Immaterial Compensation Not Criminal Losing Lives as an Implementation of Victim Protection

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Abstract
Immaterial compensation is compensation that cannot be calculated with money, such as pain, loss, and psychic, but the compensation can be replaced with some money. The existence of immaterial compensation aims to protect victims of loss of life from other people such as children and wives, families, and parents. Based on the Criminal Code, hereinafter referred to as the Criminal Code, the regulation of the crime of taking life is regulated in Articles 338 to 340. The most severe threat of punishment is contained in Article 340 of the Criminal Code, namely the death penalty, or can be said to be life imprisonment, or for a while, certain period, with a maximum period of 20 (twenty) years. Therefore, the existence of liability for compensation from the defendant to the victim can reduce the defendant's sentence or can replace the main sentence of the defendant. The research method uses a type of qualitative research sourced from the various scientific literature.
A. Introduction

Victims of disappearances or what can be called crime victims are members who suffer greatly in a crime, on the other hand, they do not receive as much protection as the law provides to criminals. Thus, when the perpetrator has been sentenced to a criminal sentence by the court, the condition of the victim is not considered at all. Meanwhile, the issue of justice and respect for human rights does not only apply to perpetrators of crimes but also victims of crimes.

Based on "Article 27 paragraph (1) of the Constitution of the Republic of Indonesia" which states that "All citizens have the same position in law and government and are obliged to uphold the law and government without exception".

In this case, the state is committed to ensuring that every citizen is treated fairly and equally before the law, also in the sense that he is a suspect or victim of crimes against humanity as the basic value of the state philosophy, namely Pancasila by upholding the entire existence of law in Indonesia, starting from the 1945 Constitution of the Republic of Indonesia up to the laws under it.

The definition of a crime victim is not only a person who suffers losses caused by a crime, because the victim of a crime is closely related to the existence of the crime itself which grows and develops in diversity. In addition, the discussion of victims of crime has increased with the evolution of crime, and discussion on this issue has extended further to political, social, economic, and even political issues, even human rights, as illustrated.

The Criminal Code as a provision that regulates the protection of victims of criminal acts through compensation can be seen in Article 14c of the Criminal Code, which in essence states that if the judge imposes a conditional sentence, the judge can determine special conditions for the convict to be sentenced to death, compensate for all or part of the loss arising as a result of the crime committed. If the judge decides that the sentence is not conditional, then compensation is usually included in the main crime, namely a fine which is usually if the fine is not paid, it is replaced with imprisonment.

Compensation is divided into two, namely material compensation and immaterial compensation. Material compensation is the compensation suffered by the victim and the amount can be calculated based on the nominal money. Immaterial compensation is compensation that cannot be calculated.
in value with immaterial compensation money, for example, fear, disappointment, psychological, and so on.\(^4\)

The legal protection of the Indonesian state protects the right to life, but the perpetrators of crimes that result in the loss of life usually only with the threat of a lighter sentence than the current threat of punishment in Indonesia. The minimum sentence for the crime of murder against the perpetrator is 10 (ten) years.

Based on the Criminal Code (KUHP), the regulation of crime of killing lives is regulated in Articles 338 to Article 350. The most severe threat of punishment is contained in Article 340 of the Criminal Code, namely the death penalty which can be said to be life imprisonment, or for a certain period, with a maximum period of 20 (twenty) years.\(^5\)

Based on the article that has been stated above, it is very clear that the maximum punishment is the death penalty and the lowest is for a predetermined time, with the longest being 20 (twenty) years, but in fact, the criminal threat is not maximally given to the defendant. So that the victim and the victim's family do not feel that they have received justice.\(^6\)

The novelty of this research will make to analyze compensation as the implementation of victim protection against criminal acts that take lives, the author examines the applicable laws and regulations, customs in society, and the culture that applies to indigenous peoples. This paper used a normative juridical method by using a qualitative approach. The data were gathered from some articles from various pieces of literature of references and journals, papers related to the topic discussed.

The author hopes to find the purpose of providing compensation as an implementation of victim protection against the crime of taking lives. This research is expected to be able to contribute to social science and law, especially criminal law. The method and technique in this research is library research, namely studying legislation, literature books, and other written materials related to this research.

