



Legal Protection Application of Victims Through a Combined Lawsuit for Compensation in Case of Criminal Acts of Fraud and Money Laundering

(Case Study: PT First Travel Cassation Decision Number 3096 K/Pid.Sus/2018)

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Abstract

Victims in the criminal justice system are forgotten and disadvantaged subjects. In addition to the victim having suffered losses as a result of the crime that occurred to him, both materially, physically and psychologically, the victim must also suffer because unknowingly they are often treated only as a means for the realization of legal certainty. As happened in the case of fraud and money laundering by PT First Travel. In the cassation decision in the PT First Travel case, the judge upheld the decision at the first level and at the appellate level. This decision resulted in victims of prospective first travel pilgrims not receiving compensation because the first travel assets were confiscated and returned to the state, even though the state was not harmed at all in this case. Therefore, the author is interested in conducting research on cases of fraud and money laundering by PT First Travel about how victims of first travel can get their rights back through a combination of claims for compensation because the Criminal Procedure Code has provided a way for victims to be able to get their rights in Article 98 -101 KUHAP. The author is interested in discussing 1) How important is the combined lawsuit for compensation in cases of fraud and money laundering at PT First Travel in the context of victim protection? 2) How is the cassation decision Number 3096 K/Pid.Sus/2018 reviewed based on the theory of justice and the theory of expediency? This legal research is normative research using library materials or secondary data. Based on the results of the research that the authors have done, the results show that: 1) The importance of combined lawsuit for compensation in cases of fraud and money laundering at PT Frst Travel is as a way to provide protection for victims so they can get their rights back. Even though compensation is in the realm of civil law, the Criminal Procedure Code has provided a way through a positive relationship in Article 98 of the Criminal Procedure Code which allows cases for claims for compensation to be combined with criminal cases at the same time. The reason for not carrying out the merger in the first travel case was due to the absence of a request from the victim, this could have happened due to the victim's ignorance of the existence of Article 98 of the Criminal Procedure Code. the theory of justice and expediency, this can be seen from the side of the victim who has been harmed but does not get his rights in the form of compensation. Of course the cassation decision did not provide justice and benefits for the victim.

Keywords: *Compensation Lawsuit Combination; Fraud; Money Laundering*

Introduction

One of the crimes contained in the Criminal Code is about fraud. Fraud or fraudulent acts as financial crimes have developed in various modes, from simple to complex scales involving organized or corporate actors. One of the cases of fraud that has been widely discussed in recent years is the case of fraud under the guise of Umrah travel. This can happen because the business opportunity for organizing Umrah services is very attractive because the majority of Indonesia's population is Muslim. Based on data from the Ministry of Hajj and Umrah in Saudi Arabia, Indonesia has the third largest number of pilgrims in the world after Egypt and Pakistan.

According to the Muslim Association of Hajj and Umrah Organizers of the Republic of Indonesia (Amphuri), the minimum standard for Umrah travel costs is set at USD \$ 1,700, or around Rp. 20 Million. This fee is also contained in the Regulation of the Minister of Religion (PMA) Number 8 of 2018 concerning Organizing Umrah Pilgrimage Travels.

The business of organizing Umrah is utilized by many parties to establish an Umrah travel agency. Ironically, not all Umrah travel agents run their business well and one of the Umrah travel agency fraud cases that was in the public spotlight was the First Travel case.

First Travel is an Umrah travel agency owned by husband and wife, Andika Surachman and Annisa Hasibuan. First Travel, in running the umrah business, has tens of thousands of pilgrims who will be departed, but in its development as many as 63,310 prospective pilgrims were not departed by First Travel. The mode used by First Travel's umroh bureau is to offer Umrah promos at very low prices, so that people are interested in using First Travel's services to worship in the holy land. First Travel provides three umrah packages to choose from, including an umrah promo package that only costs IDR 14.3 million for one person. The regular package costs IDR 26.6 million for one person. The VIP package costs IDR 54 million for one person. After that, First Travel's modus operandi was to recruit agents for a fee to find pilgrims. However, after the pilgrims paid for the Umrah package, it turned out that they had not departed. The fraudulent actions carried out by First Travel began in 2017. After pursuing business in the umroh travel sector, in July 2017 First Travel stopped its activities by the Investment Alert Task Force.

