

LAW ENFORCEMENT AND THE WEAK DIMENSIONS OF VICTIMS : A CRITICISM OF THE INDONESIAN CRIMINAL JUSTICE SYSTEM

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ABSTRACT

As one of the global issues, victim of crime has become a problem of many countries. That is, the protection demands of victims of crime in the last decade, is also an issue that so much attention, not only among observers of human rights but also in academic discourse at the national and international levels. This relates to the strengthening of the demands of the protection of the rights of citizens (civil) concerning their various interests, which on a global level stipulated in international agreements. In Indonesia, the level of practice, criminal enforcement is carried out through a court proceeding that the matter of rights of suspects accused has been organized in the laws, but not so with the problems of the victims. The victim aspect has not been touched even very marginal, or little attention is paid to victims of crime in criminal events. In fact, if we look closely victims are not only a cause and basis of the occurrence of crime but the victim plays a very important role in the search for truth material required by the criminal law. The role of the victim may have an important function in the occurrence of a crime, whether conscious or unconsciously, directly or indirectly. So that the victim was an issue that the essence of the criminal justice process especially in Law Enforcement.

Keywords: Victim, Criminal Law Enforcement, Criminal Justice System

A. Introduction

The criminal justice process is a series of stages starting from the inquiry, investigation, arrest, detention, prosecution, investigation at the trial, until the sentencing is a very complex activity and is not easily understood and sometimes intimidating for the general public. The public perception that such cannot be avoided because of the understanding which is owned by the community, that the judicial process is an activity that "creepy". It is much driven by the existence of society as a seeker of justice when undergoing the judicial process is often faced with conditions that are not pleasant, either due to their ignorance of the law and unsympathetic treatment from law enforcement officers. Criminal justice as a testing and enforcement of human rights has a special feature, which is composed of sub-systems which are institutions that stand on their own, but should work in an integrated way to enforce the law according to expectations of justice seekers. As a system, in which there is a set of complex objects consisting of sections and sub-sections are interconnected in a process of movement from the initial stage to the final stage. In the criminal justice system, the four institutions (police, prosecutors, courts and prisons) as a component of the system, each interdependent despite having special functions. There are carried each institution cannot be separated from the function and purpose of the system as a whole. The output of the institution is input to the other institutions. As the issue of judicial mafia-issue in a judgment (verdict), would not be fully understood without an awareness of the role of judges in the context of the criminal justice system as a whole.

Victims who were represented by the Public Prosecutor, in order to prosecute perpetrators of criminal acts, it is regarded as an attempt of legal protection for victims and the wider community. Yet in reality the loss suffered by victims is neglected.

Output of the law enforcement agencies are inputs to other law enforcement institutions called by Bambang Poernomo (1993) as input-output method in the criminal justice system. In such a system approach there are a series of activities crowd of law enforcement agencies, each of which should form a joint responsibility to get to the "precise justice" which contains "substantial truth" and "protection of human rights".

Shared responsibility for implementing criminal justice is not only functional and institutional coordination, but also there must be unity of views on the development of the science of criminal law. Therefore, through this system approach-according to Bambang Poernomo-expected interrelationships and interactions between components of the criminal justice system in order to avoid the occurrence of fragmentary and crisis of criminal justice. (Purnomo, 1993) If the criminal justice seen as a system, of course, has consequences for treating a planning and policy is not partial. Planning and decision partially by each institution in the components of the criminal justice system, it is certain to fail at the time of application. At least it will encounter obstacles that have been ineffective. In other words, planning efforts and policies of each component of the criminal justice system should be linked. The linkage between the parts so closely that according to Davies, Tyrer, Croall (2001 : 56) can be implications for the interdependencies among the components. Reform measures and planning that need to look each other in the system.

In Indonesia the criminal justice system that is the basis for completion of the criminal case based on Law No. 8 of 1981 on Criminal Proceedings (the Criminal Procedure Code). The fact is that the Criminal Procedure Code which is a formal criminal law and formed the basis for the implementation of the Indonesian criminal justice system, in providing protection for victims of crime it is still lacking (Gosita, 2004)

This is because the Criminal Procedure Code which regulates all the provisions of criminal law litigation practice in Indonesia is still oriented towards protection against criminals (Offender oriented).