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\(^6\) Mulyadi Alrianto Tajuddin and Imran Rusli Taras, "Fulfillment of the Rights of Victims' Families Regarding the Acts of Mulyadi Alrianti Tajuddin, Imran Rusli of Murder in the Perspective of Criminal Law Reform in Indonesia Fulfilling the Rights of Victims' Families Regarding the Crime of Murder in the Perspective of Criminal Law Reform in Indonesia," nd
B. Discussion

The criminal law policy regarding the protection of victims of criminal acts has been regulated in the "Law of the Republic of Indonesia Number 8 of 1981 concerning" Criminal Procedure Law and the Law of the Republic of Indonesia Number 13 2006 concerning the Protection of Witnesses and Victims which has been amended by the Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to the Law of the Republic of Indonesia Number 13 of 2006 concerning the Protection of Witnesses and Victims". However, the terms This law has not fully protected victims of criminal acts as parties whose rights and interests are heard, which should protect the suspect, that in the sense that the victim is also involved through the Criminal Justice System not as a victim-witness, but as a litigant as the concept applied in the system civil court a. In the criminal justice system (abbreviated as SPP) a victim is a person who suffers loss or suffering from a criminal act, whether material, physical, or psychological loss or suffering. Positive law currently in force in Indonesia paying attention to the rights of victims, especially the Criminal Code and the Criminal Procedure Code, only regulates the rights of victims to obtain compensation, other rights are not considered by positive law.

The position of the victim in the SPP and judicial practice is relatively underappreciated because Indonesian legal regulations are still based on the protection of the perpetrators (offenders' orientation ). Judging from the science of criminology and criminal law, the offense is a conflict between individuals who cause harm to the victim, the community, and the perpetrator himself, where the three interests of the victim are: the main part of the crime.

There is a need for a criminal justice system that does not only regulate the rights of suspects, not only focuses on the actions of the perpetrators, the fulfillment of the elements of the applicable provisions, and the defense of the defendant's attorney. In addition, there is a need for regulations on the rights of victims and a sense of justice for victims. Therefore, it is necessary to have a clear regulation that regulates the victim's position in the criminal justice system so that the victim does not appear as a forgotten person, a disadvantaged person, and a person without justice.

In subsequent developments, the rights of victims then developed into a wider scope which is regulated in Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 13 of 2006 concerning Protection of Witnesses and Victims (hereinafter referred to as Law No. Law on the Protection of Witnesses and Victims).

The definition of the victim can be divided into a theoretical or conceptual definition and a formal juridical definition. That is based on statutory regulations. The theoretical or conceptual understanding of the victim is as
given by Arif Gosita, namely those who suffer physically and spiritually as a result of the actions of others who seek the fulfillment of self-interest or other conflicting interests with the interests of the rights of the aggrieved party. Meanwhile, according to Muladi, victims are people who are both individually and collectively have suffered harm, including physical or mental harm, emotional, economic, or substantial interference with their fundamental rights, through acts or commissions that violate the criminal law in each of the states, including abuse of power.

Next, legally the definition of victim contained in Government Regulation Number 7 the Year 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and The victim reads that a victim is a person who has suffered physical, mental, and/or economic loss caused by a criminal act. While the definition of family is people who have blood relations in a straight line up or down and sideways to a degree third, people who have a marital relationship, or people who become dependents of witnesses and or victims, while the definition of victim in Law Number 13 of 2006 concerning Protection of Witnesses and Victims, which stated that the victim is "a person who experiences physical suffering, mental, and/or economic loss caused by a criminal act".

In the definitions of victims that have been described, it can be seen that victims are not only individuals or groups who directly suffer because of actions that cause harm/suffering for themselves or their groups but even more broadly, including such as immediate family or immediate dependents of the victim.

Victims of taking their lives are the party who suffers the most or the most in a criminal act they do not receive as much protection as is provided by law against criminal behavior. As a result, when the perpetrator of the crime has been sentenced by court sanctions, usually the condition of the victim of the crime is not considered at all. It can be seen that the issue of justice and respect for human rights does not only apply to criminals but also to victims of crime.

The problem regarding victims of crime or taking their lives in criminal law (material and formal criminal law) is why victims who are harmed and suffer as a result of the crime of taking their lives or violations of criminal law, both material and immaterial, do not become the center of attention by the criminal justice system (or the so-called criminal justice system). with SPP.

