



THE DEVELOPMENT OF A “SANTUNAN” ASSISTANCE MODEL FOR VICTIMS OF CRIME BASED ON JUSTICE

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Abstract. The current condition of victims of crime is that they do not have equal opportunities to obtain restitution and compensation, so there is a need for a model to develop the concept of “santunan” assistance for victims of crimes based on justice. This study uses a sociological juridical method, so that data is not only obtained from literature studies but also from observations and interviews with research informants in the field. The data were processed using data reduction and categorization techniques, then tested by source triangulation, and then analyzed by the content analysis method. The results of this study indicate that there are three main points to consider when developing a model of “santunan” assistance for victims of justice-based crimes: the first is the existence of juridical limits on “santunan” assistance regarding the recipient, the form and designation, the value, and the provider. Second, as long as “santunan” assistance is given in good faith with full awareness of the perpetrator and the victim accepts it without coercion, the implication is that “santunan” assistance does not stop the case but can be considered by the judge as a reason to reduce criminal sanctions for the perpetrator. Third, it is necessary to develop sources of “santunan” assistance funds in the form of victim assistance funds managed by the LPSK.

Keywords: Model, Santunan, Crime Victim, Justice

1. Introduction

Even though there are many regulations that regulate restitution, but restitution is not easy to implement. It is improbable that victims will seek compensation based on the lack of public awareness, and it is also unlikely that law enforcement personnel will tell victims of their legal rights to restitution, much alone provide support in doing so. If the restitution has been successfully proposed, decided, and given to the victim but it takes a very long time. The amount of restitution given to the victims is also far from ideal if we take a look at the formula for restitution that can be proposed.[4] In fact, the perpetrators prefer to serve prison sentences because they claim they are unable to pay restitution. In this case, the legal protection of victims is limited.[5] Victims who do not receive restitution from the perpetrators, of course, really need compensation from the state. However, even compensation cannot be a solution to the problem of restitution, because it is only limited to victims of terrorism and serious human rights violations. This condition certainly brings injustice to the victim.

Apart from going through restitution or compensation mechanisms, victims can basically obtain compensation through diversion and restorative justice mechanisms. Victims here have



a bargaining position in the success of diversion and restorative justice. But diversion can only be implemented if the victims are child. Apart from that, there is a possibility of failure if the victims do not agree and still want the child offender to be sanctioned.[6] This also happens in restorative justice where it is not always successful and on the other hand based on Police Regulations not all criminal cases can be resolved with restorative justice, namely cases of state security, corruption and crimes against people's lives.[7]

The majority of people are generally more familiar with compassionate assistance, even it can be a form of compensation or assistance whose benefits can be directly felt by the victims. Compassionate assistance has been rooted in the lives of Indonesian people. Compassionate assistance is similar with a sense of empathy for other members of the society affected by the disaster. Crime in this case is a form of disaster because it has brought suffering to the victim, because of that, victims deserve to receive a compassionate assistance.

Compassionate assistance is not only a symbol of humanity and community cooperation in lightening the victim's burden, but also a form of good faith from the perpetrator as a moral responsibility. Even some central and regional governments in certain cases also provide compassionate assistance for community members who are victims. Even though it is less binding in nature, it tends to be received more quickly by victims than restitution or compensation that must wait for a court decision.

It becomes a legal problem where currently there is no standard definition and form of compassionate assistance. Compassionate assistance that is developing in the community is still non-binding and free of charge, so it can be in the form of assistance with living expenses, compensation, medical and psychological treatment costs, funeral money, funeral expenses and others. However, compassionate assistance can be an alternative in dealing with the problem of restitution. Based on this, it is necessary to have a model for developing the concept of compassionate assistance for justice-based crime victims.

Compassionate assistance has the same goal as restitution and compensation, which is to reduce the suffering of victims, but restitution and compensation have been regulated in various regulations so that they have clear boundaries and therefore both bring more legal certainty. But on the other hand it has not brought justice to the victims. Compensation in this case can be an alternative, therefore the problem to be explored is "How is Compassionate Assistance Model for Victims of Crime Based on Justice". Research will construct the right model, which not only provides clear boundaries between compensation and other compensation systems but also brings justice to victims of crimes.