Based on this chronology, the owner of PT. First Travel was declared to have committed a criminal act of fraud. Apart from fraud, the owner of PT. First Travel was also declared to have committed a Money Laundering Crime. This is because the deposit money from the pilgrims who failed to depart was proven to be used for Andika and Anniesa's personal interests. The two of them committed money laundering by diverting the deposits of prospective Umrah pilgrims from the First Travel shelter account to a number of accounts including the personal accounts of Andika, Anniesa and another accused, Kiki Hasibuan. They used the money from the victims of First Travel for personal gain, such as buying houses, land, luxury vehicles and traveling around Europe.

In Depok District Court Decision No.83/Pid.B/2018/PN.Dpk, the leader and owner of First Travel Andika Surachman and Anniesa Devitasari Hasibuan and First Travel's Finance Director, Siti Nuraidah Hasibuan, decided:

1. Declare that the Defendant Andika Surachman and the Defendant Anniesa Desvitasari Hasibuan have been proven legally and convincingly guilty of committing the crime of "Jointly Committing Fraud and Money Laundering as a Continuing Action";
2. Convict the Defendant Andika Surachman with imprisonment for 20 (twenty) years and Defendant Anniesa Desvitasari Hasibuan with imprisonment for 18 (eighteen) years and fine each defendant Rp. 10,000,000,000.00 (ten billion rupiah), provided that if the fine is not paid then it is replaced by imprisonment for 8 (eight) months each;

3. Determine the period of arrest and detention that the Defendants have served to be fully deducted from the sentence imposed;
4. Stipulates that the accused remains in custody.

In this decision, First Travel, through their owners Andika Surachman and Anniesa Desvitasari Hasibuan, have been legally and convincingly proven to have committed acts of fraud and money laundering, and the assets owned by First Travel were confiscated by the state. In its development the decision was appealed by the defendant. The Public Prosecutor made an appeal by registering it with the Bandung High Court.

On August 15, 2018 the Bandung High Court decided the appeal of the a quo case. In its decision, the appeal filed by the defendant and the public prosecutor was accepted and strengthened so that the defendant was still sentenced to prison, a fine, and assets owned by First Travel were seized by the state.

In response to this, the Public Prosecutor made an appeal to the Supreme Court. One of the requests of the Public Prosecutor is to request that the evidence seized by the state be requested to be returned to the members of First Travel.

The request made by the Public Prosecutor was rejected by the Panel of Judges at the cassation level at the Supreme Court. The decision at the cassation level left a problem, in which the First Travel assets confiscated by the state should be returned to the prospective First Travel pilgrims who were harmed in the a quo case. The state specifically is not disadvantaged by the existence of this case.

The decisions at the first level of the a quo case up to the final decision at the cassation level stated that the evidence contained an economic element was confiscated by the state. The confiscation then raised a problem because the evidence seized by the state belonged to the congregation who had deposited money with First Travel. The assets confiscated were not state funds, but the congregation's money, so they should have been returned to the people. This resulted in the victims of the First Travel fraud not receiving compensation.

In the settlement of criminal cases, the law often places too much priority on the rights of the suspect or defendant, while the rights of the victim are ignored. One of them is the right to compensation which is a right that requires a person who has acted to harm another person to pay a sum of money or goods to the person who has been harmed, so that the loss that has occurred is deemed to have never happened.

In the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and also in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims Jo PP Number 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims is regulated regarding the terms of the perpetrator's obligation to provide restitution or compensation to the victim. Restitution can be given in the form of loss of wealth/income, arising from suffering, and reimbursement for medical/psychological treatment costs. In this case, the victim of first travel has the right to receive compensation in the event of suffering (crime). However, this cannot be done immediately because the case which was originally civil, then turned into a criminal case.

This causes no justice for prospective pilgrims who feel cheated by First Travel. As is well known, justice itself is a matter relating to actions in relations between humans that contain a demand. This allows humans to treat according to their rights and obligations.

Based on the theory of justice and expediency, this cannot be justified. Every consequence of a crime must take precedence over the interests of the victim as a result of the crime. So that the benchmark

for the implementation of a crime no longer refers to how the suspect received a crime, but is more inclined to the interests of the victim to recover the assets (losses) for the crime.

Compensation issues are subject to civil law. Therefore, the courts authorized to examine are civil courts and civil judges. Meanwhile, the Criminal Procedure Code regulates matters relating to crime. But with the existence of a positive relationship contained in Article 98 of Law No. 8 of 1981 concerning Criminal Procedure Code (KUHAP) which combines a claim for compensation with a criminal case at the same time. Article 98 paragraph (1) of Law No. 8 of 1981 concerning Criminal Procedure Code explains:

"If an act which forms the basis of an indictment in a criminal case examination by the District Court causes harm to another person, then the head judge of the session at the request of that person may decide to combine the case for compensation to the criminal case."

