Legal Justice in Returning Losses to Victims of Illegal Investment Criminal Acts

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Abstract

Regarding Legal Justice in Restitution of Victims of Criminal Acts, further provisions regarding the procedure for carrying out conditional sentences (voorwaardelijke veroordeling) are regulated in Article 276 of the Criminal Procedure Code which states: "In the event that the court imposes a conditional sentence, its implementation shall be carried out with serious supervision and observation and in accordance with the provisions of the Law." According to Muladi, conditional sentences (voorwaardelijke veroordeling) are a form of humane criminal law, namely by prioritizing prevention, not only oriented towards actions but also towards people who commit crimes, which are tat-tatterstrafrecht, placing social welfare as the ultimate goal, oriented towards the future. The mechanism for applying compensation is also regulated in Article 275 of the Criminal Code which states: "If more than one person is convicted in one case, then the court costs and/or compensation as referred to in Article 274 shall be borne by them jointly in equal proportions". The explanation is explained as follows "Because the defendants in the case referred to in this article are jointly sentenced because they are accused of committing a crime in one case, it is reasonable if the court costs and/or compensation are borne jointly in equal proportions.

1. Introduction

Investments that do not have permits are interpreted as illegal investments and unauthorized investments. The meaning of the permit according to Y. Sri Pudyatmoko's opinion, referring to the opinion of N.M. Spelt and J.B.J.M. ten Bergen, explains that a permit is an approval from the government based on applicable laws and regulations for certain circumstances that deviate from the provisions of the prohibition of laws and

regulations.[1] According to Bagir Manan, licensing is a function of state administration, where licensing gives rise to rights, protection and convenience for the recipient of the license, as well as government control over ongoing businesses.[2]

Investment crimes are often related to corporate crimes that are carried out in an organized manner. The victims of illegal investments are mostly people who have excess finances who are easily tempted and are less careful in investing their money in unclear companies, companies that are relatively new and whose existence as a business entity has not been tested.[3] Legal protection for victims of illegal investment crimes is very urgent and must be based on a sense of justice. It is the victims who feel and experience physical, mental, and/or economic suffering caused by a crime, as referred to in Article 1 point 3 of Law Number: 31 of 2014 concerning Amendments to Law Number: 13 of 2006 concerning Protection of Witnesses and Victims.

Referring to Romli Atmasasmita's opinion, illegal investment crimes can be categorized as business crimes because in terms of modus operandi, corporations often act as receptacles for criminal proceeds and use corporations as a means of committing crimes. In terms of the complexity of the problem, in corporate business activities, it is not only a national problem but is often related to international problems. These activities become legal problems that have a broad impact on the interests of the people and the interests of legal protection. Business activities, both domestic and international, have been controlled by Multi-National Corporations (MNCs) that have networks across countries, thus creating legal complexity related to corporations, especially in the event of violations of criminal law by corporate agents who have acted without the knowledge of the principals who have offices in other countries. The network of business activities is international with significant and widespread capital, in several countries it has a major impact in terms of finance, labor and the welfare of the people in the country concerned. These conditions require a clear and broad legal umbrella and have predictions that are able to see the future of international business activities.

Legal protection for victims of illegal investment crimes is very urgent and must be based on a sense of justice. It is the victim who feels and experiences physical, mental, and/or economic suffering caused by a crime, as referred to in Article 1 point 3 of Law Number: 31 of 2014 concerning Amendments to Law Number: 13 of 2006 concerning Protection of Witnesses and Victims.

Rena Yulia's view, citing van Boven's opinion, essentially provides an understanding of victims, namely as follows:

A victim is a person who individually or in a group has suffered losses, including physical or mental injury, emotional suffering, economic loss or real deprivation of their

[1] Sentosa Sembiring, *Hukum Investasi, Pembahasan Dilengkapi dengan Undang-Undang Nomor 25 Tahun 2007 Tentang Penanaman Modal, Revisi Kedua,* (Bandung; CV. Nuansa Aulia, 2018), hlm. 36

[2] Bagir Manan, *Investasi dan Perizinan. Dalam Perkembangan Hukum Bisnis dalam Era Globalisasi dalam Rangka 80 Tahun Prof. Djuhaendah Hasan, S.H.,* (Bandung; Corbooks, 2017), hlm. 17.

