

Barriers to Law Enforcement Responsive to the Interests of Victims: A Study on the Practice of Justice for Violent Crimes in the Jurisdiction of Class IA Kupang District Court

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Abstract

The aim is to identify the barriers to the enforcement of laws against violent crimes that are responsive to the interests of victims of violent crimes. This research method falls within the specification of empirical legal research/ sociological-juridical studies because it is viewed from the perspective of the legal function to protect societal interests. For primary data collection, field research (field interview) was conducted, using a questionnaire as an interview guide, and document study was carried out using a document form as a tool. The collected data were processed procedurally following the processing steps: editing, coding, and tabulation. They were then analyzed qualitatively and further elaborated descriptively. The research results have identified the barriers to the enforcement of laws that are responsive to the interests of victims of violent crimes: the factor of criminal sanctions for violent crimes that do not accommodate the interests of victims of violence; the factor of victims' inability to participate in claiming compensation; the factor of law enforcement bias towards legal certainty aspects, disregarding actions for victim recovery; and the factor of the defendant's economic incapacity to compensate the victim.

Keywords: *Law Enforcement, Crimes, Kupang.*

Introduction

Law enforcement is essentially a rational and systematic effort to uphold and enforce the credibility of the law by elaborating on the essential values contained within the law itself. The consistent application of criminal law provisions to every violation of the law will create a safe, orderly, and peaceful order in society. Deno Kamelus also expressed a similar sentiment, stating that effectively implemented law can change problematic behavior (Kamelus, 2003). Changing problematic behavior in this context does not just mean resolving legal violations and nurturing/improving the behavior of the offender, but also repairing damage or restoring the condition of the victim as a result of the crime.

In connection with the above, the essential values to be elaborated through law enforcement are none other than the values of legal certainty, utility, and justice. Concerning the essential values of law, Sudikno Mertokusumo explicitly stated that law enforcement must consider the elements of legal certainty, utility, and justice (Soemarsono, 1996). By elaborating on these three values or elements of legal purpose, an effort in law enforcement can be responsive to the interests of victims because both public (community/state) and individual (perpetrator and victim) interests must be responded to/served at the right time.

The reality shows that the effectiveness of law enforcement is not only measured by the mere application of criminal sanctions against perpetrators proven guilty of their actions but also by the consistent and responsible elaboration of the essential values of law (certainty, utility, and justice). This also means that law enforcement is not yet responsive to the interests of victims who are the targets of crime. Responsive law enforcement is not only seen in the consistency and seriousness of law enforcement in protecting public interests but also includes efforts to consider, protect, and serve the rights/interests of crime victims.

The need for law enforcement efforts that are responsive to the interests of victims in the criminal justice process is not only to fulfill the demands of the victim's sense of justice but also from the perspective of human rights, no one should be arbitrarily harmed, in which case victims are the most affected parties of

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the crime incident, so it is reasonable for them to be responded to/protected/served proportionally. In this regard, Sahetapy (1987) stated that it is still a statement that often it is difficult to imagine the existence of a victim without a crime or a form of corporation or authority; in an abstract perception or mental abstraction, victims cannot possibly be alone in a vacuum of action.

Law enforcement officials in carrying out criminal justice processes only act to apply the law, both substantive criminal law and formal criminal law, with a greater emphasis on elaborating on the value of legal certainty, while the values of utility and justice receive less attention. This is based on the fact that during the examination of violent criminal cases starting from the level of legal investigation, efforts are only made to prove: whether there was an act of violence, who the perpetrator was, whether the perpetrator can be held responsible, and then imposing punishment on the perpetrator proven guilty. Meanwhile, victims of violence are forgotten/left to suffer, with their suffering difficult to predict when it will end.

Methodology

This research is included in empirical legal research/sociological-legal studies because it focuses on the function of law in protecting society, with an emphasis on the workings of law enforcement. The research was conducted in the jurisdiction of the Class IA District Court in Kupang (Police, Prosecutor's Office, and District Court) as well as perpetrators and victims of violent crimes. The data used in this study were primary data collected using a questionnaire as a guide for interviews, supplemented by a document study using a document form as a tool. Secondary data were collected through library research to gather primary, secondary, and tertiary legal materials. The approach used was conceptual and legislative. The collected data underwent processing steps as follows: editing, coding, and tabulation. Subsequently, they were analyzed using qualitative analysis methods and then described descriptively.

Result and Discussion

Barriers to Law Enforcement Practices that are Responsive to the Interests of Victims of Violence

It is a fact that victims of violent crimes must bear alone the burden of suffering and losses resulting from the violence, both directly and indirectly. Indeed, the losses caused by violent crimes can take various forms: physical, psychological/mental, material/financial, and social losses. All of these become the struggle of the victims and their families without any hope of others' concern to help them, even law enforcement officials are unable to assist the victims.

