

VICTIM AND COMPENSATION CLAIM IN CRIMINAL TRIAL

Putu Sekarwangi Saraswati, S.H., M.H

Faculty of Law, Mahasaraswati University,
INDONESIA.

sekarwangisaraswati@gmail.com

ABSTRACT

The existence of a crime committed by a person, which may arise with various causes and reasons, can cause harm and other consequences. Therefore, legal scholars (criminals and criminologists) often search and conduct researches in order to answer this question: why do people commit a crime? The investigation to figure out the perpetrator of a crime is often determined and depends on the circumstances experienced and faced by the perpetrator himself/herself, which allow him/her to commit a crime. From the victim point of view, a crime often causes fatal consequences, not only limited to material or physical damage, but the victim also can suffer from trauma and other psychological disorders as a consequence of a crime committed by a person. The compensation in this writing refers to the compensation that must be paid by the victim of the crime in a criminal case where the suspect is innocent or in another arrest/ detention/ action that does not base on law or based on a misinterpretation of the law.

Keywords: Crime, Victim, Compensation.

BACKGROUND

Indonesia as a nation is currently striving for a better and sustainable development from, by and for the people, in every single aspect of lives in order to prepare and face the future of the people, nation and country of Indonesia. The national development refers to a holistic development of Indonesian human resources and Indonesian society as a whole, in relation to the aim of balancing equitable development between physical and psychological progress by not discriminating certain groups, ethnicities, religions or races within Indonesian society. Indonesia has a great potency of human resource to realize the development that will be carried out, both physical and non-physical development. They must involve in all aspects of development so that immediate prosperity, happiness, prosperity, peace, tranquility, peace and justice can be realized for all the people/ nation and state of Indonesia based on Pancasila and the 1945 Constitution.

All components of the nation and the state must take part in realizing such development. The development will be disrupted by violations and crimes that conducted both intentionally or because of negligence/ recklessness, and thus the perpetrators must be sentenced according to the level and quality of the crime or violation that they committed, and those who are sentenced based on the judge's decision are called convicts or prisoners. Crimes and violations will definitely be one of a barrier or an obstacle in realizing the above-mentioned development plan. However, it is important to clarify that various violations or crimes do not arise solely because of the intentions of the perpetrators. There are other factors that cause a person to commit a violation or crime which might harm himself, family, society and the state. The suspects or prisoners are also part of the community and they have potentials to take part in realizing the development as a whole. They cannot be separated from the society forever because they will interact with the community outside the prison after they finished

their sentences. This reflects the main goals in the correctional system, namely to restore the unity of relations between the prisoners and the community in general, one of which is to provide guidance, education and provision of individual skills, so that after completing their sentences and returning to society, the prisoners will be able to earn money and have a proper living for themselves and for their families. (R.Rachsobawono, 1993:15)

There are 3 (three) basic elements of crime, *inter alia*:

1. A criminal act that conducted by a perpetrator.
2. A perpetrator.
3. A victim.

There are various reasons which may trigger a person to commit a crime which might cause losses and various consequences. Therefore, legal scholars (criminals and criminologists) often search and conduct researches in order to answer this question: why do people commit a crime? The investigation to figure out the perpetrator of a crime is often determined and depends on the circumstances experienced and faced by the perpetrator himself/herself, which allow him/her to commit a crime. From the victim point of view, a crime often causes fatal consequences, not only limited to material or physical damage, but the victim also can suffer from trauma and other psychological disorders as a consequence of a crime committed by a person.

Crime is a very anti-social act which will be challenged consciously by the State in the form of giving suffering/punishment or action (W.A.Bonger, 1982:25). R. Soesilo stated definition of crime based on various perspective. From a legal perspective, crime is an act or behavior that is contrary to the law which is formally stated in the Act, whereas from a sociological perspective, crime is an act or behavior that does not only harm the sufferer, but also very detrimental to the community in the form of loss of balance, peace, and order. From a sociological point of view, crime is closely related to the norms or methods of the culture of the society, therefore the criteria for a crime is vary depends on the level/ social status of the community. Hence, a crime can result in a loss that has a very broad impact, both in the form of material and psychological (B.Bosu, 1982:19-20).