2. Methods

This research method is sociological-juridical with descriptive research specifications, with the aim of providing a thorough and clear picture of the problem being studied. The research locations were at the Purwokerto District Court, Banyumas District Court, Banyumas District Attorney, Purwokerto District Attorney, Cilacap District Attorney, and the Witness and Victim Protection Agency (LPSK). Data that has been collected from interviews and observations was processed through data reduction, data display, and data categorization. The data was then analyzed using a qualitative method with content analysis.

3. Discussion (The Development of a Compassionate Assistance Model for Victims of Crime Based on Justice)

"Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their

fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

Angkasa explained Referring to the development of international regulations and Victimology as the science of victims which in its development there is general victimology and new victimology, victims are not only victims of criminal acts but also victims of violations of human rights (HAM), accidents, abuse of power, natural disasters, victims from society and others. It is not excessive, of course, if all types of victims deserve the same rights in obtaining compassionate assistance.

Until now there is no normative definition of compassionate assistance, but the scope of compassionate assistance can be seen from the Big Indonesian Dictionary (KBBI) which defines compassionate assistance as (1) compassionate assistance money for accidents, deaths and others: earthquake victims' families receive - from the local government; (2) assistance: - orphan. Referring to this definition, compassionate assistance has a broad meaning, not limited to compassionate assistance, but can also be in the form of money for grief, assistance, and others. Compassionate assistance can not only be given by the perpetrators, but also the government and various elements of society. While Moeljatno, emphasizes that compassionate assistance implies an improvement in the relationship between the perpetrator and the victim.[8]

There was a legal breakthrough in which compassionate assistance was given to traffic accident victims, this was regulated in Law Number 22 of 2009 concerning Road Traffic and Transportation, Law Number 34 of 1964 Jo. Article 11 PP No. 18 of 1965 concerning Jasa Raharja. The victim has the right to receive compassionate assistance from the perpetrator, or assistance from a party that can be held responsible for the accident, on the other hand compassionate assistance can also be provided by the insurance company. The amount of compassionate assistance from Jasa Raharja can be seen in the table below.

Table 1. Amount of Compensation Fund Value PT. Jasa Raharja [9]

No	Injury	Law No. 33/1964 Pmk	Law No. 34/1964 Pmk.
		No.37/2008	No.36/2008
		Land & sea	Air
1	Pass Away	Rp. 25.000.000	Rp. 50.000.000
2	Wound	Rp. 10.000.000	Rp. 25.000.000
3	Permanent disability	Rp. 25.000.000	Rp. 25.000.000
4	Grave fee	Rp. 2.000.000	Rp. 2.000.000

In its development, the amount of compassionate assistance above has changed and currently what applies is the Regulation of the Minister of Finance of the Republic of Indonesia No.15&16/PMK.010/2017. It becomes a problem where regulations related to road traffic and transportation, as well as Jasa Raharja, do not regulate the definition and form of compassionate assistance, but only determine the maximum amount of compassionate assistance that can be given based on the level of injury. Even victims of permanent disability due to land, air or sea accidents based on the 2017 Minister of Finance Regulation only get a maximum compassionate assistance of IDR 50,000,000 (fifty million rupiah), this amount certainly cannot cover medical expenses in the long term.

Since the issuance of Government Regulation Number 35 of 2020, families of victims of terrorism who have died as a result of criminal acts of terrorism at home or abroad are entitled to compassionate assistance. This provision in addition to providing legitimacy for giving compassionate assistance as well as limiting its form, namely only in the form of funeral money. In its implementation, compassionate assistance is also provided by the heirs of victims of gross human rights violations through the Witness and Victim Protection Agency (LPSK). This can be seen in the table below:

Table 2. Compassionate Assistance Victims of terrorism and serious human rights violation

No	Recipients of Spiritual Compassionate Assistance	Amount
1	11 heirs of Terrorism Victims in six cases, with 14 victims dying (each IDR 15,000,000)	Rp. 210.000.000,00
2	22 heirs of victims of Serious Human Rights Violations (Rp 2,000,000 each)	Rp. 44.000.000,00.