Criminal justice practices, with their working systems, position law enforcement officials according to their functions and roles by investigating and prosecuting a case, and transferring and prosecuting the perpetrator in court. They then examine and decide on the case by punishing the perpetrator proven guilty of their actions based on applicable criminal law provisions. Even though a judicial process may end with a conviction of the perpetrator, the interests of the victim remain unaccommodated for attention, protection, and fair and proportionate service, just as for a legal subject seeking justice. Research results indicate that the failure to respond to victims' interests through criminal justice practices for violent crimes is greatly influenced by the following inhibiting factors.

Factors of Criminal Sanctions that Do Not Accommodate the Interests of Victims of Violence

Criminal law, as a set of norms comprising commands and prohibitions accompanied by strict sanctions for anyone who violates them, fundamentally aims to achieve order, security, and peace within society. To achieve this goal, criminal sanctions are chosen to be applied to every perpetrator of criminal violations, including perpetrators of violent crimes.

The mainstay of achieving security, order, and peace goals is formulated explicitly in Article 10 of the Criminal Code as follows. Sanctions consist of: a) Primary sanctions, which include death penalty, imprisonment, detention, fine, and forfeiture of assets (Law Number 20 of 1946, dated October 31, 1946); b) Additional sanctions, which include revocation of certain rights, confiscation of certain assets, and public

announcement of the judge's decision.

Table 1. Informant Responses Regarding the Focus of Attention in Examining Cases of Violent Crimes (n=20)

No	The Emphasis of Attention Given by Law Enforcers	f	Percentage (%)
1	Protecting the public interest by consistently applying criminal law provisions	17	85
2	In addition to the public interest, the interests of victims also receive attention in the application of criminal law provisions	3	15
Total		20	100

Source: processed from primary data

With the affirmation of the above criminal sanctions, it follows that for every violation of the law, including violent crimes, only the criminal sanctions as stipulated in each formulation of the offense in the law itself will be applied. For clarity, the types formulated in the law (Criminal Code) regarding violent offenses need to be highlighted.

The limitation of the types of criminal sanctions formulated in the above-mentioned types of violent crimes has consequences in its application, in that judges cannot impose criminal sanctions other than those stipulated in each formulation of the offense against perpetrators of violent crimes proven guilty of their actions. This is further emphasized by jurisprudence as one of the formal sources of criminal law, as found in several rulings of the Supreme Court as follows:

- Supreme Court Decision No. 59 K/Kr/1969 dated March 11, 1970, stating: Adding types of punishment established in Article 10 of the Criminal Code is not permissible.
- Supreme Court Decision No. 11 K/Kr/1972 dated May 10, 1972, stating: In criminal cases, the court cannot impose a punishment that includes: sentencing the defendant to leave the disputed land.
- Supreme Court Decision No. 119 K/Kr/1972 dated July 17, 1974, stating: The order of the Prosecutor to demolish the above-mentioned building is annulled because the judge is not authorized to impose a punishment/decision other than that specified in Article 10 of the Criminal Code.
- Supreme Court Decision No. 16 K/Kr/1974 dated August 13, 1974, stating: Additional punishment imposed by the District Court: "Regarding the punishment for the accused to leave the cultivated forest to be reforested" and "Imposing again on the accused to pay damages to the state, respectively 1/29 x Rp.1,485,700", must be canceled because it is contrary to Article 10 of the Criminal Code.
- Supreme Court Decision No. 54 K/Kr/1972 dated June 6, 1970, stating: Criminal judges are not authorized to determine compensation.6. Supreme Court Decision No. 74 K/Kr/1972 dated September 26, 1970, stating: The District Court as a criminal judge is not authorized to impose a decision other than that specified in Article 10 of the Criminal Code, such as the decision in dictum 3, which is to sentence the accused to leave the land/fields in dispute named Djam/Sawal Lankerbo to be used by the complaining witness.

The affirmation by jurisprudence regarding the lack of authority of criminal judges to choose and apply types of sanctions other than the criminal sanctions explicitly formulated in Article 10 of the Criminal Code clarifies that the legal sanction system indeed does not accommodate and respond to the interests of victims of violent crimes. This also provides an understanding that the enforcement of criminal law against incidents of violent crimes is more oriented towards the public or societal interests than the individual

interests of the victims who are the targets of such crimes.