Taking into account those three elements, it is undeniable that there is a close correlation between the perpetrators and the victims of a crime. In the past, in relation to the problem of crime, people only focus on the perpetrators, while victims of crime were often not questioned, and even ignored. Such a view has now begun to shift where the victim also being taken into account in a criminal case. Thus the role of the victim in a criminal offense and the rights of the victim to claim (a compensation) in the occurrence and in the criminal case began to receive attention as it should.

The compensation in this writing refers to the compensation that must be paid by the victim of the crime in a criminal case where the suspect is innocent or in another arrest/ detention/ action that does not base on law or based on a misinterpretation of the law.

RESEARCH QUESTION

Based on such consideration, there are two legal issues that must be addressed, namely:

1. How is the role of a victim in a crime?
2. How are the procedures for a victim to claim for compensation in a criminal trial and which procedure is the most effective for the victim among the existing procedures?

ANALYSIS

It is difficult to find the definition of/about victims of crime and it is even more difficult to determine who is the victim or the injured person. A crime occurs because there is an interaction between the perpetrator and the victim. There is a possibility that the victim is actually the cause of an act/crime, such as murder, persecution or rape. In case of a homicide, it may be the person that is killed/murdered/persecuted is the one who mocked or insulted or defamed or degrading the dignity of the perpetrator. Whereas in a rape case, the victim may trigger the lust of the perpetrator to commit a rape because she/he wears sexy clothes or indecent clothes or behave flirtatiously. Besides that, the environment that can be called a victim is not only limited to people who physically suffer from a crime, the definition of 'victim' also can be extended to their families.

Considering the wide extent of the understanding of victims of crime, the determination of the injured person (the victim) is based on the principles of civil law and the loss is caused by the actions of someone who is called the perpetrator (daader) of a criminal act (Soedarto, 1977: 194). According to Arif Gosita, victims are those who suffer physically and spiritually as a result of the actions of other people who seek fulfillment of their own or others' interests that conflict with the interests and rights of others (Arif Gosita, 1983: 41). Thus victims can be an individual or a group. Pursuant to this theory, both the perpetrators and victims of crime always feel offended and humiliated by the actions of others.

The Role of Victim in a Crime

As mentioned above, there is an interaction process between the offender/ perpetrators of criminal acts with the victim. Besides the perpetrators of crime, the victim also takes part in the occurrence of a criminal act. By participating actively in a deviation with the aim/intention to achieve or get something for the sake of himself or others, it can make them be a victim of crime. For example, someone who wants to get and buy something good at a cheap price from a street vendor without examining the good. After the street vendor leaves, the person just realizes that the goods he purchase is a counterfeit item, then the person becomes victims of fraud. Another example is a woman who walks alone at night with sexy/indecent clothes that can trigger a male to commit a rape. Then, there is a man riding a motorbike who offer a favor to give a ride to the woman. The woman thinks that the man seems to be kind and polite and she gets on that man's bike. The man suddenly stops at a quite dark road and he drags the woman to the wilding and he rapes her, thus the woman became a victim of the crime of rape. It is clear that the victim has an important role in the occurrence of a crime so that the victim is responsible for the occurrence of a crime by acting actively or passively.

Compensation Claim from the Victim

After briefly describing the role of victims in a crime, we should not ignore the rights of the victims in a criminal case to claim compensation. In civil law, it is clear that compensation arrangements as stipulated in Article 1365 of the Civil Code, which regulates principally against someone who commits an unlawful act and causes harm to another person, must and is obliged because of his mistake to compensate the injured party (victim of acts). Likewise, the responsibility to compensate must be and is required for the perpetrator to the victim for the loss that caused by negligence or recklessness of the perpetrator, as formulated in Article 1366 of the Civil Code.