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9 Mulyadi, "Legal Efforts Performed by Crime Victims are Assessed from the Perspective of the Criminal Justice System in the Decision of the Supreme Court of the Republic of Indonesia."
Barda Nawawi Arief stated the same thing in the current criminal law, the existing protection for victims or what is given more to the protection of victims is "abstract protection" or called "indirect protection". In this case, the various formulations of criminal acts in the statutory regulations, essentially, so far, there has been direct or tangible protection in abstract against the legal interests and human rights given to the victim.

The treatment of victims or their families in the criminal justice system as well as in judicial practice is relatively underestimated because Indonesian legal regulations are still based on the protection of offenders. In fact, from a criminal and criminal point of view, crime is an interpersonal conflict that harms the victim, society, and the perpetrators themselves, where the interests of the victim are the main parties to the crime.

The issue of justice and respect for human rights does not only concern perpetrators of crimes that kill lives but also victims of crimes that take their lives and their families. In handling criminal cases, law enforcement officers (such as police and prosecutors) are often faced with the obligation to protect two seemingly conflicting interests, namely the interests of victims and victims, their families must be protected to recover from the suffering that has been experienced due to the death of the victim. Criminal acts (such as mental, physical, and material) and the interests of the accused or suspect, even though they are guilty but are still human, have human rights that must not be violated. Especially if there is no judge's decision on his actions that declare the perpetrator guilty. Therefore, the perpetrator must be presumed innocent (principle of presumption of innocence).

Recognizing the rights of families of murder victims, Van Boven, a UN special rapporteur, argues that the rights of victims of human rights violations, in general, are not limited to the right to know and the right to be tried, but also the right to seek redress. (right to compensation). Based on Van Boven's investigations, these rights have been enshrined in various applicable human rights instruments and have also been confirmed in decisions (precedence cases) of international human rights commissions and courts.

The regulation of victims' rights has made significant progress in the Law on the Protection of witnesses and victims, namely the rights of victims including the right to security for themselves and their families, the right to legal assistance, the right to information on case settlement, the right to support for living expenses, medical and psychosocial assistance, the right to provide testimony outside the trial and the right cannot be prosecuted for the

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12 Theo van Boven, Those Who Become Victims (Right of Victims to Restitution, Compensation, and Rehabilitation), (Jakarta: ELSAM, 2002), p. 21
testimony or report and the rights of the victim can be given in all stages of 
criminal justice within the criminal justice environment. 
Article 5 of the Law on the Protection of Witnesses and Victims, among 
others: 
"Obtain protection for the safety of his personal, family, and property, and be 
free from threats related to the testimony he will, is currently, or has given, 
participate in the process of selecting and determining the form of security 
protection and support, providing information without pressure, obtaining an 
interpreter, free from entangling questions, obtain information about the 
development of the case, obtain information regarding court decisions, find 
out information if the convict is released, keep his identity secret, obtain a new 
identity, obtain temporary residence, obtain a new place of residence, obtain 
reimbursement of transportation costs as needed, obtain legal advice, obtain 
temporary living expenses assistance until the protection period expires; 
and/or, receive assistance".

Muladi argues that in the criminal justice system, victims of crime must 
be protected by arguing that first, the sentencing process is related to criminal 
identification through the infrastructure of prison institutions (judges, 
correctional officers, etc.). contains ethical requirements, on the one hand, a 
philosophical link, and on the other a sociological link within the framework 
of human relations in society. Another argument that emphasizes the 
legitimate defense of victims of crime is the argument of the social contract 
and the argument of social solidarity. It can be said that the state monopolizes 
all public responses to criminal acts and strictly prohibits individual actions. 
Therefore, if a crime occurs with the victim, the state has a responsibility to 
take care of the needs of the victim. Protection of victims of crime is generally 
associated with one of the goals of currently introduced sanctions, namely 
conflict resolution. Resolve conflicts caused by criminal behavior, restore 
balance and bring a sense of peace to society.13

In the case of loss of life, one form of protection provided is to provide 
compensation to the closest family, for example, such as children and wife if 
the victim of the disappearance is married or compensation is given to his 
parents if the victim of the disappearance of life is not married or has a family. 
If it is associated with civil law, three groups are included in the victims of 
taking lives. The first is the husband or wife of the victim, the second is the 
children of the victim, and the third is the parents of the victim. This statement 
is contained in Article 1370 of the Civil Code.