[3] Romli Atmasasmita, *Hukum Kejahatan Bisnis, Teori dan Praktik di Era Globalisasi*, (Jakarta: Prenadamedia Group, 2014), hlm. 208-209: lihat Nando Matulangi, *op.cit, hlm.* 110

basic rights, either due to their actions (by act) or due to their negligence (by omission).[4]

The form of protection for the rights of victims of criminal acts according to Article 19 paragraph (1) of Government Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, in the form of providing compensation for loss of wealth or income, compensation for losses caused by suffering directly related to the consequences of the crime, and/or reimbursement of medical and/or psychological care costs still faces serious stumbling blocks. In reality, the confiscation followed by the seizure of the assets of perpetrators of illegal investment crimes using the formulation of the Money Laundering Law conflicts with the interests of returning the victims' losses.

2. Research Method

This research is normative legal research, namely legal research that positions law as a system of normative structures.[5] The nature of this research is confirmed by Abdul Kadir Muhammad who is of the opinion that the main subject of study in normative legal research is law which is conceptualized in norms or rules which apply in society and become a reference for the behavior of every person.[6] This study uses qualitative analysis in conducting a study of the data that has been collected. Qualitative data analysis aims to analyze data based on its quality (level of relevance) not based on its quantity (amount). This statement is emphasized by Suteki and Galang Taufani stating that the data presented in qualitative analysis is not in the form of numbers but verbal words. According to Nana Syaodih Sukmadinata, qualitative analysis is intended to describe and analyze phenomena, events, social activities, attitudes, beliefs, perceptions, thoughts of people individually or in groups.[7]

3. Results and Discussion

According to Benjamin Mendelsohn quoted by Azahra Haisy Tasyaa and Dimas Moch. Risqi that in the victimology approach, the level of relationship or contribution of the victim to the occurrence of the crime has its own typology that should not be missed from the study, can be assessed from the level of vulnerability (victims culpability). There are 6 (six) typologies that are often discussed, namely; First, victims who are truly innocent, Second, victims with a minimal level of guilt contribution (victims with minor guilt), Third, victims who have the same level of guilt as the perpetrator. Fourth, victims

[4] Rena Yulia, *Viktimologi Perlindungan Hukum Terhadap Korban Kejahatan*, (Yogyakarta: Graha Ilmu, 2010), hlm. 50

[5] Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*, (Yogyakarta: Pustaka Pelajar, 2019), hlm. 34

[6] Abdul Kadir Muhammad, *Hukum dan Penelitian Hukum*, (Bandung: PT. Citra Aditya Bakti, 2004), hlm. 40.

[7] Nana Syaodih Sukmadinata, *Metode Penelitian Pendidikan*, (Bandung: PT. Remaja Rosdakarya, 2012), hlm. 43

who are more guilty than the perpetrator (victims are more guilty than the offender); Fifth, the victim is the only guilty party (in the case of the perpetrator who was later killed himself) and Sixth, the imaginary victim, aka the victim who claims to be the victim, even though he did not suffer anything.[8]

In legal terms, compensation is also called legal remedy, which is defined as a way of fulfilling or compensating rights based on a court decision given to a party who suffers a loss due to the actions of another party due to negligence or error or intent.[9] According to Nieuwenhuis, loss is a reduction in one party's assets, which is caused by actions (committing or allowing) that violate norms by another party.[10]

In law, there are two types of losses, namely losses that befall a person's property (material), and real losses experienced and loss of expected profits (immaterial). Meanwhile, the concept of compensation in the scope of criminal law can be seen in Article 1 number 22 of the Criminal Procedure Code (KUHAP) which explains that compensation is the right of a person to receive fulfillment of his/her demands in the form of compensation for a sum of money, which arises due to an error in arrest or detention when the suspect is undergoing the legal process that was charged to him/her, as stated as follows:

Article 1 number 22 of the Criminal Procedure Code:

Compensation is the right of a person to receive fulfillment of his/her demands in the form of compensation for being arrested, detained, charged or tried without a reason based on law or due to an error regarding the person or the law applied in the manner regulated in this Law.