In the Criminal Procedure Code (KUHAP) the issue of compensation by the victims is regulated under Chapter XIII regarding the merging of compensation claims from Article 98 to Article 101. Article 14 c of the Criminal Code stipulates a punishment / criminal

compensation for losses, which is a special condition if the judge (Court) imposes a probational sentences.

Procedure for Claiming Compensation

There are several several methods for a victim to claim for compensation in a criminal trial, *inter alia*:

1. Merger of case.

Article 98 (1) of Criminal Procedure Codes stipulates: if the act that becomes a basis for an indictment in a criminal investigation by a District Court cause harm for others, the President Judge can merger a for compensation claim with a criminal case. This merger is conducted so that the compensation claim can be processed, tried and settled together with the criminal trial in order to compensate the loss that suffered by the victim of crime. While Article 98 (2) of Criminal Procedure Codes stipulates that such request shall only be submitted before the prosecutor brought the charges. In the absence of a prosecutor, the request shall be submitted before the judge issue the verdict.

In the guideline for implementing the Criminal Procedure Codes, it is stated that the merging of criminal cases with compensation claims is to speed up the settlement process, thus it can save time and money. However, the compensation that can be requested is limited to reimbursement of costs that have been incurred by the injured party, so other indemnities must be declared unacceptable. So it is only limited to material losses for victims, while immaterial loses cannot be requested through this procedure.

2. Through Lawsuit before the Civil Court

There are two possible reasons why the victim chooses to bring a lawsuit, namely:

- a. The victim cannot submit a request to merge the case within the stipulated time-frame.
- b. The victim suffers from immaterial damages, besides the material damages, and other damages outside the cost that has been incurred by the victim.

Article 99 (1) of the Civil Code states: if the aggrieved party requests the merger of his lawsuit in a criminal case as referred to in article 98 of the Criminal Procedure Codes, then the district court considers its authority to adjudicate the claim concerning the basic truth of the claim and the cost of compensation that has been incurred by the injured party. Thus in this article, it is determined that compensation that is decided is only limited to the costs that have been incurred by the aggrieved party so that other claims must be submitted as ordinary civil cases, and this lawsuit will not be considered as “ne bis in idem”.

In deciding this compensation claim, the court must consider:

- a. The competency and authority of the court to try the case.
- b. The validity of the rationale behind the claim.
- c. Reimbursement penalties that have been incurred by the aggrieved party, in addition to the criminal penalties imposed on the defendant and the related criminal and civil costs.

The difficulties that will arise by using this civil process are:

- To file a claim for compensation, it must wait for the decision of the criminal case first.

- Compensation claims must be filed in the district court where the defendant resides. For example, people from Banyuwangi commit crimes in Denpasar against Balinese people, so in this case the claim for compensation must be submitted in the Banyuwangi district court.

If the defendant / convicted person in the criminal case does not file an appeal, then the claimant can not appeal in the civil case. By looking at the things mentioned above, the demands for compensation by victims through civil litigation processes require a complicated / long-winded process and require a lot of time and money.

CONCLUSION

Based on such analysis, it can be concluded that:

1. There is an interaction between a perpetrator of a crime with a victim of a crime and thus the victim plays an important role in a crime. With the issuance and enactment of the Criminal Procedure Code, the rights of victims in demanding compensation, also receive attention and protection.
2. In demanding compensation, the victims of crime can use two methods, namely by merging compensation claims with criminal cases and also with ordinary civil proceedings. Of the two procedures, the more effective way for victims is to merging their criminal cases with compensation claim in the event that the losses suffered are material losses, while for immaterial losses as well as costs other than those incurred by victims, this is done with the ordinary civil procedure. It requires a process that is quite complicated, costly and takes a long time.

RECOMENDATION

From the conclusions above, the best procedure for victims of crime in demanding compensation is to merge the criminal case with the compensation claim. Note that what needs to be added is that in this merger, compensation claims do not distinguish material and immaterial losses, but in this case, the judge in deciding compensation claims must consider/take into account the abilities of the defendant / if not, then it is possible to cause new crime.

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