If further examined in criminal law provisions, there still appear to be regulations regarding the rights of victims of violent crimes to receive compensation from the perpetrators. However, these rules are relative in their implementation, meaning they are not absolute in every violence case, because both in substantive criminal law rules (Criminal Code), their implementation depends on the judge's considerations (discretion), and in formal criminal law rules (Criminal Procedure Code), their implementation depends on the victim's knowledge and ability. The rules regarding victims' rights to compensation from perpetrators of violent crimes are found in the following provisions:

Article 14a paragraph (1) Jo. Article 14c paragraph (1) of the Criminal Code, which essentially stipulates the following:

If the sentence is imprisonment for less than one year, then the judge may order that the sentence not be executed for a certain probationary period specified in the order.

In that order, the judge may impose conditions that must be fulfilled by the convict during that probationary period, namely:

General condition that the convict will not commit a crime during the probationary period.

Special condition that the convict will fully or partially compensate for the losses caused by their actions within a shorter period than the probationary period.

If the convict fails to meet the specified conditions, the judge orders the convict to serve the sentence while awaiting prosecution for their violation later on.

This provision indeed provides hope for victims to obtain compensation for their losses, but its implementation largely depends on the judge's discretion in adjudicating, as the authority lies entirely in the hands of the judge. This can be seen in cases one and five above, where in the application of conditional sentencing, the judge did not impose the special condition of compensation for the victim.

Articles 98 to 101 of the Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana), which essentially stipulate the following :

Other persons who have suffered losses (victims) as a result of the act that forms the basis of the indictment (criminal act) in the examination of criminal cases by the court, may file a request to combine their claim for compensation with the relevant criminal case.

The request must be submitted no later than before the prosecutor files the criminal charges, or before the judge issues a decision in the summary examination, and if it is late, the right to claim compensation is forfeited.

The judge may grant the request after considering its jurisdiction to adjudicate, the truth of the claim, and the amount of compensation (costs) incurred by the injured party (victim).

The judge's decision only contains the determination of compensation for costs incurred (material losses) by the injured party (victim) alone and will be final and binding following the decision in the criminal case.

Regarding execution regarding the determination of compensation, it is subject to civil procedural law rules.

These provisions essentially make it easier for victims to obtain compensation from perpetrators of violent crimes because it saves time and litigation costs. However, its implementation is largely determined by the victim's knowledge and skills (ability) to exercise their rights appropriately according to the applicable criminal procedure and civil procedure laws.

Even if the victim can exercise their right to claim compensation from the perpetrator through the consolidation of cases, only material losses can be compensated, while immaterial losses must still be pursued (fought for) for a second time through civil litigation procedures, usually before a civil judge.

If the policy regarding the regulation of the rights of victims of violence to receive compensation in the criminal law provisions, both substantive criminal law (Criminal Code) and procedural criminal law (Criminal Procedure Code), is further examined, the weaknesses can be revealed as follows:

- Conditional sentencing in Article 14a paragraph (1) Jo. Article 14c paragraph (1) of the Criminal Code is not a type of punishment, but rather a way of implementing punishment that can be ordered by the judge for imprisonment under one year with certain conditions.
- The application of these conditions is not a requirement or obligation for the judge as stipulated in the law, but merely a discretion to be freely considered according to their beliefs.
- If the convict intentionally or negligently fails to meet the conditions during the probation period (both general conditions: will not commit a crime again, and special conditions: compensate the victim for losses due to the crime), the only consequence is the cancellation of conditional sentencing, without any forced action to fulfill the terms of the agreement.
- Victims of crime who wait with resignation for the judge's compassion and the convict's conditional sentencing for the recovery or alleviation of their losses due to the crime, without any power or authority to act according to the judge.
- The deadline for filing a request to combine the compensation claim case with the criminal case according to Articles 98 to 101 of the Criminal Procedure Code is absolute, so if it is late, the victim's claim is automatically forfeited.
- The judge's decision regarding the civil aspect of compensation is only a determination of the reimbursement of costs that have been incurred by the victim due to the crime (only material losses), without considering the victim's immaterial losses.
- If the decision in the criminal case becomes legally binding, then the determination regarding compensation also becomes legally binding, so if no appeal is filed against the criminal case, an appeal regarding compensation is not allowed, and as a consequence, the victim may suffer in their dissatisfaction.
- Immaterial losses suffered by the victim can only be claimed through regular civil litigation procedures, which can be relatively time-consuming and expensive. Thus, for the victim, it is as if they are going through two trials, which fundamentally contradicts the principle of simple, fast, and cost-effective justice.

The Factors of Law Enforcement Bias Towards Legal Certainty

Criminal justice practice is essentially a series of systematic and gradual actions to operationalize criminal law by law enforcement officials (police, prosecutors, and judges), according to their authority under the law. The action of operationalizing criminal law is nothing but an effort to be harmoniously elaborated. The basic aspects of criminal law itself are the aspects of certainty, utility, and justice to be applied to every concrete event (case) that occurs. Thus, law enforcement officials in operationalizing criminal law must have the same commitment to realizing the enforcement of the aspects of legal certainty, utility, and fairness for the protection of public interests and individual interests proportionally/balanced.