Whereas in paragraph (2) explains that:

"Requests as referred to in paragraph (1) can only be filed before the public prosecutor files criminal charges. In the event that the public prosecutor is not present, the request shall be submitted no later than before the judge renders a decision."

The existence of a merger of cases for compensation claims is due to the settlement of cases in a case contained in two aspects, namely the civil aspect and also the criminal aspect. The existence of these two aspects in the same case can lead to a criminal case with a claim for compensation. With regard to such cases, prior to the enactment of the Criminal Procedure Code, the settlement by the Court was carried out sequentially not at the same time, so the criminal case was settled first and then followed by the settlement of the claim for compensation (civil case). With the existence of Article 98, what is in civil law and criminal law can be brought together, which was not previously subject to the Criminal Procedure Code, with Article 98 of the Criminal Procedure Code it becomes subject to criminal procedural law. The amalgamation of claims for compensation is a form of protecting the rights of victims of a crime by accelerating the process of obtaining compensation for the losses they experience, by combining the criminal cases and the application for compensation which is essentially a civil case.

It is very unfortunate that the Public Prosecutor and the victim did not take this route in order to be able to restore the rights of the victims to first travel, even though if the recovery of the victim's losses was carried out through a criminal trial, then 2 (two) different trials were not necessary. Thus, the fulfillment of victims' rights can be carried out more quickly and efficiently so that the principle of justice can be realized quickly, simply and at low cost.

The anomaly against the cassation decision for the crime of fraud and money laundering First Travel Number 3096 K/Pid.Sus/2018 leaves a question regarding how the victims of First Travel get their rights back if in that case the Public Prosecutor and the victim filed an effort to combine a claim for compensation. Based on the above background, the author is interested in analyzing and further researching related to the a quo case with the research title **"Efforts to Protect Legal Against Victims through Combination of Compensation Lawsuits in Fraud and Money Laundering Crime Cases (Case Study: PT First Travel Cassation Decision Number 3096 K /Pid.Sus/2018)."**

Research Methods

Referring to the title and formulation of the problem, this research falls into the category of normative research or library research, which is a type of research that relies on secondary data sources as the main reference data consisting of primary legal materials, secondary legal materials and tertiary legal materials. These materials are arranged systematically, studied, then a conclusion is drawn in relation to the problem under study.

In line with Soerjono Soekanto that legal research conducted by examining literature or secondary data alone can be called normative legal research or library legal research.

Research Result

Combining cases of claims for compensation in criminal cases is a form of protection for the rights of victims of a crime. This protection is provided by accelerating the process of obtaining compensation as a result of a crime he has suffered. In the opinion of the author, in the case of the crime of fraud and money laundering at PT First Travel, a lawsuit for damages should be combined and at the same time a criminal trial proceeding.

The combination of claims for compensation in this case is important because the civil lawsuit filed by the victim First Travel in 2017 was rejected. The first time the victim or the so-called plaintiff has sued PT First Travel on July 24 2017 with case number 146/Pdt.G/2017/PN Dpk. The lawsuit asked the Depok District Court to grant the Plaintiffs' claim in its entirety and stated that the Defendant had committed an unlawful act.

The lawsuit was again rejected by the Panel of Judges due to formal defects. It is known that the Plaintiff could not prove whether the lawsuit was filed by the congregation or by a travel agent. The civil lawsuit on First Travel's assets was filed by Suhartaty, Hj Ira Faizah, Devi Kusriani, Zuherial, and Ir Ario Tedjo Dewanggono.

One of the rules that can be used in realizing justice, especially regarding the First Travel problem, is by applying Article 98 (KUHAP). If examined further, this article regulates how to combine the process of compensating for criminal offenses through the prosecution process. Victims here no longer need to file a lawsuit that is different from the prosecution carried out in the criminal trial process. The victim only needs to undergo a criminal trial along with the prosecution process.

The process of criminal prosecution according to Article 98 of the Criminal Procedure Code can also allow for a merger of lawsuits. The author believes that if this happens, the victim can ask the judge in the a quo case to ask for compensation. Merging can be done if the victim himself takes the initiative to ask the panel of judges to merge the claims for compensation. Requests for compensation are required to be submitted to the panel of judges before the process of demands is read out in court. The judge who tried the a quo case, at the request of the victim, may grant the merger of the lawsuits. The merging process allows the judge to give a decision / try cases of granting compensation at the same time as giving a criminal verdict.

