

LEGAL PROTECTION TO THE VICTIM OF CRIMINAL ACT IN MAKING DEMANDS COMPENSATION

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Abstract - This study aims to know and understand about the legal protection in the merger of civil cases and criminal cases. The design of this study used normative legal research with a philosophical approach combined with empirical research, as well as conceptual approach. Sources of research data from primary legal materials and secondary legal materials were analyzed using statute approach method. Legal protection for victims consists of preventive and repressive legal protection, as a form of service that must be implemented by law enforcement officers.

Index Terms - legal protection, the victim, and the merger of the case.

I. INTRODUCTION

The issue of filing a victim's claim for compensation is a very important topic for practitioners and academics. Attempts to defend the rights of individuals that are violated by others or to force others must be settled on the basis of the law, so that peace can be realized. Saribu (2009) explains that in many cases, the victims suffered injustice and also the material loss so that the implementation of the merger of the lawsuit lawsuit was considered very important. Surya Study (2013) also stated that the phenomenon of merger of claim lawsuit against the victim, in fact not implemented as KUHAP in Article 98.

One of the efforts in the framework of law enforcement conducted by the police as investigators, prosecutors as public prosecutor or judge as a case breaker in court is by merging case. With various criminal offenses which resulted in material and immaterial loss to the victim. Referring to the Criminal Code, Article 98 that if an act on which an indictment is charged in a criminal case by the District Court causes harms to another person, the presiding judge at the request of the person may decide to combine the damages to the criminal case.

Sulistyantoro (2009) in the research findings explained that in the past there was no compensation for victims, after the KUHAP. The procedure of combining cases is executed through two processes at once, namely criminal proceedings followed by civil proceedings to claim compensation. In a merger of cases accompanied by claims of compensation, it can only be processed and

tried by a judge if there is a proposal from the victim who has suffered losses due to the crime, which among others aims to simplify and create something more efficient and save cost and time saving on the ongoing court proceedings. This study aims to know and understand about the legal protection in the merger of civil cases and criminal cases.

II. LITERATURE REVIEW

Terms of compensation

The victim may file a joint lawsuit compensation claim, which includes material damages, while the immaterial compensation of the victim must be a civil case (Rahmatsyah, Din, & Gaussyah, 2016). If one party feels aggrieved by the other, then the law provides an opportunity for those who feel disadvantaged to file a compensation suit (Tjoanda, 2010).

The provisions relating to compensation under the Criminal Procedure Code are derived from Law no. 8/1981 (Statute Book of 1981 No. 76), especially in the following articles: Article 1, paragraph 10 c: The pre-trial is the authority of the district courts to examine and decide upon the terms provided for in this law on demand for compensation or rehabilitation by the suspect or his or her family or any other party to his / her proxy whose case is not brought to court.

Article 1 point 22: Indemnification is the right of a person to receive the fulfillment of his claim in the form of remuneration of money for arrest, detention, prosecution or trial without any reason which is based on law or by mistake concerning the person or law applied in the manner stipulated in law - this invite. Article 77 paragraph b: The district court is authorized to examine and decide upon, in accordance with the provisions of this law on compensation and / or rehabilitation for a person whose criminal matters are terminated at the level of investigation or prosecution.

Article 81: The request for compensation and / or rehabilitation resulting from the unlawful arrest or detention or the unauthorized consequence of the suspension of an investigation or prosecution shall be filed by a suspect or an interested third party to the head of a district court by reason of the reason. Article 82 paragraph 3 c: The content of the decision other than to contain the provisions referred to in paragraph (2) also contains the following in the case of a decision stipulating that an arrest or detention is invalid, the decision shall include the amount of compensation and rehabilitation provided, if a termination of investigation or prosecution is lawful and the suspect is not detained, then the verdict shall be implied with rehabilitation.

Article 82 Paragraph 4: Indemnification shall be requested, including those referred to in Article 77 and Article 95. Article 95 paragraph 1: The suspect, the accused or the convicted person shall be entitled to claim compensation for arrest, detention, prosecution and trial or other action, reasons based on statute or due to errors concerning the person or applicable law.