13 Muladi, 2012. Protection of Victims in the Criminal Justice System: As published in the 
Collection of Human Rights, Politics and the Criminal Justice System, Publishing Agency, 
Diponegoro University, Semarang, p. 176-177
Compensation is an important thing needed to restore things to their original state, although in some cases the loss itself cannot be recovered. The existence of compensation is the same as the compensation given to the victim. Compensation is compensation provided by the state because the perpetrator cannot provide full compensation for which it is his responsibility. Restitution is compensation provided by the negating because the perpetrator is unable or unable to fully provide compensation to the victim or his family by the perpetrator or a third party, it can be done by returning property, paying compensation for loss or suffering, or reimbursement of costs for certain actions.

Compensation is contained in Article 7A (1) of Law No. 31 of 2014 which states that victims of crime need to be compensated for the loss of income they have earned or compensate for what the perpetrators of the crime have done. The definition of compensation, rehabilitation, and restitution which can be translated as a recovery process is a right that refers to all types of victim recovery, both material and immaterial for victims of violations by human rights violators.

Only the three family groups based on Article 1370 of the Civil Code are given the right to claim compensation. However, of the three family groups that can claim compensation for the loss, Article 1370 of the Civil Code, which is limited to families who usually receive a living from the victim's income, so that of the three groups, those who in their daily lives do not depend on the income from the victim's income, they are considered not to suffer the loss of livelihood as a result of the death of the murder victim. The purpose of Article 1370 of the Civil Code only gives the right to the three family groups to claim compensation for the loss of livelihood.

Article 1370 of the Civil Code stipulates that the amount of compensation must be determined by taking into account the position and wealth of both parties. The first party in this case the murderer is the one who is obliged to provide compensation, the second party, in this case, is the family of the murder victim who has the right to demand compensation, so it can be assumed that the first party (the murderer) is the party who has more wealth...
than the second party's wealth. because if the perpetrator of the murder is a person who is not financially capable or can be said to be a poor person, then the perpetrator may not be able to be sued for compensation.

The last element is that the amount of compensation must be determined by taking into account the circumstances. The point is not the condition of the position and wealth of both parties, because it has been mentioned above. What is meant by what must be determined keeping in mind the situation is that the amount of compensation can be reduced, if the fault of the perpetrator is less serious, or if the victim takes an action that causes the death of the victim. This situation will be seen in the evidence, and the judge will assess the situation.

The case of loss of life related to compensation or compensation is the case of an accident that occurred or was carried out by Abdul Qadir Jaelani or usually called Dul, the son of Ahmad Dani, which occurred on September 8, 2013, and killed 7 people on the Jagorawi toll road. In the accident case, the compensation given was compensation in the form of school fees until they graduated from college, although the nominal was not stated, the compensation given was one of the judges' considerations in deciding the case of Anak Ahmad Dhani alias Dul.

In providing compensation to victims, it is regulated in Article 14C of the Criminal Code. The rest there are no rules regarding the rules for compensation in the Criminal Code which are useful for lightening the defendant in punishment. In essence, if the judge imposes a conditional sentence according to Article 14c of the Criminal Code, the judge can set special conditions in the form of compensating for losses due to a criminal act so that it is as if the compensation functions as a substitute for the main crime. Barda Nawawi explained that this compensation is rarely applied in practice because it contains several weaknesses, including:

a. "The determination of this compensation cannot be given by the judge as a stand-alone sanction in addition to the main punishment, it can only impose a conditional sentence, so it is only a special condition not to undergo the main punishment imposed on the convict"

b. "The stipulation of special conditions in the form of compensation is only given if the judge imposes a maximum imprisonment of one year or imprisonment"

c. "Even this special requirement in the form of compensation according to the Criminal Code is only facultative, not imperative."

19 http://www.kompas.com, Rp. 5 million by Ahmad Dhani, the victim's family felt enough? accessed on 2 June 2022.
From the explanations above, it can be concluded that the compensation referred to in the Criminal Code is not included in this discussion. Similar to the Criminal Procedure Code, normatively the Criminal Procedure Code only pays attention to the rights of the suspect/defendant, without giving space to victims to fight for their rights. The Criminal Procedure Code as the legal basis related to law enforcement procedures in Indonesia has not significantly regulated the protection of witnesses and victims so the protection and attention to the rights of the suspect/defendant are still more dominant.