According to Sudarto's opinion quoted by Suparman, the determination of the person who is harmed is based on the principles of civil law and the loss is caused by the actions of a person who is called the "maker" (dader) of a criminal act by criminal law. So in the matter of compensation in criminal law, it must be seen in relation to the "three in a row": crime (criminal act) - maker - victim. It must also be noted that the loss is material and immaterial. Compensation for material losses does not cause problems, this is not the case with immaterial losses, which are in the form of hardship, anxiety, shame and so on.

The regulation of victim rights in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) is not explicit and less than the rights of suspects and defendants. This is because the state through investigators and public prosecutors has become a representative for victims. The opinion of Hezel B. Kerper quoted by Romli Atmasasmita and Bambang Waluyo explains that criminal law enforcement rests on the state and provides authority through its organs to impose criminal penalties (ius puniendi). Victims and society are automatically represented by the state through the criminal justice process to impose appropriate penalties on the defendant.

Likewise, the Criminal Code only focuses on criminal acts or mistakes (guilt),

[8] Azahra Haisy Tasyaa dan Dimas Moch. Risqi, "Analisis Peranan Korban Dalam Kejahatan Pembunuhan", *Jurnal Prosiding Seminar Nasional & Call for Paper,* Vol. 8 No. 1 (2021), hlm. 346.
[9] J.T.C. Simorangkir dkk, *Kamus Hukum, Aksara Baru*, (Jakarta: Aksara Baru, 1980), hlm. 289
[10] Niuewenhuis, *Pokok-Pokok Hukum Perikatan, Terjemahan Djasadin Saragi*, (Surabaya: Universitas Airlangga, 1985), hlm. 57

criminal responsibility and criminal threats (punishment), does not formulate compensation for victims (restitution). The Criminal Code adheres to the neoclassical school which focuses more on the discussion of the perpetrator of the crime, the circumstances that influence someone to commit a crime to aggravate or mitigate the punishment imposed such as the reasons in Article 44 of the Criminal Code, rather than discussing protection for victims.[11]

The Criminal Procedure Code and its implementing regulations do not explain the parameters for determining the level of each defendant to pay the compensation in question, whether it is based on the defendant's fault, whether it is based on the defendant's ability and whether all bear the same burden without any parameters. This is very necessary for the sake of creating justice for the victim and the defendant himself.

M. Yahya Harahap assessed that the norm on compensation is still lacking and incomplete because there is a limitation on compensation claims for material losses, according to Article 99 Paragraph (2) of the Criminal Procedure Code, while immaterial losses must go through the process of filing a civil lawsuit. This means that to obtain full compensation, two examination processes must be carried out. This situation again obscures the original intention of the merger itself, which aims to simplify the process and reduce costs. In addition, there are still obstacles in the implementation of the payment of compensation (executie), compensation is charged to the defendant who committed the crime, so there will always be disappointment in the implementation of the payment of compensation.[12]

The development of the law then provides protection for victims with the birth of several laws and regulations, including Law Number 13 of 2006 concerning Protection of Witnesses and Victims which has been amended by Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, along with regulations that support the implementation of victim protection. Protection for victims is all efforts to fulfill rights and provide assistance to provide a sense of security to victims which must be implemented by LPSK or other institutions in accordance with the provisions of the Law on Protection of Witnesses and Victims (Article 1 Number 8).

Victims of illegal investment crimes as targets of crime must receive protection for losses suffered as a result of being hit by the crime, in accordance with their rights. Victims of crime are people or groups who experience physical, mental, and/or economic suffering caused by a crime as explained in Article 1 number 3 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

Rena Yulia quoted the opinion of van Boven and Muladi agreeing that victims of crime are parties who have suffered losses due to experiencing a crime, including losses in the form of physical or mental injury, emotional suffering, economic or real deprivation

[11] Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakkan dan Perkembangan Hukum Pidana,* (Bandung: Citra Aditya Bakti, 1998), hlm. 55

[12] M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP, Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali, Edisi Kedua,* (Jakarta: Sinar Grafika, 2008), hlm. 81

of their basic rights, either due to actions (by act) or due to negligence (by omission). So victims of illegal investment can be ascertained to have suffered losses, both material and immaterial.