Thus it can be understood that the criminal law in Indonesia oriented towards the perpetrators of criminal acts, it is because the State has taken over the entire reaction can be made by the victim against the person who has hurt himself. Loss and suffering the victims have been described by the State and is manifested in the form of sanction, criminal or action against the perpetrators. In the practice of criminal justice in Indonesia that covers the interests of victims and suffering the loss of any criminal offense suffered, is often overlooked. (Abdul Wahid, Muhammad Irfan, 2011) Victims of crime are placed only as a means bukti² only as a witness. In this condition the possibility for victims to obtain greater freedom in fighting for their rights is very small. This is because in theory and practice in Indonesian criminal justice system the interests of victims of crime is represented by the public prosecutor as part of the protection of society according to the theory of social contract (social contract argument) and the theory of social solidarity (social solidarity argument). The idea that embody social welfare society which is based on the commitment of the social contract (social contract argument) and social solidarity (social solidarity argument), it makes the society and the State is responsible and morally obligated to protect its citizens, especially those of the unfortunate victims.

B. Dimensions of Law Enforcement in the Criminal Justice System

The rule of law through the Criminal Justice System (cjs) is another aim to tackle the crime, in the sense of controlling crime in order to be within the limits of public tolerance. Control within tolerance limits in question, does not mean any sort of political will to tolerate or allow certain crimes, but more as an awareness that crimes are "doomed" still exists in society. (Waluyo 2012) Therefore, criminal justice was considered successful if the majority of reports or complaints of people who become victims of crime, can be "solved" by filing perpetrators to justice and given a criminal. The above figures by Reksodiputro, just what is the most visible (explicit) and expected by society.

The task is often overlooked is associated with the prevention of crime victims and prevent offenders in order not to repeat the crime. Thus, the purpose of the criminal justice system covers. (a) protect the public from becoming a victim of crime; (b) resolve the case (crime) happens so that the community satisfied that justice has been done; (c) see to it that those who have committed crimes are not repeated crimes

C. Dimensions of Victims Marginalized in the Criminal Justice System

Criminal Justice System in Indonesia when read through the product its legislation, KUHAP which was enacted in Act No. 8 of 1981 which became the basis of the implementation system of Criminal Justice, have not really included, to what is in Suggests within 45 Constitution and Pancasila state philosophy. This is evident in the formal criminal law in Indonesia, which were recorded in Act No. 8 of 1981 on the Law of Criminal Procedure. The philosophical foundation of these laws explicitly (explicit) include the respect for and protection of human rights as contained in the preamble 'Considering' sub a, which states: "That the Republic of Indonesia is a constitutional state based on Pancasila and the Constitution of 1945 that uphold human rights human and which guarantees all citizens equal before the law and government and shall abide by the law and the government without any exception

If we look closely the design procedures of Criminal Procedure Code (KUHAP) the essentially be set on the limits of authority of law enforcement agencies in the criminal justice system. It is implicitly seen within 10 (ten) principles that underlie the operation of regulated norms. The ten principles are reaffirmed in the General Explanation of the Criminal Procedure Code in point 2 that the principle governing the protection of the nobility of human dignity, namely:

1. Equality before the law without discrimination of any kind; 2. The presumption of innocence; 3. The right to compensation (compensation) and rehabilitation; 4. The right to legal aid; 5. presence of the accused in the face of the trial; 6. Judicial free and is quick and simple; 7. Justice open to the public, unless otherwise specified in the legislation; 8. Violations of the rights of the individual (arrest, detention, search and seizure) should be based on law and carried out with a warrant (written); 9. The right of an accused to be informed of conjecture and prosecution against him; 10. The obligation to control the execution of court rulings. (Pangaribuan, 2002: 2)

Tenth these principles can be categorized into two categories. First, the general principle which consists of seven principles, and secondly, special principles consisting of three principles.

General principles shall include: (1) equal treatment before the law without discrimination of any kind; (2) the presumption of innocence; (3) the right to obtain compensation (compensation) and rehabilitation; (4) the right to receive legal assistance; (5) the right to the presence of the defendant before the court; (6) an independent judiciary and is fast and simple; (7) trial open to the public.

While the principles of the special consisting of: (8) violation of individual rights (arrest, detention, search and seizure) should be based legislation and carried out with a warrant; (9) the right of an accused to be informed of conjecture and prosecution against him; (10) the obligation to control the execution of court rulings.

