

LEGAL PROTECTION FOR VICTIMS OF NEGLIGENT HANDLING OF FRACTURES SHAMAN AND ITS URGENCY IN THE REFORM OF CRIMINAL LAW

***(PERLINDUNGAN UNDANG-UNDANG KEPADA MANGSA KECUAIAN
KENDALIAN OLEH DUKUN PATAH DAN KEPERLUAN SEGERA DALAM
PEMBAHARUAN UNDANG-UNDANG JENAYAH)***

Muhammad Ardi Munir, Jubair & Kartini Malarangan

Abstract

Legal Protection for Victims of Negligent Handling of Fractures Shaman and Its Urgency in the Reform of Criminal Law. Under The Supervisions of Jubair and Kartini Malarangan. The problems is this research comprised : (1) how is legal protection for victims of negligent handling of fractures shaman?, and (2) what is its urgency in the reform of criminal law? Therefore, the aims of this research were to find out and analyze legal protection for victims of negligent handling of fractures shaman and its urgency in the reform of criminal law. This research employed normative juridical method. Sources were obtained from primary and secondary legal materials and non-legal materials as supporting ones. This approach used in this research included legal acts, concept, and cases. The technique of legal materials was done by collecting data or documents through library review. Data were analyzed descriptively and conclusion was drawn based on problems being discussed. Based on the discussion result, it can be concluded that legal protection is not specifically gives to the victims of negligent handling of fractures shaman, but the protection is given to the victims of violence in general. Then, the urgency of legal protection for victims of negligent handling of fractures shaman is provided for guaranteeing the losses that are being or will be affected by the criminal acts.

Key words : Legal Protection, Victims, Negligent Handling of Shaman

Abstrak

Permasalahan penyelidikan ini terdiri dari: (1) bagaimanakah perlindungan undang-undang bagi mangsa akibat kecuaiannya dukun patah ?, dan (2) apakah yang mendesaknya dalam reformasi undang-undang jenayah? Oleh itu, matlamat kajian ini adalah untuk mengetahui dan menganalisa perlindungan undang-undang bagi mangsa akibat kecuaiannya dukun patah dan segera dalam pembaharuan undang-undang jenayah. Kajian ini menggunakan kaedah yuridis normatif. Sumber diperolehi dari bahan-bahan undang-undang primer dan sekunder dan bahan-bahan bukan undang-undang sebagai sumber sokongan. Pendekatan yang digunakan dalam kajian ini termasuk perbuatan, konsep dan kes-kes undang-undang. Teknik bahan undang-undang dilakukan dengan mengumpulkan data atau dokumen melalui kajian perpustakaan. Data dianalisis secara deskriptif dan kesimpulan telah dibuat berdasarkan masalah yang dibincangkan. Berdasarkan hasil

perbincangan, dapat disimpulkan bahwa perlindungan undang-undang tidak secara khusus memberikannya kepada mangsa kecuai pengendalian dukun patah, tetapi perlindungan hanya diberikan kepada mangsa kekerasan secara umum. Sehubungan dengan itu, perlunya suatu perlindungan undang-undang bagi mangsa kecuai pengendalian dukun patah disediakan untuk menjamin ke atas segala kerugian yang sedang dihadapi atau akan terkesan daripada perbuatan jenayah.

Kata kunci : *Perlindungan Undang-Undang, Mangsa dan Kecuaian Pengendalian Dukun*

INTRODUCTION

As a state law (rechtstaats) legal equality has a major position and the highest (supremacy of law). Law has the function to provide protection, justice and development. The law in Indonesia has an important role in various aspects of life of the state and society. No exception in the health sector which is the state's obligation to ensure the health and human rights of among the many obligations of the welfare state in accordance with the ideals of the nation of Indonesia as stipulated in the Pancasila and the Constitution of the Republic of Indonesia Year 1945.

Law aims to provide protection to humans in order to achieve prosperity and happiness. One form of legal protection to public health is the enactment of several laws such as Law No. 29 Year 2004 on Medical Practice (Official Gazette of the Republic of Indonesia Year 2004 No. 116), Law No. 36 Year 2009 on Health (Gazette the Republic of Indonesia Year 2009 Number 144). Legislation in the health sector is more focused on protection for people in this case the patient as medical service receivers. For instance Hospital (RS), Community Health Centers (PHC), and Clinic recognized and operate legally.

According to Smeltzer and Bare, fractures or fractures is continuity bone dissolution which is determined by the type and extent, according to Reeves, Roux and Lockhart, or any cracks or fractures in the intact bone. Fracture is a problem that often occurs in a traffic accident that most of the victims fractured. Many of the natural events that have caused the fracture. Often occurs fracture improper handling due to the lack of information availability, for example a fractured choose massage shaman / shaman sequence to deal with her illness.

Fracture / Fracture also more common in males than females with ages under 45 are often associated with sports and work. While the prevalence of age tend to be more prevalent in women who were associated with osteoporosis-related hormonal changes (De Jong, Sjamsuhidayat. 2011 ; FKUI, 1995; Salter, RB, 1999).