Article 95 Paragraph 2: The indemnification by the suspect or his heirs of arrest or detention and other acts without cause based on law or by mistake concerning the person or applicable law referred to in paragraph (1) whose case is not filed to a court of law, shall be terminated in the pre-trial hearing as referred to in Article 77. Paragraph 3: The claim for damages as referred to in paragraph (1) shall be filed by a suspect, defendant, convicted person or his heirs to the court authorized to hear the case concerned. Paragraph 4: To examine and decide upon the indictment in paragraph (1) the chairman of the court may as far as possible appoint the same judge who has adjudicated the criminal case concerned. SECTION 5: The inspection of compensation as referred to in paragraph (4) follows pre-trial proceedings.

Article 96 paragraph 1: Decision of giving compensation in the form of determination. Article 98 paragraph 1: If an act on which an indictment is charged in a criminal case by a public court creates harm to another person, the presiding judge at the request of the person may decide to incorporate the claim for damages to the criminal case. Section 2: The request referred to in paragraph (1) may only be filed at the latest before the public prosecutor filed a criminal suit. In the event that the public prosecutor is not present, the request is filed no later than before the judge handed down the verdict.

Article 99 paragraph 1: If the aggrieved party asks for the amalgamation of his case in a criminal case as referred to in Article 98, the court shall consider its authority to try the lawsuit, on the truth of the grounds of the lawsuit and on the reimbursement of expenses incurred by the disadvantaged party. Paragraph 2: Except in the case of a district court declaring that it is not authorized to try the lawsuit as referred to in paragraph (1) or the lawsuit shall be declared unacceptable, the judge's verdict only contains the determination of the reimbursement of expenses incurred by the aggrieved party. Paragraph 3: The verdict on the indemnity shall in itself have permanent powers, if its criminal verdict also obtains a permanent legal force.

Article 100 paragraph 1: In the event of a merger between a civil case and a criminal case, the merger itself shall take place in the examination of the appeal level. Paragraph 2: Where a criminal case is not filed an appeal, an appeal request for a verdict of

indemnification shall not be permitted. Article 101: The provisions of the civil procedure law shall apply to the lawsuit as long as the law is not regulated otherwise. Article 274: In the event that the court handed down the verdict as referred to in Article 99, the execution shall be conducted in accordance with the procedure of civil judgment. Article 275: if more than one person is convicted in a case, the cost of the case or damages referred to in article 274 shall be borne equally by them.

These indemnification provisions of the legal basis are contained in Article 9 of Law Number 14 Year 1970 on the Principles of Judicial Power. So this law regulates the main points as the legal basis while the Criminal Procedure Code regulates its implementation further. However, the provisions of this Criminal Procedure Code (KUHAP), on the matter of compensation are considered to be incomplete and require further implementation regulations for the justice and welfare of those concerned.

Claim for Indemnification from civil law aspect

Claim for damages civil, then the basis of the demands is article 1365 Criminal Code. Similarly, in other articles, the compensation is also regulated, among others Article 1367, 1370, 1371 and Article 1372 of the Civil Code. The Establishment of the Highest Judgment in the Netherlands Hoge Raad (HR) in the 31st January 1919 ruling of the most famous case of COHEN versus LINDENBAUMI, which in essence interpreted that "unlawful acts not only contain the notion of an act contrary to the Law, but include as well as acts or omissions that violate the rights of others, or to be contrary to the legal requirements of the author, or to be contrary to morals, or to be contrary to public opinion; show others.

Unlawful acts contain a broad sense, not only acts that directly violate a rule of law, but also directly violate other norms such as morals, manners and customs, if by doing that there is a mistake and cause harm to others. Based on Article 1365 of the Civil Code, if a person has committed an act of violating the law and has proven his guilt, then against him can be prosecuted to compensate.

