriate for the perpetrators of crimes to provide compensation to victims. (Reksodiputro 2007) Restitution is regulated by PP no. 44 of 2008 concerning Providing Compensation, Restitution and Facilities to Witnesses and Victims.

**Article 20**
2. Paragraph (2): This application referred to in paragraph (1) is made by the victim, his family or their attorney with a power of attorney.  
3. The request for restitution as referred to in paragraph (2) shall be made in writing in Indonesian on a sufficient stamp duty to the court through the LPSK. Article 21 requests for restitution are made before or the perpetrator has been declared guilty based on permanent legal force.

Giving restitution is not solely to restore the losses that have been suffered by the victim, but is a form of responsibility for the resocialization of the offender towards the victim so that it is hoped that a sense of social responsibility will be instilled and long thoughts on the disgraceful actions he will commit in the future. (Iswanto 1996)

In addition, Supreme Court Regulation Number 1 of 2022 concerning Procedures for Completing
Applications and Providing Restitution and Compensation to Crime Victims explains the procedures and mechanisms for submitting restitution applications (Article 12).

Compensation payments to victims have long been implemented in Indonesia, this application is often found in customary law, namely making peace between perpetrators and victims through negotiations witnessed by traditional leaders. This negotiation is carried out to return the perpetrator's "debt" to the victim of a crime, for example there is a case where someone impregnates a woman, then a civil court judge punishes the perpetrator by requiring him to pay a certain amount of money. money and give a cow. This situation, when viewed from the side of justice, gives a glimpse of sincerity to the victim, compared to the perpetrators who are only sentenced to prison and pay fines to indigenous peoples.

Giving restitution to victims apart from being a form of recovery for victims for their losses and suffering, apart from that there are important things that become the philosophical basis for implementing restitution in the criminal justice system, namely: (Muhadar 2010) The responsibility of the offender to the victim, namely is perpetrator's actions which result in suffering and loss for the victim, raises the responsibility for the perpetrator compensate any losses suffered by the victim. Fulfiling the perpetrator's responsibilities in the form of restitution will restore the relationship between the perpetrator and the victim which has become tenuous or bad due to a criminal act. In addition, giving restitution will eliminate or at least reduce the feeling of guilt from the offender that arises because his actions harm other people.

From the aspect of sentencing objectives, namely the provision of restitution can be used as a mitigating consideration for perpetrators in sentencing. In addition, with the provision of restitution, it becomes easier for the community to accept the offender to return to living together in society because the granting of restitution is seen as a form of admission of guilt as well as a form of apology by the perpetrator to the victim and the community.

The provision of compensation and restitution to victims of crime in the current era of legal reform still encounters several obstacles, even though it has been regulated through various laws, ranging from human rights laws, merging cases, payment of compensation and restitution as well as civil lawsuits against the law. However, the implementation of the provision of compensation to victims is still largely neglected. This is due to several things, including:

Lack of understanding by the community regarding the provision of compensation for the impact of criminal acts that they experienced. This ignorance makes the public only accept the court's decision. Perpetrators are only given punishments that are orderly punishments originating from the state. The obligation to carry out corporal punishment and pay fines to the state only creates a new life guarantee for convicts, namely life insurance for some time in the future that is free from living costs for convicts.

The complicated bureaucratic process that the victims had to go through to defend their lost rights, and the many conditions and institutions that had to be passed became a driving force for the victims to be reluctant to continue their struggle.

There are still internal regulations that bind law enforcers to exercise discretion to find justice, and concerns about the quality of decisions through discretion make it a scourge for law enforcers in their future careers.

There is no separate portion provided by the government for victims to fight for their rights. Victims must take the initiative to seek justice and spend a lot of time and effort so that the
principle of a quick, concise trial cannot be implemented.

If it is concluded that the three efforts above still show a passive nature, passive means that it will be carried out if there is a request from the victim. This condition shows that the value of justice for victims of criminal crimes is still a request that must be submitted. Meanwhile, Indonesia is a state based on the law as stated in Article 1 paragraph 3 of the 1945 Constitution, where there are 3 objectives of law itself, namely legal certainty, legal justice, and legal benefits, but of the three legal objectives, justice is the main goal rather than legal benefits and legal certainty.

**Compensation Efforts Seen from the Perspective of Pancasila**

Criminal crime scene from victimology causes losses, here it can have a broad meaning. Quoted from the UNODC (United Nations Office Drug and Crime) the impact of crime is that "When people become victims it will result in trauma, and can disrupt mental health and, in some cases, cause serious mental health conditions such as post-traumatic stress disorder (PTSD). Trauma can occur after a crime occurs at a later stage. It can be felt in a short period of time or potentially in the victim in the long term." This means that the victim experiences severe trauma which has an impact on the victim's health in the long term or posttraumatic stress disorder (PTSD). Apart from that, emotional and behavioral conditions will be experienced by the victim, including feelings of fear, loss of control, helplessness, depression, suicidal ideation, attempted suicide, self-harm, substance abuse, and sensation-seeking behavior. (United Nations Office Drug and Crime (UNODC) n.d.) This condition lasts a long time and requires treatment itself to return to its original condition so that behavior or actions are needed that can provide a sense of satisfaction to cure the suffering (Rahardjo 1991), one of which is the value of justice aimed at the victim.

The problem of justice is a complex issue that can be found in every society. Law has two main tasks, namely achieving legal certainty and achieving justice for all people, but if the sentence is reversed it will read; Justice for all people must be achieved through legal certainty. The function of Pancasila, namely as the basis for making regulations. Legal certainty should be used as a weapon that carries justice so that the bullets that are spewed out are the value of justice. If the process of law formation is based on this concept, the upholding of the value of justice as outlined in legal certainty will experience a dynamic that is constantly changing, or in other words, it can be called legal progressiveness, so that if an event of a violation of rights occurs, then the person entitled to determine the loss is the person who has lost this right. Gustav Radbruch, said that there are three purposes of law, namely benefit, certainty, and justice. In carrying out these three legal objectives, priority principles must be used.

The severity of the impact that must be suffered by victims of crime when viewed from the punishment system that prioritizes prison sentences is felt to still lack the value of justice, the ongoing losses cannot be repaired just by seeing the perpetrators of crimes imprisoned. Moreover, the granting of the death penalty to the perpetrators of crimes is very less beneficial for the victims of crime. The concept of imposing the death penalty must be put aside as long as the perpetrators of crimes can provide reparations for their victims.

The three efforts that have been provided by the state show that there is an enforcement of justice in the civil realm, this shows that the state does not turn a blind eye to actions that can harm fellow citizens.

**Conclusion**

Pancasila is the foundation of the Indonesian state which underlies the life of the Indonesian nation, including the national criminal law system. As part of material law in criminal law, the imposition of criminal sanctions in Indonesia must pay attention to Pancasila values, such as
divine values, human values, unity values, social values, and justice values. The use of Pancasila values in criminal sanctions in Indonesia is because these values have lived together in Indonesian society so that these values can live in Indonesia. Criminal sanctions that deviate from Pancasila values will cause conflict or controversy considering these values are not the values that live in Indonesian society (such sanctions can be accepted in one area, but can be rejected in other areas because they are not by living values). The application of Pancasila ideology must always be considered in enforcing civil rights for victims of crime so that the function of Pancasila apart from being a unifying nation can also be an enforcer of justice.
References