The first principle: equal treatment before the law without discrimination, not just listed in the general description the Criminal Code, but also contained in Act No. 8 of 1981 Considering section. The same treatment can not be simply interpreted as discrimination suspects and defendants based on social status or wealth as such, but also dealing with discrimination based on

race, color, sex, language, religion, political opinion, nationality, birth and others as found in articles 6 and 7 of the UDHR and article 16 CPR Covenant in 1966.

The second principle: The presumption of innocence. Elements of the presumption of innocence as well as a main principle of the protection of citizens' rights through a fair legal process (due process of law). Elements might include: (a) protection against arbitrary actions of state officials (law enforcement agencies); (B) the court is entitled to determine only one and not a person; (C) the trial court should be open (not to be confidential); (D) that the suspect and the accused must be given guarantees to be able to defend themselves to the fullest.

The third principle: the right to obtain compensation and rehabilitation. This principle includes two basic principles, namely: (a) the right for a person to obtain compensation and vindication; (B) the obligation to account for the behavior of law enforcement officials in carrying out the pre-adjudication.

The fourth principle: the right to obtain legal assistance. This principle is a counterweight to the power of the state (law enforcement officers) in demanding person. The principle is known as the doctrine of equality of arms. In addition to the guarantee "equality of opportunity", this principle also requires professional advocate independence or freedom to defend one's client in any situation.

The fifth principle: the right of the defendant's presence in court. The aim of this principle is to give an opportunity to the accused filed a defense in a fair legal process. Therefore, however strong the evidence submitted investigator and the prosecutor, a defendant is always given the opportunity to be heard and considered in his interest as a human being.

The sixth principle: an independent judiciary and done quick and simple. Two principles covered in these principles, namely: (a) justice that is free from any influence; (B) that the judicial process should be quick and simple. Freedom judicial (independent judiciary) is sentrum law states that embrace the concept of rule of law, the rule of law without bias (as impartial). The desire for the judicial process quick and simple intended to reduce to a minimum the "suffering" of suspects and defendants in waiting for the certainty of the alleged error.

The seventh principle: Courts are open to the public. That is to avoid the secret hearings, the public are permitted to "supervise" direct the course of justice so that due process of law or fair trials can be run properly.

The eighth principle: the basic laws and obligations warrants the implementation of forceful measures. This principle aims to respect and protect the individual rights of citizens to freedom (freedom of the individual citizen).

The ninth principle: The right to legal remedy. This principle is one of the basic elements of citizens' rights to "liberty and security". He is also an integral element of what we call due process of law or due process of law.

Tenth principle: a principle that is in the realm after the adjudication in which the judge is required to supervise the implementation of the decision in order to achieve the goals of sentencing that he set. Whatever is adopted in terms of the theory of punishment, it must be remembered that the "terisolirnya" convict behind prison walls, he does not lose their rights as citizens, namely the right to human dignity.

Can be seen clearly that the ten principles contained in the Criminal Procedure Code, the state's commitment to protecting the interests of the rights of every person who lodged the criminal case in this regard is the perpetrator. Here it appears that the protection of human rights in the criminal justice system not only starts since someone the offender was called to be witnesses, suspects, accused and then stopped at the moment so convicted. But as long as the offender is in prison as a convict, citizenship rights still have to be protected. All of them have the intent to provide education and awareness to the space convicted within the framework of respecting and upholding human rights.

It thus raising the issue, that the system of criminal justice as a base settlement of the criminal case does not acknowledge the existence of crime victims as seekers of justice, a crime victims will suffer again as a result of the legal system itself, because the victims of crime can not be actively involved as well as in civil proceedings, can not directly apply for a criminal case to the court itself but through the designated agencies (police and prosecutors).

At first glance the interests of victims of crime have been represented by state namely the police and the prosecutor as investigator, investigator, prosecutor, but the relationship between victims of crime on the one hand with the police and prosecutors on the other hand was symbolic, while the relationship between the defendant's counsel legal in principle is purely a legal relationship between service users and providers are regulated in civil law.

Meanwhile, the police and prosecutors to act to implement the state's duty as a representative of victims of crime and or community, while the legal advisor acting on the direct authority of the defendant acting on behalf of the defendant himself. [5]

For that, clearly illustrated that the protection that exists in the Criminal Code more to protect the rights of the offender from the rights / interests of victims of crime, for it can be pointed out that the provisions protecting / observing the interests of the victim only about pretrial and the combined claim for damages, degan other words, the system adopted by the criminal Procedure Code is retributive justice, ie a policy point of protection is the criminal (offender oriented) is not restorative justice that the policy focus of protection is for victims of crime (victim oriented). [6]

The condition is appropriate resulted Indonesian Criminal Justice System reviewed and to see a wider interest, not only focused on retribution for the perpetrators of criminal acts alone, but also the interests of the victim who is a very essential aspect to note.