Aristotle divides justice into two important parts, namely: First, distributive justice which focuses on the distribution of honor, wealth, and other goods that can be obtained equally in society, the distribution of wealth and other valuables based on the values that apply in society. So the distribution is a distribution that is in accordance with the values of goodness that exist and are recognized by society. Second, corrective justice which focuses on the act of correcting something that is wrong. If there is a violation of the rights of others, the injured party must be given compensation. Then, if a crime occurs, the perpetrator must be given a proper sanction and commensurate with his actions.[13]

Aristotle's theory of justice also states that the measure of justice is the applicable law and proportionality. From the point of view of the amount that must be distributed, justice is divided into two parts, namely: First, commutative justice which gives everyone the same amount without considering individual services in the individual's relationship with others. Second, distributive justice based on appropriateness is a form of the same, referring to the conditions and realities experienced, the principle is that in the same case it should be treated in the same way and different cases are treated in different ways.[14]

Justice in the Islamic view is synonymous with "al-mizan" which means balance or moderation, also equated with the word "al-qist" which means justice. Justice is generally associated with the establishment of laws or policies of the authorities, or with matters related to power, including justice in trade or business. In the Koran, Surah Al-Maidah (5) verse 8, Allah SWT commands to act justly and correctly, in this case we must keep away feelings of hatred and love as well as lust because humans tend to follow their desires.

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The mechanism for applying compensation is also regulated in Article 275 of the Criminal Code which states: "If more than one person is convicted in one case, then the court costs and/or compensation as referred to in Article 274 shall be borne by them jointly in equal proportions". The explanation is explained as follows:

[13] Achmad Rifai, *Kesalahan Hakim Dalam Penerapan Hukum Pada Putusan Menciderai Keadilan Masyarakat,* Cetakan Pertama, (Makasar: CV. Nas Media Pustaka, 2020), hlm. 7
[14] Ibid.,

Because the defendants in the case referred to in this article are jointly sentenced because they are accused of committing a crime in one case, it is reasonable if the court costs and/or compensation are borne jointly in equal proportions.

The application of Article 275 of the Criminal Procedure Code is different from conditional sentences (voorwaardelijke veroordeling). The context of Article 275 of the Criminal Procedure Code correlates with Article 274 of the Criminal Procedure Code and Article 99 of the Criminal Procedure Code which regulates the procedure for demanding compensation from perpetrators of criminal acts by filing a lawsuit whose trial is combined with the trial of the criminal case, and the mechanism for executing compensation will later refer to the procedure for executing a civil decision.

The perpetrator's assets that are used to compensate the victim for losses can be in the form of assets that have been confiscated, which is based on the provisions of Article 46 paragraph (2) of the Criminal Procedure Code, namely:

If the case has been decided, then the objects subject to confiscation are returned to the person or to those mentioned in the decision, unless according to the judge's decision the objects are confiscated for the state, to be destroyed or to be damaged until they can no longer be used or, if the objects are still needed as evidence in another case.

Viewed from the concept of protection of victims of criminal acts, the Criminal Code and Criminal Procedure Code have represented it, where the concept of Protection of victims of crime is divided into two models, namely: a). The model of protection of procedural rights (The procedural rights model), and b). The protection model in the form of providing services (The Services Model) to victims. The procedural rights model is to provide an opportunity for victims to play an active role in the process of resolving criminal cases by prosecutors, victims are asked for consideration and input in making criminal charges, assist prosecutors in every examination including the right to be consulted before being given conditional release, as well as the right to make peace. While the protection model in the form of providing services, for example, victims are given compensation as a criminal sanction that is restitutive or given compensation for losses arising from being hit by a criminal act. In this case, victims are considered to have to be served in law enforcement activities or the resolution of criminal cases.

4. Conclusion

Regarding Legal Justice in Restitution of Victims of Criminal Acts, further provisions regarding the procedure for carrying out conditional sentences (voorwaardelijke veroordeling) are regulated in Article 276 of the Criminal Procedure Code which states: "In the event that the court imposes a conditional sentence, its implementation shall be carried out with serious supervision and observation and in accordance with the provisions of the Law." According to Muladi, conditional sentences (voorwaardelijke veroordeling) are a form of humane criminal law, namely by prioritizing prevention, not only oriented towards actions but also towards people who commit crimes, which are tat-tatterstrafrecht, placing social welfare as the ultimate goal, oriented towards the future. The mechanism for applying compensation is also regulated

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