Data source: Yearly Report LPSK 2021

Providing compassionate assistance to the families of victims of gross human rights violations on the one hand is a progressive step, but on the other hand there are no regulations governing compassionate assistance for victims of gross human rights violations. The response of research informants from LPSK elements on this matter is that "In addition to victims of terrorism, in terms of protection, efforts have been made to obtain spiritual compassionate assistance, but the context is not compassionate assistance but medical assistance because based on the explanation of Article 6 Paragraph (1) a of Law No. 31 of 2014 that includes medical assistance is the management of bodies up to funerals. This actually shows an inconsistency, where families of terrorism are given the right to medical assistance and compassionate assistance, but other victims, including victims of gross human rights violations, have no basis for the right to compassionate assistance, but the reason for the right to compassionate assistance can be obtained through the right to medical assistance. What is even more ironic is that based on Table 2 above, it reflects that the decision from the Ministry of Finance was very one-sided in which the families of victims of terrorism were given compensation of Rp. 15,000,000, - (fifteen million rupiah) while heavy HAM is only Rp. 2,000,000.- (two million rupiah)..

Both research informants from prosecutors and judges held the view that "an appropriate model is needed to accommodate compassionate assistance for victims, considering that not all accidents are caused by the victim's fault but can be caused by fallen trees, entangled in cables on the road, to damaged road conditions". However, victims of single accidents do not receive compassionate assistance from Jasa Raharja even if they are caused by these conditions. Things like this then encourage different responses from each local government, for example the DKI Jakarta Provincial Government issued a Governor Regulation in 2014 which budgeted compensation for residents who were victims of fallen trees. Of course, this policy is not always the same as other regional governments because it depends on the direction of policy and the financial capacity of each institution, even if the victims have the same level of injury. As previously mentioned, compassionate assistance has the potential to be an alternative compensation which has weaknesses in terms of legal substance and restitution has weaknesses



in terms of its implementation. But there are still problems, therefore the concept of compassionate assistance needs to be reconstructed. The following is a recommendation for the model for developing the concept of compassionate assistance for victims of justice-based crimes. There are juridical limits on compassionate assistance regarding the recipient of compassionate assistance, the form and designation of compassionate assistance, the provider of compassionate assistance, the value of compassionate assistance.

The character of compassionate assistance that develops in society is that there are no restrictions on the types of victims of crime, so that victims who deserve compassionate assistance depend heavily on the perspective of the compassionate assistance provider. This concept needs to be maintained because it brings more justice to victims by providing equal opportunities. The justice-based compassionate assistance model developed here is not based on the type of victim but on the level of loss of the victim, so that the assessment of compassionate assistance is more on the degree of loss and the needs of the victim.

Regarding the form and allocation of compassionate assistance when referring to Government Regulation Number 35 of 2020, the form is limited to only in the form of condolence money for the families of victims of terrorism who have died, it is different from traffic accidents, although both are in the form of money but are intended according to the degree of injury of the victim, including first aid costs, ambulance and funeral. Including victims of natural disasters, where there is disaster assistance for victims in the form of compensation for funeral expenses and/or funeral money, and disability compensation for disaster victims who experience mental or physical disabilities, this is as stipulated in Regulation of the Head of the Disaster Management Agency Number 8 2008 and Regulation of the Head of the Disaster Management Agency Number 15 of 2010. Regional governments also tend to provide compensation in the form of money, but its designation is not limited to funeral money, but assistance to reduce the suffering of victims or their heirs. While the character of compensation that develops in society is not limited in form but in the majority it is in the form of money and its allocation is adjusted to the needs of the victim.

Based on the description above, the recommendation for the right form of compensation for crime victims is money. This is to provide a boundary between compensation and medical and psycho-social assistance, so that there is no overlapping of compensation concepts with others. While the recommendations for the purpose of the designation are not limited to just being a funeral money, but are adjusted to the needs and interests of the victims.

