

The Essence of Paying Compensation To Victims of Fair-Based Fraud According To John Rawls

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ABSTRACT: This article aims to discuss and analyze the nature of justice-based compensation payments to victims of fraud, the problem approaches used are a conceptual approach, a statutory approach, a comparative approach, a case approach and finally a philosophical approach. This research uses normative research by studying and understanding law as norms or positive legal rules. Sources of legal materials are obtained from legislation, literature books, theory and legal journals. Where later it will be used to find out what the essence of compensation payments should be that provides justice for victims of criminal acts of fraud to obtain their rights, namely through the reconstruction of regulations by adding sanctions in the form of criminal compensation for losses experienced as a result of the criminal act, due to criminal witnesses who were present. This applies only to giving prison sentences without paying attention to the victims.

Keywords: The Nature of Compensation, Fraud

INTRODUCTION

Laws, both material and formal, are intended to accommodate perpetrators and victims, especially in fraud cases, but in reality the applicable regulations do not accommodate all the interests of the parties, in this case the aggrieved victim is in the form of the perpetrator's liability for the material loss of the victim from the fraud crime. It is not fulfilled because of the existence of imprisonment alone (Manurung, 2020). At this level, the victim experiences a double victim effect, namely the victim has to pay the cost of the civil case and the litigation process takes a long time (Widodo, 2018). It is not uncommon for fraudsters to be

difficult to contact and of course this is not in accordance with the principles of simple, fast, and low-cost justice (Ariyanti, 2019).

A legal accountability system with a separate legal settlement model between criminal and civil cases. The issue of achieving justice as a legal goal is often unbalanced between victims and perpetrators (Budiarsih & Ngah, 2017). In contrast to the decision of the Corruption Court which demanded that the defendant if there was a loss to the State, the defendant was required to return the amount of the loss. But this is different from the decision of the General Court, in Article 378 of the Criminal Code if the defendant is proven

guilty, the decision does not state that the defendant is obliged to return the loss to the victim of fraud, so that from the victim's side in this case the State and the non-State victim the return of the loss is differentiated in the decision, the same decision should also be applied in the General Court, So that this results in injustice in the decision (Alviolita & Arief, 2019).

The type of crime that continues to develop, especially in the crime of fraud, requires a new concept in the law, especially in terms of accountability for criminal sanctions. In this journal, the author assumes that there needs to be a provision for criminal sanctions that can accommodate the interests of the victim both morally and materially.

RESEARCH METHODOLOGY

The type of research used in this study is a normative research method (Winarni, 2016). To find solutions to legal problems in this study, approaches that are in accordance with the nature of payment of compensation to victims of justice-based fraud according to John Rawls are: Conceptual approach (Putra, 2019) an approach that starts from the views and doctrines of law that develop in legal science, namely views and doctrines about criminal law in this case, especially regarding the concept of criminal sanctions. As Peter Mahmud Marzuki argues, in using a conceptual approach, it is necessary to look at legal principles. This principle can be found in the views and opinions of scholars or legal doctrines. Although not complete, legal concepts can also be found in the Law (Philipus, 1997). The legal approach (Karmani & Yudianto, 2019) is an approach by using laws and regulations as primary legal materials. According to

Peter Mahmud, what is meant by a legislative approach is an approach using legislation and regulations (Hadjon, 1994). The comparative legal approach is an approach by comparing the legal rules in Indonesia with other countries, the case approach (Sudariyanto, 2018) is using case examples in this journal research and a philosophical approach.

RESULT AND DISCUSSION

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From the legal aspect, the legal responsibility of fraudsters can be seen from civil, criminal and administrative aspects. From the civil aspect, the perpetrator has committed a default to his victim, in addition to that he has also committed an unlawful act (onrechmatige daad in Dutch and Tort in English). Therefore, the perpetrator can be prosecuted civilly to fulfill the bond (Alviolita & Arief, 2019).

According to the Criminal Code, it does not explain in detail the meaning of evidence. However, the evidence referred to in criminal law is evidence that is the object of a criminal act or the proceeds of a criminal act as well as goods that have a relationship with the criminal act. To maintain the security and integrity of these items, the Criminal Procedure Code gives the authority to the Investigator to carry out the confiscation as referred to in Article 39 Paragraph (1) of the Criminal Procedure Code which reads: (Chrysan et al., 2020) (1) What can be subject to confiscation is:

- a) objects or bills of the suspect or defendant that are suspected to have been obtained in whole or in part and

- a criminal act or as a result of a criminal act;
- b) objects that have been used directly to commit a criminal act or to prepare it;
- c) objects used to obstruct the investigation of criminal acts;
- d) objects that are specifically made or intended to commit criminal acts;
- e) other things that have a direct relationship with the criminal act committed.