Claim for Indemnification from the aspects of criminal law

Police (Law No. 13 of 1961), as well as the Attorney (Law No. 15 of 1961), authorized to arrest / detain in a criminal case in accordance with the basic provisions underlying their duties, in carrying out their duties must always uphold human rights, and state law. Whereas the law No. 14 of 1970 is also considered to be sufficient to provide a legal basis for the protection of human rights, setting forth several restrictions regarding the issue of arrest and detention, Article 7 of Law No. 14 of 1970.

Concerning the principle of "Presumption of Innocence" has been affirmed in Article 8 of the Act, but it must be remembered that our law enforcement officers also consist of human beings who are inseparable from errors / errors. The intent or absence of an arrest and detention intended to uphold justice and order in society, is sometimes done by people who are not at all innocent. If such actions are left alone, then the collective respect and legal authority of society will be destroyed.

III. RESEARCH METHODS

The design of this study used normative legal research with a philosophical approach combined with empirical research, as well as conceptual approach. Sources of research data from primary legal materials and secondary legal materials are analyzed using statute approach method.

IV. RESULTS AND DISCUSSION

Legal Protection (Preventive)

Preventive legal protection, protection granted by the government with a view to preventing prior to the offense. It is contained in legislation with a view to preventing an offense as well as providing signs on the limitations in performing an obligation. Legal protection is a form of service that must be performed by law enforcers or security apparatus to provide a sense of security, both physical and mental, to victims and witnesses of threats, harassment, terror and violence from any party given at the stage of investigation, prosecution, and for trial hearings. So that, for victims and witnesses to be free without any pressure in providing testimony or testimony in the law enforcement process.

Legal Protection (Repressive)

Repressive Law Protection, repressive legal protection is the ultimate protection in the form of sanction of fines, imprisonment, and additional punishment given in the event of a dispute or an offense has been committed. Protection is contained in Law Number 31 Year 2014 amendment of Law Number 13 Year 2006 concerning Protection of Witness and Victim in Article 1 point 8 that is all effort of fulfillment of right and giving aid to give sense of safety to witness and or victim which must be implemented by LPSK or other institutions in accordance with the provisions of this Act.

Protection of Victims of Crime as a Form of Protection of Human Rights

The crime victims are basically the ones who suffer the most in a criminal act, but are less likely to receive the maximum protection provided by the government, especially in the case of the merger of claims for damages in a criminal case. In the Criminal Procedure Code especially in relation to human rights, there is a tendency mostly to explore rights relating to the rights of the suspect regardless of the rights of the victim.

The low position of the victim in the criminal act in handling the compensation claim in the criminal case causes the victim party lack of enthusiasm to solve it through the merging of the compensation claim in the criminal case in court. Legal protection of victims of crime as part of the protection of society can be manifested in various forms, such as through the provision of restitution and compensation, medical services, and even legal assistance.

Indemnification in principle is something that is given to a party who suffers losses that should be commensurate with calculating the loss or damage suffered, whether in the form of compensation or other forms of assistance that can be directly felt by the victim of the crime. The provision of compensation is also of great benefit as it arises from a victim's request, and is paid by the public or constitutes the responsibility of the society, while restitution is more criminal, arising from a criminal court ruling and paid by a convicted person or constituting a form the conviction of the convicted person.

According to Arief (2001), the protection of the victim can be seen two meanings: (a) in abstracto that can be interpreted as legal protection to not become victim of crime that form of legislation is expected with the formulation of legislation that has arranged it will not arise casualties; (b) in concreto (concrete protection) may be interpreted as protection for obtaining legal guarantees for the suffering / loss of persons who have been victimized by a criminal offense. The forms of compensation may be the restoration of the good name (rehabilitation), the restoration of the inner balance (among others with forgiveness), the provision of compensation (restitution, compensation, social welfare benefits / welfare,

V. CONCLUDING REMARKS

The victim may file a lawsuit for the compensation of the indemnification law, which includes material damages, whereas the immaterial damages to the victim must file a civil case. Legal protection for victims consists of preventive and repressive legal protection, as a form of service that must be implemented by law enforcement officers.

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