In some cases frequent handling negligence in the treatment of a disease does not only come from the medical professionals (such as doctors specialist) only. Negligence often occur in practice even many herbalists sequence fractures. It can be seen from patient treatment by a specialist orthopedic surgeon at the hospital caused by negligence shaman sequence (Solomon, L., D. Warwick dan S. Nayagam, 2010 ; Oerswari, E., 1989).

There are some patients who are handled by specialist physicians orthopedic surgeon to be amputated because when it is handled by herbalists sequence in the hand or a broken leg tied with bamboo previously wrapped with leaves. Bamboo bond on broken arm or leg is very strong, resulting in pressure / strong penetration of the blood vessels. On that former bond blue spots arise even until blackened which is a blockage of blood vessels. As another way to save the patient's doctor perform an amputation to prevent the spread of injury or infection that can cause death (De Jong, Sjamsuhidayat. 2011 ; FKUI, 1995).

It can be said that the shaman acts fractures that do not have the competency / skills enough and have a certificate issued by competent authorities, it is assumed as a healing practice in the field of the lack of proper health / less fit. Shaman sequence fractures in doing practice just having

experience, resulting in errors as described above. Such actions can be fatal to the patient. The shaman fracture negligence in dealing with patients, it is very difficult to prove the element of negligence (Salter, RB. 1999).

Things are very different if there is negligence in the handling of patients conducted by medical personnel, namely Doctors, Mantri, Midwives and Nurses that can lead to permanent disability or death. The victims and families of the victims can just ask / medical workers exposes them to legal action according to the rules applicable legislation. When examined more deeply the great questions of this is how the legal protection of victims of negligent quack fractures (Black, Joyce M. 1993 ; Brunicardi, FC et all. 2004).

Legal protection is one of the objectives of the state in providing shelter to the people whose human rights harmed by others. The protection afforded to the (community) in order to be able to enjoy all the rights granted by law. Including protection of victims due to mishandling of the shaman fractures. Therefore, the victim of a witch doctor fracture sequence of their rights need to be protected from being harmed both soul and economically.

This is consistent with what is described by Satjipto Raharjo that provide legal protection for human rights aegis of the injured people and the protection given to the community to enjoy all the rights conferred by law (Raharjo, Satjipto, 2007). The law provides for the protection of persons or those weak economically and socially from the actions that resulted in losses(Raharjo, Satjipto. 1993).

If errors or omissions in the handling carried out by healers fractures, this can result in losses that do not to the victim (patient). These disadvantages include that the patient's own economy is already spent in order to hope fracture healer can cure illness. But in fact the patient as a victim may not necessarily get the assurance of cure his illness.

Another disadvantage is that caused the failure of negligence when handling by herbalists such fractures lead to an infection in the wound. This resulted in the infection of the amputation wound due to decay when handled by a shaman fractures. The decay of injury due to treatment using herbs or leaves that are not sterile.

Fractures treated by healers also result in permanent disability. Permanent disability, among others, the bones are in bent position, unequal limb (arm or leg short side). This happens because after the treatment, the shaman does not allow patients to take photos of radiology. There are strong indications that the shaman fractures do not want the patient to know if there had been an error in handling.

Data handling patients (surgery) were obtained by prospective researchers from medical records at the hospital Undata Palu, as much as approximately 50% of the 492 cases handled by a specialist orthopedic surgery (from 2011 to 2013) was the victim of negligence shaman sequence broken bone. Of negligence committed by herbalists sequence such fractures can lead to consequences for the patient are handled (the person who suffered a broken bone). From this can lead to infection that leads to permanent disability of amputation, and even from some of these patients died.

Should the board to place the patient can not prosecute to the shaman fractures. If the prosecution by the patient then the shaman would argue that the patient himself would come to him for healing. Shamans also reasoned that fracture healing was done with good intentions (good faith). Good faith itself is one of the reasons that some scholars think may remove the offense to someone.

If this happens then the shaman fracture patients as victims from the negligence of handling the disease do not receive legal protection from such actions. Based on this, the state must provide legal protection in terms of both criminal and civil legislation through adequate. This legal

protection is given to patients shaman fractures (victim) in order to conduct the prosecution in order to restore the damages caused.

The empirical facts would be sufficient worth to be considered in the criminal law, particularly with regard to the protection of victims of negligence shaman broken bone. According to Barda Nawawi Arief sequence, renewal of criminal law is essentially an effort to review and reappraisal ("reorientation and reform") values sociopolitical, sosiofilosofis and underlying sociocultural and provide the content on the content of normative and substantive criminal law aspired. Not a reform ("reform") criminal law, where the value orientation of criminal law which aspired to the same as the value orientation of the old criminal law heritage invaders (Arief, Barda Nawawi 2011).

The process of criminal law reform in an effort to renew the criminal legislation in the future, at least to give hope to provide protection against shaman fracture patients as victims who receive damages from errors or omissions of the handling of the illness.

Based on the description of the background above, hence the title of research reports and the themes that will be raised by the applicants are Negligence Victims Legal Protection Against Broken Bones And Handling Shaman Urgency In Criminal Law Reform.