The confiscation of evidence aims to support evidentiary efforts in the trial, but if the case has been decided by the Panel of Judges, then based on Article 46 of the Criminal Procedure Code, the Panel of Judges Examining the Case has the right to declare that: (Kleden, 2019)

- (1) The thing subject to confiscation is returned to the person or to them and to whom the thing is confiscated, or to the person or to those who are most entitled when:
 - a) the interests of Investigation and Prosecution no longer require;
 - b) the case is not prosecuted because there is insufficient evidence or it does not constitute a criminal offense;
 - c) The case is set aside for the public interest or the case is closed for the sake of the law, unless the object is obtained and a criminal act or used to commit a criminal act.
- (2) If the case has been decided, then the object subject to confiscation shall be returned to the person or to those named in the judgment unless according to the Judge's decision the object is confiscated for the state, to be destroyed or to be destroyed until it can no longer

be used or if the object is still needed as evidence in another case.

Based on positive law in Indonesia, compensation is regulated in Article 1365 of the Civil Code, Article 1 of the Criminal Code, the LPSK Law, the ITE Law and Law No.1/2023, defined as the right of a person to get fulfillment of his demands in the form of material applied in the manner regulated in this law. According to Hanafi Asnawi, Article 1 number 22 of the Criminal Procedure Code clearly states that the "loss" that is reimbursed is only in the form of a reward for a sum of money as a person's right that can be sued due to certain circumstances (Sudariyanto, 2018).

Furthermore, regarding the compensation arrangement listed in Articles 98 to 101 of the Criminal Procedure Code which states "If an act that is the basis of an indictment in an examination of a criminal case by the District Court causes losses to another person, then the presiding judge of the trial at the request of that person may stipulate to combine the case of the compensation lawsuit with the criminal case and Article 98 Paragraph (2) of the Criminal Procedure Code reads, "The request as referred to in paragraph (1) can only be submitted no later than before the Public Prosecutor files a criminal prosecution. In the event that the Public Prosecutor is not present, the request is submitted no later than before the Judge renders a decision.

The merger of this criminal case is intended so that the lawsuit case is examined and decided at the same time as the criminal case concerned. Losses for other people in question include losses for the victim. The other person referred to in this Article is the victim of

the crime, namely the act of the defendant which is a criminal act that causes losses to the person. The word "can" means, that the Judge in hearing this case can reject or accept the application in terms of merging the compensation case with the criminal case. Thus, it opens up an opportunity for the Judge to make a policy whether it can be filed civilly or combined, thus opening up the opportunity for the Judge to reject the merger of the cases submitted. If this is done, then legally the Judge is not wrong because the Law regulates this.

The arrangement of compensation provisions is an effort to protect the state from the perpetrator's actions. Victims are protected by the state with a compensation mechanism in the law, including in the Criminal Code because victims are people who suffer and are the result of injustice, so here it will be seen as unfair if the victim is not protected by his rights.

Russian criminal law also recognizes a kind of compensation to the aggrieved party called *reparation of damage*. It is even listed as a criminal law according to Article 32 of the Criminal Code of the RSFSR (Russia). This remedy penalty can be applied as a principal penalty, for example damage as a result of intentional acts against socialist property and additional crimes, if intentional damage to a citizen's personal property. The crime can be applied in three ways, namely:

1. Requiring the convict to repair the damage, if the Court considers that the convict can do so;
2. Requiring the convict to pay such damages, if the damages do not exceed one hundred rubles;
3. Requiring the convict to apologize in

public to the victim or members of the collective, in the manner determined by the Court, if the offense is directed at the dignity or integrity of a person or to the rules of socialist society and there is no material damage caused by the offense. (Saputra 2017)

In contrast to Russia, France is a country that adheres to the *Civil Law* criminal law system which has given legal authority for the settlement of a criminal act through mediation known as *Victim Offender Mediation (VOM)*. Since the amendment to the French Criminal Code, it has been clear that there is a strong legal basis for victims and perpetrators to resolve a criminal case through a mediation approach, which is then followed by several provisions that regulate the right of victims to resolve a criminal case through mediation.

The participation of the VOM institution in the mediation process for the settlement of a criminal act is regulated in the French criminal law system. This institution can be applied to both adult and juvenile offenders who aim to resolve a criminal act through an agreement after the conditions that have been met by the perpetrator, namely a confession of guilt, the attitude of the victim who supports the possibility of being carried out materially, including requiring VOM to make a report on the results achieved to the Public Prosecutor as a basis for determining the case to the prosecution level or to stop it case.

The application of the restorative justice approach in the French criminal law system illustrates that the criminal law system in France has provided space for the community to directly play a role

in tackling and preventing the occurrence of criminal acts, so that the burden of time and cost of the state can be reduced and the public will feel what is the meaning and purpose of the criminal law itself (Bawole, 2013).

In addition to Russia and France, the Netherlands applies a legal system called "*Family Model*", which is if the convict cannot return the compensation directly, he will be asked to the local social service to hire the convict so that the salary given can be used to return the compensation to the victim in installments.