The Indonesian courts were formed by the state to resolve conflicts that arise in society, but the courts are not the only ones resolving conflicts, because there are some parties involved in the conflict who prefer to settle outside the judiciary. Under what Marc Galanter said, the search for justice is not only obtained out of court. Conflict resolution outside the court is considered to have a positive impact, namely:

1. Provide a sense of justice to the victim and/or family.
2. Do not cause revenge against the parties involved in it.
3. Can create harmonization in the social order of people's lives by not ignoring the value of justice for victims.
4. Can assist legal officers (Police, Prosecutors, and Judges) in dispute resolution, especially if the dispute occurs in an area that is geographically in the interior.

Resolving conflicts between perpetrators and victims of criminal acts is not resolved based on the criminal justice system, however, in Indonesian society, customary law is also an effective conflict resolution method. Where customary law is the original law of Indonesia that is not written and/or contained in the form of legislation.

Conflict resolution needs to pay attention to the customary law that is currently in force in the community, because if the existing law is still very strong in maintaining it in the community, then the legal mechanism is a determining factor for success in resolving conflicts. As quoted by Sudirman Kartohadiprodjo, Van Vollenhoven stated that "If the ruler decides to maintain customary law, even though that law has receded. Then the determination will be useless. On the other hand, if it has been determined from above that

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22 La Syarifuddin. "The Customary Law System Against Efforts to Settle Criminal Cases". Legal Minutes, Volume 15, Number 2, December 2019, 1-10
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customary law must be replaced, while the people still obey it, even the State Judge will be powerless to face it".  

One example of a resolution through a mediation mechanism in a conflict between perpetrators and victims of the crime of taking the lives of Acehnese customary law is through the “di’et” mechanism, which is realized through compensation to be paid by the perpetrator of the crime to the victim or the heirs of the victim. Usually, the facilitators, negotiators, and mediators in conflict resolution using the “di’et” mechanism are "Keuchik, Teungku Meunasah, and the Gampong Elders". The extended family in discussing this matter is very important to avoid revenge in the future.  

Initially, the facilitators, negotiators, and mediators assessed the level of apology given by the victim and the heirs of the victim. After the pardon has been given, the gampong elders or customary holders hold consultations with the perpetrator or his heirs about the amount of “di’et", which must be paid by the perpetrator of the crime. What follows is the perpetrator of a crime and his family giving something, usually gold, to the victim's family and slaughtering an animal in the form of a cow or buffalo initiated by "imuem mukim, geuchik, and teungku meunasah". The traditional ceremony for the payment of “di’et’ is called peusijuek and peumat jaroe. The involvement of traditional and cultural institutions in the implementation of criminal cases eliminates the grudges that exist between the conflicting parties and families.  

Awareness that arises about the desire to recover, as well as the implementation of recovery of loss or damage is expected to arise due to the willingness of the perpetrators of criminal acts not due to coercion from other parties. However, seen from another point of view, the community also has an obligation to victims and perpetrators of criminal acts in uniting the litigants back into society and guaranteeing open and wide opportunities for perpetrators to improve themselves and be active again in society.  

Fundamental to the criminal justice process, commonly known as restitution or commonly referred to as compensation aimed at the victim, restoration has a broader meaning which includes restoring the relationship between the victim and the perpetrator. Recovery in this relationship can be based on a mutual agreement between the victim of a crime and the perpetrator of a crime. The side of the victim can convey the loss that is being suffered and the perpetrator is allowed to make amends, through compensation mechanisms, peace, or other agreements. Every indication of a criminal act without taking into account the escalation of the act will continue to roll out the realm of law enforcement, which will only be the jurisdiction of law

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24 Raharjo Faculty of Law, University of Muhammadiyah Yogyakarta Jl Lingkar Selatan Kashiian Bantul Yogyakarta, "Criminal Mediation in the Provisions of Customary Criminal Law."
26 ibid
enforcers. The active participation of the community does not seem to be important, and everything only leads to a sentence or *punishment* without seeing the essence.

**C. Conclusion**

Based on the results of the discussion, the implementation of the protection of victims against the crime of taking lives can be carried out because it is based on habits in society, as well as the culture that applies to indigenous peoples. Therefore, the victim and the victim's family will get justice.

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