Focusing solely on one aspect of legal certainty creates the view among law enforcement officials that justice has been upheld if the provisions of criminal law (Criminal Code and Criminal Procedure Code) have been

implemented, regardless of whether public interests are protected and the rights of individuals (victims) are served fairly. To demonstrate law enforcement's bias towards the aspect of legal certainty in the practice of adjudicating cases of violent crimes, the following field facts will be presented for each stage of the case examination process:

Examination of Violent Crime Cases at The Investigation Level

The examination of criminal cases at the investigation stage is carried out by investigators based on the applicable criminal procedural law, starting with investigative actions to search for and collect evidence to clarify the criminal act that has occurred to identify the suspect. In the effort to collect evidence about the violence that occurred, the examination of witnesses, suspects, and evidence is solely aimed at uncovering the factual truth about the violence. Another important aspect of the violent incident is the consequences experienced by the victim, but it does not become part of the examination at the investigation stage. This shows that the orientation of an investigation is solely the expression of the truth of the violent incident as a criminal violation, while the detrimental effects on the victim of the legal violation are not the focus of attention in the examination at the investigation stage.

Regarding the investigation of violent criminal cases, a member of the investigative team stated that "usually the police only concentrate on the criminal aspect, so the object of the investigation by the investigator is only to determine whether there is a legal violation by gathering evidence according to the applicable criminal procedural law. In the examination reports of witnesses and suspects, there will be no other equally important things found, such as the victim in the violence, the consequences of violence on the victim, and the perpetrator's attitude and actions toward the victim after the violence.

The police's job is generally to collect as much evidence as possible to explain that a criminal act has occurred, to be forwarded to the prosecutor's office. Even in the event of reconciliation between the victim and the perpetrator of the violent crime, the peace agreement made is still attached to the investigation report to be forwarded to the prosecutor's office. All of this will be considered by prosecutors and judges in the court session" (interview with IPTU POL Sastra Budi Kasat Serse at the Kupang Police Resort, September 30, 2015).

From the above interview results, it is clear that investigators in carrying out their duties are very biased towards the aspect of legal certainty because if not mandated by the law, it will not be carried out even though it is very necessary for the enforcement of law and justice. On the other hand, the law also gives authority to investigators to: "take other actions according to responsible law" (Article 7 paragraph (1) of the Criminal Procedure Code).

If investigators are committed to the interests and individual justice of the victims, then various other actions that can be taken with their authority include things like disclosing the amount of the victim's loss, the impact of violence on the victim's future, the emotional relationship between the victim and the perpetrator at present, the victim's plans regarding the suffered loss, advice and guidance on a way out for the victim to fight for their rights and interests according to the applicable legal procedures, and so on. Investigators who take these actions cannot be said to have violated the law because not only are they not contrary to a legal rule, but they also aim to protect and serve the individual rights of the victims as part of efforts to respect human rights, which are also the object of criminal law protection.

- *Examination of Violent Crime Cases at the Prosecution Level*

The examination of criminal cases at the prosecution stage is carried out through two forms of actions: pre-prosecution actions and prosecution actions. At the pre-prosecution level, the examination is only conducted by examining the completeness of the investigation case file submitted by the investigator, without any scope of examination other than the completeness of the statements of witnesses and suspects in the Investigative Report (BAP) by the investigator which strengthens the factual truth of the violent incident that occurred. Meanwhile, at the prosecution level, the examination is carried out by studying and

analyzing the investigation case file to determine the adequacy of the evidence needed to draft the indictment. The continuation of this prosecution action is carried out by transferring the case and filing a criminal lawsuit in court. It is this last action that is preceded by a direct examination of the defendant, witnesses, and evidence in court.

Considering that the basis of the indictment is the Investigative Report, the examination material at the prosecution level also follows and reaffirms the examination material in the investigation, namely proving the alleged acts and filing criminal charges. Thus, the examination at the prosecution stage also emphasizes the aspect of legal certainty as the main thing, because it is oriented towards the application of criminal law provisions alone. Other things, even though they are necessary according to the standards of appropriateness and justice, if not specified in the law, will not receive attention in the examination at the prosecution level. This has been strengthened by the statement of the Head of the General Crime Section at the Kupang District Attorney's Office, Sukwanto Koho, SH, that "In the examination of violent criminal cases, prosecutors do not think about the victim's loss, only the criminal sanctions aspect under Article 10 of the Criminal Code is considered. However, if there is compensation for the victim's loss by the perpetrator, then it will be considered as a mitigating factor in the punishment." (interview, October 31, 2015).