Regarding the compassionate assistance giver, it is better not to be limited, meaning that anyone can give compassionate assistance. Based on the view of one of the research informants from the prosecutor element at the Cilacap District Prosecutor's Office that "The ideal model in providing compassionate assistance to victims of crime is that it can be given by the perpetrator, but if there is negligence from the state, the state should provide compensation to victims of crime as a state responsibility.". However, according to the researchers, if the central and regional governments or related agencies have the authority, capacity and obligation to provide compensation, then the policy on the amount of compensation should be adjusted to the needs of the victims. For example, Jasa Raharja can only provide a maximum compensation of fifty million rupiahs to a victim of permanent disability due to a traffic accident. Of course, this value cannot cover the cost of medical care and long-term living costs. This includes policies related



to compensation for victims of fallen trees and others. It is important that medical assistance is not included in the compensation section, meaning that medical assistance is a separate part of the compensation considering that medical assistance must be adjusted to the progress of the victim's recovery, the time period and amount of costs cannot be determined at the outset, while compensation is part of the support system for victims.

As illustrated, medical assistance for victims of traffic accidents or natural disasters with minor injuries. While compassionate assistance can be allocated for transportation fees, daily needs while victims are undergoing medical treatment or psychological rehabilitation. Because of that this need to be avoided compassionate assistance with a sales model where money is given, the business with the victim has been completed. Compassionate assistance in this case must be synergized with the concept of medical assistance, psychological and social rehabilitation, restitution and others.

It is different if the perpetrator is the giver. There needs to be strict conceptual boundaries with restitution where restitution is part of the victim's demands and is decided by the court. Therefore the model that needs to be developed is that compassionate assistance is oriented towards the good faith of the perpetrator to help and ease the burden on the victim and can be given directly to the victim without going through the mechanisms of the criminal justice system. The amount of compassionate assistance depends on the good faith and financial ability of the offender. If the victim is dissatisfied with the compassionate assistance given by the perpetrator, he can submit a restitution, or if it is a case that can be resolved with restorative justice, a claim for compassionate assistance can be requested through this mechanism. This is in line with the view of the Prosecutor from the Cilacap Prosecutor's Office that compassionate assistance is better if it is sincere so that it is not escalating and the criminal case will continue.

As a culture that develops in society where various elements of society can also provide compassionate assistance, both from the victim's social environment or from the victim's work environment. As an example, it can be illustrated by the "funeral money box" that is in the funeral home when someone dies, not only is a mere symbol of grief but has a humanitarian meaning from fellow members of the community who want to help reduce the grief and suffering of the victim's heirs. Including the existence of various social benefits in community organizations that are intended to visit and be given to members who are being hit by a disaster, including when members become victims of crime. Even someone personally gives compassionate assistance as a form of concern as a fellow human being. Such a model needs to be maintained, so that when the community is the giver, there is no need to limit the allocation of compassionate assistance or the amount of compassionate assistance, this is returned to the good faith and financial ability of the community.

3.1 There are limitations to the implications of compassionate assistance for criminal cases

There needs to be a limitation regarding the implications of giving compassionate assistance from the perpetrators of crimes against their criminal cases. The results of the interviews with the Advocates gave the view that "In general, the community is more familiar with compassionate assistance than restitution, but in its implementation compassionate assistance has the potential to cause misunderstandings on the part of the perpetrators where they think that the criminal case will not continue because they have provided compassionate assistance".



This was also reinforced by the views of the Prosecutor from the Banyumas Prosecutor's Office in relation to the continuation of the case. In response to this, the results of the study show that several prosecutors, judges and advocates are of the view that compassionate assistance does not stop cases but at least can be a legal consideration for judges in reducing the sentences handed down.