The judge can consider two things at once, namely related to the criminal act committed by the defendant, on the other hand the judge can also consider the defendant's actions whether it is believed that he has caused harm to the victim for the crime committed by the defendant. Decisions arising from these considerations are the same as criminal decisions, namely the existence of corporal punishment, and if it is proven that there has been a loss, compensation can be made to the victim. This is as explained in Articles 99 – 101 of the Criminal Procedure Code

With regard to filing claims for compensation under Article 98-101 of the Criminal Procedure Code, parties need to pay attention to the following matters:

1. Losses that must be incurred by the crime itself;
2. Losses caused by criminal acts or other people who suffer losses (victims) as a direct result of said crime;

3. Claims for compensation resulting from criminal acts are combined or examined and terminated at the same time at the examination and decision of the criminal case charged against the defendant and in the form of a single decision.
4. Article 98 of the Criminal Procedure Code does not only pay attention to the rights of the perpetrators of criminal acts, but also the rights of people who suffer "material" losses caused by the commission of a crime.) with an ongoing criminal case, in which case it is clear that the criminal case is the basis for the civil charge and is decided at the same time as the criminal case

Indeed, there are opinions that say that the Criminal Judge does not have the authority to determine compensation and on the contrary, there are those who say that they have the authority. From a practical point of view and in the interests of the victim, if the Criminal Judge is also authorized to determine compensation, it will be very beneficial for the victim considering the lengthy civil process to be able to claim compensation. In this case the author agrees with this based on the authority of judges as law enforcers to explore and always pay attention to legal values that live in society (Article 27 of Law No. 14 of 1970) and also the principle of the need for a trial that is fast and inexpensive and not there is a legal prohibition against giving additional punishments. Thus, merging cases for compensation as a way to provide protection to victims by imposing prison sentences and providing compensation for damages caused by perpetrators. Another thing regarding the merger of cases for compensation claims helps resolve cases more effectively and efficiently. Settlement of cases as referred to is also in line with the principles of criminal procedural law, namely the principle of speed, simple principle, low cost principle, and other principles.

Based on the results of the discussion and legal analysis that has been carried out, the authors come to the following conclusions:

1. The merger of cases for compensation claims was born because criminal sanctions were considered unfair. Injustice can be seen from the side of the victim, because the provisions of criminal law do not recognize compensation. In criminal law, the perpetrator is only subject to criminal sanctions, so that the victim does not get compensation for all the consequences carried out by the perpetrator that harm the victim. The importance of combining cases of claims for compensation in cases of fraud and money laundering at PT First Travel is as a way to provide protection to victims by imposing prison sentences and providing compensation for losses caused by the perpetrators. Another thing regarding the merger of cases for compensation claims helps resolve cases more effectively and efficiently. Settlement of cases as referred to is also in line with the principles in the law of criminal procedure, namely the principle of a quick, simple and low-cost trial. In addition, the importance of the merger needs to be carried out because initially the civil lawsuit filed by the victim was rejected by the Panel of Judges at the Depok District Court which resulted in the victim not receiving compensation.

However, it is still difficult to merge cases for compensation claims, including in the PT First Travel crime case of fraud and money laundering. According to the author, these difficulties were the reason why the merger of the compensation claims in the PT First Travel case was not carried out. These reasons include, the victim's lack of knowledge about the existence of Article 98 of the Criminal Procedure Code besides that, written regulations which are considered to still provide insufficient space, the burden of proof that lies on the victim which requires the victim to try to find evidence on his own that he has been harmed, then regarding the relative competence of the court which in the end Basically, criminal and civil procedural law have differences in terms of relative competence.

2. Cassation Decision Number 3096 K/Pid.Sus/2018 related to the Criminal Case of Fraud and Money Laundering committed by First Travel causing losses to First Travel pilgrims who have deposited money to First Travel either through agents or directly to First Travel. The cassation decision in the a quo case stated that all the evidence in the a quo case was confiscated for the

state in accordance with Article 39 of the Criminal Code and Article 46 of the Criminal Procedure Code, so that First Travel pilgrims who were victims of fraud and money laundering committed by First Travel did not receive the money. return. The decision was deemed inconsistent with the theory of justice according to Aristotle, John Rawls, and Hans Kelsen and also inconsistent with the theory of expediency according to Jeremy Bentham and John Stuar Mill. Purnadi Purbacaraka formulates that justice is harmony between legal certainty and legal comparability, so in this case justice is a fundamental right for congregations who become victims. If the assets in the PT First Travel case are decided to become state assets, the legal consequence is that these assets will no longer be controlled by the congregation as victims. Because in this case the state was not harmed, so when viewed from the perspective of the victims of the prospective congregation, this judge's decision cannot fulfill legal justice and also legal benefits.

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