From the above statement, it is clear that the interests of the victim do not receive attention from law enforcement, even though the victim, with all their weaknesses and concerns, is still required to play a role as a suffering witness in the judicial process with all the consequences of their double sacrifice. This was also acknowledged by Sukwanto Koho, SH, in his further statement that "we are indeed concerned about the suffering and loss experienced by the victim, but our position and authority as public prosecutors are only to demand punishment (criminal) against the defendant, because we are limited by the criminal sanctions in Article 10 of the Criminal Code" (interview, October 13, 2015). Concern from law enforcement alone without any concrete actions beneficial to serving the interests of the victim still represents a bias towards the aspect of legal certainty.

If prosecutors, out of their concern, do something to help the victim, then they can actually play a more concrete role, such as:

Providing guidance/direction to the investigators to complete the Investigative Report (BAP) with content regarding the form and amount of loss suffered by the victim due to the violent crime.

Advising the victim to file a request to merge the compensation claim case with the relevant criminal case.

Influencing the defendant to agree to compensate their victim with a relatively light criminal sentence.

Encouraging relevant parties to help lighten the burden of the victim's loss reasonably according to appropriateness and justice.

Even though these concrete roles are not mandated by law if done sincerely and responsibly, no norm prohibits such actions; on the contrary, they represent a more rational elaboration of the duties and authority of prosecutors as functional law enforcement and justice personnel. This has been reinforced in the provisions of Law Number 5 of 1991, where prosecutors are always required to act based on the law and respect religious, moral, and ethical norms, as well as being obliged to explore the values of humanity, law, and justice that live in society (Article 6 paragraph (4)).

- *Examination of Crime Cases in Court*

The basis of the examination of court cases is the prosecutor's indictment, which has been prepared based on the Investigation Report (BAP) of the investigation level. Thus, the objective of the examination in court is to prove the defendant's guilt for the alleged acts by uncovering the material truth through the examination of witnesses, experts, the defendant, and the submitted evidence. In cases where the

defendant's guilt has been proven conclusively and convincingly, the judge decides by imposing a prison sentence as demanded according to the law. The final result of the examination in court is a judge's statement regarding the proven guilt of the violent offender and the determination of the length of the prison term to be served by the defendant, without the possibility of applying any other sanction outside of Article 10 of the Criminal Code.

From the practice of justice in violent cases, it is clear that judges' bias is towards the legal aspect, by applying a prison sentence as the only relied-upon sanction according to the formulation of the law that has been violated by the defendant. This was acknowledged by one senior judge who stated that "as a judge, our only duty is to enforce the law in adjudicating cases to protect society, including victims as the aggrieved parties" (interview with Yoseph F. E. Fina, SH, October 31, 2015). Regarding the victim's losses due to violent acts, it is acknowledged that they need to be considered, but the law has not regulated it, making it difficult to pursue compensation. Therefore, Fina further expressed that "if there is a provision/emphasis on compensation in the law, it would be better as an effective prevention so that there is no revenge from the victim against the perpetrator" (interview, October 31, 2015). The strong commitment of law enforcement to adhere to the principle of legality in operationalizing criminal law influences law enforcers to always prioritize the aspect of legal certainty, thus only acting as far as mandated by the law.

In Law Number 35 of 1999 on Judicial Power, judges are given the authority to act more responsibly in certain matters, even if there are no rules for a case, judges must provide justice based on unwritten law by exploring, following, and understanding the legal values that live in society (for this, see Article 14, Article 23, and Article 27 of the Law). Based on the authority to explore the law above, in adjudicating cases of violent crimes, judges can play a more concrete role in matters beneficial to the victim, especially for the sake of upholding the law and justice, such as:

Bringing the victim to court at the expense of the court/state, both when giving testimony as a suffering witness and during the reading of the judge's decision as a reasonable form of respect.

Also examining the form/type and amount of loss suffered by the victim due to the violent crime.

Encouraging the defendant, who has been proven guilty, to compensate the victim outside of court in a familial manner with a relatively lenient criminal guarantee.

Considering the adverse effects of violence on the victim's future as one of the factors informing the punishment for the defendant.

Ordering the convicted person to compensate the victim for the losses incurred due to the violent crime as a condition for the application of special/conditional terms in addition to general terms in the implementation of conditional sentencing.

Upholding the aspect of the victim's suffering in the court's consideration of the request to merge the compensation claim with the relevant criminal case.

Directing the victim to sue the convicted person in civil court to compensate for the immaterial (non-material) losses suffered by the victim after the final and binding criminal conviction.