If the convict does not correct the mistake in the manner and within the time limit determined by the Court, the Court may change the sentence to forced labor, fine, dismissal from special duty or public reprimand. Although the old regulation (HIR) was not regulated about the merger of criminal cases, but through a decision to impose a conditional sentence as stipulated in the merger of cases regulated in the Criminal Procedure Code. Articles in the Criminal Code allow for a special condition, that is, for example, if a convict is also convicted with a special condition of paying compensation to the victim, then a civil settlement is also achieved, but keep in mind that the verdict must be in the form of a conditional penalty which generally concerns cases that are not serious.

The role of the Judge is to add an additional criminal judgment in the form of material damages in accordance with the victim's demands by strengthening a rule as its juridical basis by making a new law regarding the settlement of compensation for victims of fraud at the Court level or adding vague norms

contained in Article 66 which explains the additional criminal penalties as referred to in Article 64 letter b of Law No.1/2023 consisting of:

- a. revocation of certain rights;
- b. confiscation of certain goods and/or bills;
- c. announcement of the judge's decision;
- d. payment of compensation;
- e. revocation of certain permits; and
- f. fulfillment of local customary obligations.

Article 66 letter d, namely the payment of compensation, if it returns to the existing regulations, it is only the payment of compensation for state losses, not to victims of fraud who also suffer losses, so that in the article it is necessary to reconstruct clear specifications for which party gets compensation.

Agreeing with the theory of Justice according to John Rawls, because justice is based on the essence of humanity in the relationship between man and himself, man and other humans, man and society, and man with the nation and state which is actually the goal of the state as the goal of living together, so that the obligation of the state in treating the victim as it should must really pay attention to it humanely, so that they can uphold the rights that victims of fraud should get as they were.

Victims of money laundering crimes are not only the state, but also from ordinary people where their money is diverted from the original crime to the crime of money laundering. So it can be said that the victim of money laundering is a person or a group of people who feel economically disadvantaged by the crime of money laundering.

Then if it is associated with the Law on the Protection of Witnesses and Victims, in essence it is clear in the law that the state provides protection to those who receive legal remedies from victims as a form of state protection for victims.

What the state should also do to defend and protect the interests of victims is to reject the decision of the Supreme Court Judge, so that the state essentially shows an attitude of prioritizing the protection of victims. The refusal of the state to accept First Travel assets should be able to be done by considering all legal bases related to the state's obligation to protect its citizens, so it is not natural for the state to accept the judge's decision with open arms to receive victims' money which is not essentially the state's right. Because this is contrary to various legal bases, be it the Law on the Protection of Witnesses and Victims, the Legal Aid Law, and the 1945 Constitution which clearly in the Law many meanings the essence of the state that provides protection to its citizens.

Not only that, with the decision given by the Supreme Court Judge which is too focused on the legal basis that the evidence was confiscated by the state, and directly the Supreme Court Judge has ignored the rights and interests of the victim. Thus, the state has directly ignored its obligation to protect its citizens, especially citizens who are victims of witness crimes and victims.

Article 64 b of the National Criminal Code explains the additional crimes described in Article 66 Paragraph (1) with several additions to Article 10 of the Criminal Code, "additional crimes as referred to in Article 64 letter b consist

of:

- a. revocation of certain rights;
- b. confiscation of certain goods and/or bills;
- c. announcement of the judge's decision;
- d. payment of compensation;
- e. revocation of certain permits; and
- f. fulfillment of local customary obligations.

Compensation is given to the community as victims. This is different from the criminal sanction of fines which aims to recover state losses. Criminal sanctions for providing compensation are aimed at repairing damage suffered by the community as victims of criminal acts. Compensation is given commensurate with the losses suffered by the community as victims. It can also be done by adopting the rules of the Dutch State, namely *the Family Model* as explained above, so that in accordance with the theory of justice what was formally put forward by John Rawls, namely those that are built from formal laws (laws and regulations) and even its administrative - formalistic nature can guarantee justice, because it departs from the assumption that all human beings must be treated equally. In other words, formal justice can provide justice because the rules demand equality. Therefore, according to Rawls, to achieve justice, it is very necessary to have legal regulations that are written (formal) and various supporting institutions

CONCLUSION

The essence of the payment of compensation to victims of justice-based fraud according to John Rawls in realizing the principle of Contante Justice, in order to realize the principle

of fast, simple and low-cost justice, by reconstructing article 64 letter b of Law No.1/2023 concerning additional crimes, namely the payment of compensation (to the state) by adding or changing, so as to produce a Novelty with Mention the victim as an individual, especially regarding fraud, with an explanation of the rules that expressly regulate the defendant's need to return material damages experienced by the victim to ensure legal certainty and legal protection, because it is a concept for law enforcement that is faster, more effective, efficient and in accordance with the expectations of the nation and state. This concept is also in accordance with the objectives of the National Criminal Code which uses the modern criminal law paradigm (corrective justice, restorative justice and rehabilitative justice) or by adopting rules from the Dutch state by applying the "Family Model" system as a novelty option that can be applied in legal rules in Indonesia.

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