Therefore, the concept that needs to be developed is that as long as compassionate assistance is in good faith and full awareness of the perpetrator and the victim accepts it without coercion, then compassionate assistance does not stop the case but can be considered by the judge as a reason that mitigates the perpetrator's sentence. This model will be different from restitution where restitution is part of the victim's demands which are decided or determined by the court, even based on the 2023 Criminal Code, restitution becomes an additional criminal sanction. (this model will be different from restitution where restitution is a part of the victim's demands which are decided or determined by the court, even based on the 2023 Criminal Code, restitution becomes an additional criminal sanction)

3.2 Development of Compassionate Assistance Fund Source

It is a great hope that all parties can contribute to reducing the suffering of victims. According to a research informant from the LPSK, "for example, in Wonogori there are villages that use village funds to facilitate victims of occupational abuse, this shows that the village cares for the victims". However, on the other hand, there are consequences if compassionate assistance is applied to all types of crime victims, which has implications for the financial capacity of the compassionate assistance giver, especially the government or related agencies that have the authority, capacity and obligation to provide compassionate assistance. Moreover, the model for the amount of compassionate assistance that is recommended is adjusted to the needs of the victim. In response to this, sources of compassionate assistance funds need to be developed.

Government Regulation Number 35 of 2020 regulates that compensation for victims of terrorism can come from:

- a. State Revenue and Expenditure Budget (APBN);
- b. Regional Revenue and Expenditure Budget (APBD); and/or
- c. other sources of funding that are legal and non-binding in accordance with the provisions of laws and regulations.

It seems that the development of sources of compassionate assistance funds can refer to the latest provisions regarding other sources of funding, so that they do not depend on the APBN and APBD. In this case it may refer to several other countries. New Zealand has an independent organization called Manaaki Tangata Victim Support which is an independent organization that provides free assistance including financial assistance to victims of serious crimes and trauma.[10] Manaaki Tangata Victim Support is a place for people who want to donate to victims of serious crimes. At the time of the Christchurch shooting incident against worshippers at the Al Noor mosque, Manaaki Tangata Victim Support played a role in collecting donations and distributing them to victims.[10] Singapore also has a Victim Assistance Scheme (VAS) for crime victims which was established in 2017 which aims to ease the victim's financial burden. This program is a collaboration between the Community Justice Center (CJC) and the



Singapore Police Force (SPF) to ease the financial burden on victims who do not receive compassionate assistance from convicts.[11]

Such a model is reinforced by the opinion of research informants from LPSK who are of the view that "as long as the state is capable it is expected that compassionate assistance is not limited to victims who died and is the responsibility of all parties, so that the victim assistance fund policy can be an alternative". Victim assistance funds can come from anywhere, including from the community. Research informants from the Purwokerto State Prosecutor's Office are of the view that victims' aid funds can come from the proceeds of crimes that do not harm the state and are auctioned, the proceeds of which are for the victims' needs. It further decreased that "if the funds are devoted to victims who are most relevant to managing LPSK." Therefore, according to researchers, LPSK in this case can be the manager of victim assistance funds.

4. Conclusion

There are three main points in the development of a model of compassionate assistance for victims of justice-based crimes, the first is the existence of juridical limits on compassionate assistance regarding the recipient of compassionate assistance, the form and purpose of compassionate assistance, the value of compassionate assistance and the provider of compassionate assistance. With regard to recipients of compassionate assistance that compassionate assistance is not limited to the type of crime victim, while the model is in the form of money this is to provide a boundary between compassionate assistance with medical and psycho-social assistance, but its designation is not limited to just money for mourning but is adapted to the needs and interests of the victim. Regarding the compassionate assistance giver, it is not limited so that anyone can give compassionate assistance. However, if the central and regional governments or related agencies have the capacity and obligation to provide compassionate assistance, the policy on the amount of compassionate assistance should be adjusted to the needs of the victim, whereas if the perpetrator is the provider, it must be based on the good faith of the perpetrator to ease the victim's burden so that it is different from restitution. based on the victim's claim. When the community is the giver, there is no need to limit the allocation of compassionate assistance or the amount of compassionate assistance, this is returned to the human side and the financial capacity of the community. Second, as long as the compassionate assistance is in good faith and the full awareness of the perpetrator and the victim accepts it without coercion, the implication is that compassionate assistance does not stop the case but can be considered by the judge as a reason that mitigates the criminal sanction that will be imposed on the perpetrator. Third, it is necessary to develop sources of compassionate assistance funds in the form of victim assistance funds managed by the LPSK

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