All of these concrete roles that judges can play are not regulated in criminal law, but for the sake of comprehensive protection of all legally protected interests fairly and proportionally, there is also no prohibition if the above roles are carried out responsibly for the sake of law, justice, and human rights.

From the way law enforcement works in the justice process of crime cases, and violence at each stage of examination, it is apparent that the focus of attention is directed towards the consistent application of material criminal law (Criminal Code) and formal criminal law (Criminal Procedure Code). This is further explained by the responses of law enforcement informants regarding the focus of attention on the practice of justice in cases of violent crime in the table below:

Table 2. Informant Responses Regarding the Focus of Attention in Examining Cases of Violent Crimes (n=20)

No	The Emphasis of Attention Given by Law Enforcers	f	Percentage (%)
1	Protecting the public interest by consistently applying criminal law provisions	17	85
2	In addition to the public interest, the interests of victims also receive attention in the application of criminal law provisions	3	15
Total		20	100

Source: processed from primary data

The informant's responses regarding the focus of attention from law enforcers in examining cases of violent crime, where 17 informants (85%) stated that the public interest in being consistent/firm towards proven guilty defendants is a bias towards the aspect of legal certainty alone. Although violent crime is essentially an attack and a threat to the safety of the body, property, and even the lives of the individuals who are victims, the interests of the victims are not the primary concern for receiving legal protection and justice. The reasons why the interests of the victims, especially those related to the aspects of suffering/losses due to violent crime, are not considered/responded to, can be seen in the following table.

Table 3. Reasons for the Non-Response to the Suffering and Losses of Victims in the Judicial Process for Violent Crimes (n=20)

No	Variations in Informant Reasons	f	Percentage (%)
1	The aspect of victim losses is not regulated by criminal law, so it is not the obligation of law enforcers to advocate for their compensation	16	80
2	Victims themselves will demand perpetrators to compensate for their losses if they so desire	4	20
Total		20	100

Source: processed from primary data

From Table 3, it is clear that the majority, namely 16 informants (80%), stated that they do not feel obliged to consider the victim's losses in examining cases of violent crime because it is not directly regulated and instructed by criminal law provisions. Meanwhile, a small number, 4 informants (20%), felt that there was no need to consider the victim's losses because it is the victim's own business to claim compensation from the perpetrator whenever the victim desires. Both reasons complement and reinforce the attitude of neglecting the interests of the victim in obtaining compensation as part of the legal interests that deserve protection. This is a reality of the law enforcement's attitude that considers law enforcement tasks to be complete if all the mandates of criminal law provisions have been implemented and someone proven guilty of violating criminal law provisions is sentenced according to their actions.

Victim's Powerlessness in Participating in the Judicial Process

One of the factors that supports the success of law enforcement tasks is the active participation of the general public, particularly the victims of a crime. The active participation of the community and the crime victims themselves will greatly assist the smooth running of the judicial process as a repressive effort to combat a crime. The form of community participation, especially the victims themselves, in the criminal trial process can vary. It includes the willingness to report or accuse the crime at the right time, being willing to be a demanding witness for the perpetrator to compensate for the losses caused by the crime. With the participation of victims in the trial process, not only can criminal law be enforced by holding the perpetrator accountable for their actions, but also the burden of suffering and losses incurred by the victim due to the crime is likely to receive attention, protection, and recovery.

Conversely, if the victim hesitates or is unwilling to report the non-violent crime that has occurred to them,

the perpetrator will be more inclined to commit actions that lead to an increase in hidden crimes within the community. The victim will also face threats on every occasion. Moreover, if the victim feels it is unnecessary (unwilling) to testify in court without valid reasons, it may be considered as intentionally refusing a legitimate summons/order from the authorities, which can be punishable by law. Regarding the victim's inability to demand that the perpetrator of violence compensate for their losses, it will result in a loss of opportunity to receive attention, compensation, and services for the recovery of all or part of their suffering.

From the research results, especially in cases of violent crimes, it is apparent that victims also participate in reporting/accusing the violence they have experienced to law enforcement and are willing to be witnesses. However, none of the victims demand that the perpetrators compensate for the losses they have suffered. The following table shows the participation of victims of violent crimes in the criminal justice process, both in reporting/accusing and being witnesses, as well as demanding compensation from the defendants of violent crimes during the trial process.