D. Victims aspect is Represents Esesensi Should Look In The Criminal Justice System

In fact of criminal justice in Indonesia that covers the interests of victims and suffering the loss of a crime experienced, less attention. Victims of crime are placed only as a means bukti² only as a witness. In this condition the possibility for victims to obtain greater freedom in fighting for their rights is very small. This is because in theory and practice in Indonesian criminal justice system the interests of victims of crime is represented by the public prosecutor as part of the protection of society according to the theory of social contract (social contract argument) and the theory of social solidarity (social solidary argument). The idea to realize the social welfare society which is based on the commitment of the social contract (social contract argument) and social solidarity (social solidary argument), it makes the society and the State is responsible and morally obligated to protect its citizens, especially those of the unfortunate victims.

Interests of the victims who had been represented by the Public Prosecutor, in order to prosecute perpetrators of criminal acts, it is regarded as an attempt of legal protection for victims and the wider community. (Chaerudin dan Syarif Fadillah 2004). Yet in reality the loss suffered by victims neglected. The possibility of providing compensation to the victim can actually be based on the Criminal Code and Criminal Procedure Code. In the Criminal Code to provide the legal basis for compensation set out in Article 14 c, while the Criminal Code legal basis which can be used to menmberikan compensation is Article 98 through Article 101.

Efforts legal protection for victims set out in the Criminal Code and the Criminal Procedure Code is felt not implementable because it is less secure the recovery of the suffering experienced by victims of crime and victims of crime is very rare that seek compensation for the suffering that has been experienced, for this reason then the government issued Law Law No. 13 of 2006 on the Protection of Witnesses and Victims. Law No. 13 of 2006 which was converted into Law 31 th 2014 on the Protection of Witnesses and Victims in Article 3 states: protection of witnesses and victims based on a. human dignity; b. sense of security; c. justice; d. non-discriminatory; e. legal certainty with fairly clear explanation

Legal protection for victims of crimes regulated in Law Number 13 Year 2006 concerning witness and victim gave assurance to victims of crime to receive compensation in the form of restitution, as provided for in Article 7 (1) b and further implemented through Regulation Government. Indonesian Government Regulation No. 44 Year 2008 on the Provision of Compensation, Restitution and Assistance to Witnesses and Victims is the implementing regulations as already diatur dalam Article 7 (3) of Law Number 13 of 2006 on the Protection of Witnesses and Victims. Under Article 1 (5) states that restitution is the compensation given to victims or their families by the offender or a third party, restitution may be, the return of property, the payment of compensation for loss or suffering, ataupun penggantian fees for certain actions. The regulation of restitution and procedures for restitution emberian stipulated in Article 20 and Article 33 of Government Regulation No. 44 Year 2008 ndonesia PP 44 year 2008 also governs three stages in applying for restitution namely: the first stage which is the stage of submission of application for restitution, the second stage is the stage of examination of the feasibility of restitution, and the third stage is the stage of implementation of restitution. Implementation of the restitution of the role of the Witness Protection Agency (LPSK), As an institution established and given the mandate by the Act to facilitate the protection of victims, and one of the tasks and functions of the Agency is to assist victims to obtain restitution as a safeguard and restoration of the rights of victims. Arrangements regarding the implementation of restitution has been set up well in Legislation in Indonesia, but in the practice of criminal justice that occurred during this time, restitution is still difficult to obtain by crime victims. The difficulty that occurs because the procedure for obtaining restitution very long and convoluted, and the criminal justice process in Indonesia is still oriented to the perpetrators of criminal acts, so that the legal protection of victims of crime, such as the one restoration of the rights that had been captured in the form of restitution often overlooked.

E. Epilogue

The principle of equality according to Keijzer be the cornerstone of human rights protection in criminal law. Thus, at the level of regulation in the legal world in Indonesia, especially criminal law, Human Rights essentially has a critical function, namely, to work to overcome the crisis Human rights violations which occurred both for the offender and the victim. So that also must be considered is how the victims have access to achieve justice, protection, service and last but not least also how victims can express their aspirations related harm befall him.

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