Table 4. Victims' Participation in the Criminal Justice Process Crimes (n=84)

No	Forms of Victim Participation	f	Percentage (%)
1	Reporting/accusing and being witnesses, by:		
	- The victims themselves	68	80,95
	- The victims' family	16	19,05
2	Demanding compensation from the perpetrator/defendant of violent crimes	-	
Total		84	100

Source: Processed Stimulatively from Primary and Secondary Data

From the table above, it is clear that the participation of victims in the criminal justice process for violent crimes has reached its maximum, especially in terms of reporting/accusing and being witnesses. Specifically, 68 individuals (81%) were directly performed by the victims themselves, and 16 individuals (19%) (all murder cases) were performed by their family members to report and act as witnesses. However, the participation of victims in demanding compensation from the defendant of the violent crime is non-existent (0%). The data or information regarding the participation of victims in the process of criminal justice for violent crimes above were obtained from both the examination of case files and judge's decisions, as well as from law enforcement agencies involved in the trial process of the five observed types of violent crimes.

The lack of participation by victims of violence in advocating for their rights to compensation by suing the defendant of the violent crime in the process of merging civil compensation cases with the related criminal cases has contributed to the neglect of victims' interests by law enforcement agencies. The reasons why victims do not participate in demanding compensation from the perpetrator/defendant during the criminal trial process are presented in the following table.

Table 5. Reasons for the Non-participatory Nature of Victims in Seeking Compensation from Perpetrators of Violence in the Criminal Justice Process (n=84)

No	Variations in Victims' Reasons	F	Percentage (%)
1	Unawareness of the right to claim compensation and inability to afford legal fees	59	70,23
2	Belief that the perpetrator/defendant will not pay	25	29,27
Total		84	100

Source: processed from primary data

The majority of the victims claimed that they were unaware of their right to demand compensation as regulated by law and did not have the financial means to afford a lawyer to assist them, which was why they did not file for compensation through the criminal justice system, totaling 59 individuals (70.23%). The remaining 25 individuals (29.77%) doubted the ability of the violent offender or defendant to pay the claimed compensation, thus they chose not to pursue their claims, considering it would be a futile effort. This illustrates the existence of victims of violence with limited knowledge of the legal regulations regarding their rights to compensation from the perpetrator, as well as their inability to seek commercial legal assistance to advocate for their interests. One victim of severe abuse, with the initials MS, recounted their situation, stating, "As a result of the abuse, I suffered serious injuries, requiring hospitalization for several days and incurring relatively high costs. However, I did not understand how to claim compensation for these losses. It felt like a stroke of bad luck, even though I still wanted to recover what was lost, even if there was a possibility (interview conclusion, September 16, 2015)."

The Factor of Perpetrator/Defendant Inability to Compensate Victim's Losses

Another factor that hinders a responsive judicial practice to the interests of victims of violence is the economic or financial condition of the perpetrators of violent crimes, which is not supportive. The efforts of victims to reclaim what is rightfully theirs and the concern of law enforcement to respond to the interests of victims will yield no results if the perpetrators of violence themselves are unable to fully or partially compensate for the losses suffered by the victims due to the violent crimes they have committed.

Information regarding the real economic/financial condition of the perpetrators of violent crimes is not only obtained from the Examination Report of the suspect/defendant (investigation and trial Examination Report) in the criminal cases of violence being tried but also from the observations and assessments of law enforcement information in handling the related criminal cases of violence. In this regard, the results of the identification of the nature of the perpetrators' work in violent crimes as recorded in the criminal case decision register at the Kupang District Court provide information as depicted in the following table. (Table 6)

Table 6. (n=108)

No	The Nature of Employment of Violent Offenders	f	Percentage (%)
1	Permanent Employment	32	29,63
2	Non-permanent Employment	76	70,37
	Total	108	100

Source: processed from primary data

From the table above, it can be seen that only 32 individuals (29.63%) of the observed perpetrators of violent crimes have stable jobs. The majority, 76 individuals (70.37%), have unstable jobs. Stable employment here refers to a person's ongoing work opportunity for a relatively long period with guaranteed income (salary/wages) averaging above three hundred thousand Indonesian Rupiah per month. Meanwhile, unstable employment refers to a person's opportunity to work for a relatively short period and can often move from place to place or change job types, with guaranteed income averaging three hundred thousand Indonesian Rupiah per month. Those considered to have stable jobs are civil servants (PNS) and company employees, while those with unstable jobs are daily wage laborers and bemo conductors. Regarding the number of perpetrators of violent crimes reaching 108 individuals, this is because in cases of violence committed jointly in public, totaling 16 cases, the perpetrators or defendants always consist of two or more individuals working together in one event.

Considering the nature and types of jobs of the perpetrators, which reach 70%, fall into the category of stable jobs with an average income below three hundred thousand Indonesian Rupiah per month, it is reasonable to assess/declare the perpetrators of violence as economically/financially incapable of providing material compensation for their victims. This assessment is also supported by law enforcement observations of the employment status and economic/financial conditions of the perpetrators of violent crimes handled

in the criminal justice process. For example, the statement that "...usually violent acts are mostly committed by people who are idle, have low education, and are frustrated because their needs are not met reasonably" (interview conclusion with judge Yoseph F. E., SH on October 31, 2015). The same sentiment was expressed by public prosecutor Sukwanto Koho, SH, who stated that "based on previous observations, the average defendant/perpetrator of violent crimes whose cases were handled are economically/financially unable, exceeding sixty percent, because their job status is mostly unclear" (interview on October 13, 2015). The term "unclear job status" as mentioned by the public prosecutor encompasses both the nature and types of unstable jobs as mentioned above, where job types often change, and those who do not have a specific job or source of income, such as the unemployed, students who do not yet have a source of income.

Conclusion

The inhibiting factors for the implementation of law enforcement practices that are responsive to the interests of crime victims include: the presence of legal sanctions for compensation for violent offenses that do not accommodate the aspects of losses suffered by victims of violent crimes, so that the sentencing of the violent crime perpetrator does not directly provide direct and concrete benefits to the victims; the victim's powerlessness to participate in advocating for their right to demand compensation from the defendant in the criminal justice process, thus unable to change the attention and concern of law enforcement (judges) towards the individual interests of the victims of violent crimes; the bias of law enforcement towards legal certainty by consistently applying substantive criminal law (KUHP) and procedural criminal law (KUHP), so that the aspects of legal utility and justice that can accommodate the sense of justice of the victims are often neglected; the economic (financial) inability of the violent crime defendant, which influences the judge's consideration, so that in applying conditional sentencing for certain types of violent crimes observed, the judge never imposes a specific condition requiring the convicted person on probation to compensate the victim within a certain trial period.

References

- Arief., B. N. (1991). *Upaya non-Penal Dalam Kebijakan Penanggulangan Kejahatan*. Semarang: Universitas Diponegoro.
- Arief., B. N. (1996). *Bunga Rampai Kebijakan Hukum Pidana*. Bandung: Citra Aditya Bakti.
- Arief., B. N. (2001). *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*. Bandung: Citra Aditya Bakti.
- Gosita., A. (1993). *Masalah Korban Kejahatan, Kumpulan Karangan*. Jakarta: Akademika Press Indo.
- Kamelus., D. (2003). *Teori dan Metode Perundang-undangan*. Kupang: Fakultas Hukum Undana.
- Kusumah., M. W. (1982). *Analisa Kriminologi Tentang Kejahatan-Kejahatan Kekerasan*. Jakarta: Ghalia Indonesia.
- Manu., N. (1997). *Fungsionalisasi Lembaga Ganti Kerugian Untuk Perlindungan Korban Penganiayaan Berat Melalui Peradilan Pidana: Suatu Kajian Viktimologi*. (Unpublished Masters Thesis). Jakarta: PPS UI.
- Moleong., L. J. (1998). *Metodologi Penelitian Kualitatif*. Bandung: Remaja Rosdakarya.
- Muladi., (1992). *Bunga Rampai Hukum Pidana*. Bandung: Alumni.
- Reksodiputro., M. (1994). *Hak Asasi Manusia Dalam Sistem Peradilan Pidana, Kumpulan Karangan Buku Ketiga*. Jakarta: LK UI.
- Sahetapy., Y.E. (1986). *Viktimologi Sebuah Bunga Rampai*. Jakarta: Pustaka Sinar Harapan.
- Sahetapy., Y.E. (1995). *Karya Ilmiah Para Pakar Hukum, Bunga Rampai Viktimisasi*. Bandung: PT Eresco.
- Soekanto., S. (1983). *Faktor-Faktor Yang Mempengaruhi Penegak Hukum*. Jakarta: CV Rajawali.
- Soekanto., S. & Sri., M. (1985). *Penelitian Hukum Normatif, Suatu Tinjauan Ringkasan*. Jakarta: CV Rajawali.
- Soekanto., S. (1986). *Pengantar Penelitian Hukum*. Jakarta: UI Press.
- Soemartono. (1996). *Hukum Lingkungan Indonesia*. Jakarta: Sinar Grafika.
- Soemitro., R. H. (1988). *Metodologi Penelitian Hukum dan Yurimetri*. Jakarta: Ghalia Indonesia.
- Soerodibroto., R. S. (1991). *KUHP & KUHP dilengkapi Yurisprudensi Mahkamah Agung dan Hoge raad*. Jakarta: Rajawali Press.
- Sugri., B. (2003). *Strategi Pengadilan Tinggi Nusa Tenggara Timur di Bidang Penegakkan Hukum (kertas kerja)*. Kupang.