Formulation of the problem

From the above description, the problems that arise are as follows:

1. How legal protection of victims of negligent handling of a shaman fracture?
2. How urgency protection of victims of negligent handling of a shaman fractures in criminal law reform?

Research purposes

Based on the formulation of the problem above, the objective in preparing the research proposal are as follows:

1. To know and to understand and analyze the legal protection of victims of negligent handling of a shaman fracture; and
2. To know and to understand and analyze the urgent protection of victims of negligent handling of a shaman fractures in criminal law reform.

The benefits of writing

1. Theoretical benefits

Theoretically all scientific papers have benefits in the development of knowledge in their respective disciplines. This study seeks to provide benefits to add to their repertoire of science, especially in the field of legal science. the benefits of this research for applicants are trained to develop their reading skills effectively, as a vehicle to train express ideas or research results in the form of a scientific paper that is systematic and methodological training to combine readings from a variety of sources, introducing the activities of the library, improve the organization of the facts / data clearly and systematically, obtaining intellectual satisfaction, broaden the horizons of thought knowledge and science as a reference for further research in order to produce the scientific work,

2. Practical Benefits

Practical benefits in research reports are expected to membukacakrawala think and become contributions to upholders of law (judges, prosecutors, police and lawyers) and other practitioners

working in the field of law also the legislator as policy making renewal of the law in providing legal protection for the victims of negligence shaman fractures in Indonesia.

3. Authenticity Research

In this thesis there are works that have been asked to obtain a master's degree at a university and my knowledge also does not have works or opinions ever written or published by others, except that in writing a reference in this text and mentioned in the list library. The title of this scientific work is the result of thinking of the writer who works as an orthopedic surgeon in daily deal directly with the victims of negligent quack fractures.

RESEARCH METHODS

Types of research

In general, each discipline has its own characteristic in his research, for the methods used in this research report is a normative legal research. Peter Mahmud Marzuki formulate normative legal research is a process of finding the rule of law, principles of law, and the legal doctrines in order to address the legal issues at hand. This is consistent with the prescriptive character of law. Answer desirable in legal research is right, Appropriate, Inappropriate, or wrong. Thus it can be said that the results obtained in the study of law contain values (Marzuki. Peter Mahmud 2011).

Source Material Law

Logically in a research are two sources of data, namely data from the field or the Primary Data and data from literature data or secondary data. In this research proposal the secondary data derived from the legal materials and ingredients of non-law. Legal materials consisting of primary legal materials and secondary law. For that prospective researchers focused on secondary data to assess the object studied. Legal research resources according to Peter Mahmud Marzuki can be divided into research resources in the form of primary legal materials and secondary law (Peter Mahmud Marzuki 2011).

1. Materials Primary Law

The primary law materials are authoritative means to have authority consists of the law, official records or minutes in the making of laws and decisions of the judges (Marzuki, Peter Mahmud 2011).

2. Secondary Legal Materials

Materials secondary law consists of all publications on the law which is not an official documents include text books, dictionaries law, legal journals, and comments on the verdict (Marzuki, Peter Mahmud. 2011).

As a supporter of the law it is necessary to study the materials of non-law. For academic purposes non-legal material can assist in legal research (Marzuki, Peter Mahmud 2011). The materials are non-legal literature outside the law or legal disciplines.

Type approach

The approach used in this research proposal are:

1. Approach Act

Approach legislation (statuteapproach) is done by examining all the laws and regulations concerned with legal issues being dealt with. For research to practical activity, approach this legislation will

provide an opportunity for researchers to learn is there consistency and compatibility between a law with other laws, or the laws with the Constitution, or the regulation of the enactment Act (Marzuki, Peter Mahmud 2011).

2. Conceptual approaches

The conceptual approach or conceptual approach, an approach that moved from the views and doctrines that developed in the jurisprudence. By studying the many views and doctrines in the law, researchers will put forward the ideas that gave birth to notions of law, legal concepts, and principles of law that are relevant to the legal issues at hand. An understanding of the views and doctrines is a backrest for researchers in developing divulging legal arguments in solving the issues faced (Marzuki, Peter Mahmud 2011; Ibrahim, Johni 2007).

3. Medical Records Case Approach

Case approach (caseapproach) in normative research aims to study the application of norms or rules of law committed in the practice of law. This type of approach is typically used on cases that have received the award. These cases meaningful empirical, but in a normative study, these cases can be studied to gain an overview of the impact normative dimension in a rule of law in the practice of law, as well as using the results of the analysis of the input material (input) in the explanation of the law (Johni Ibrahim 2007).

Legal Materials Collection Techniques

In gathering material law, researchers conducted an inventory of data or documents via search library materials such as books on jurisprudence, legal journals, dictionaries law and national legislation.

Search library materials is a kind of legal materials obtained through the collection and penginventarisasian as follows: (1) primary legal materials consisting of the legislation relating to negligence and protection of victims; (2) secondary law which consists of legal literature, legal journals, articles of law both in physical form and that publication via electronic media; (3) material non-legal form of literature originating from other scientific fields.

Legal Materials Analysis

To produce the arguments relating to the issues to be discussed, then do the analysis in the problem. in this research proposal, prospective investigators using descriptive analysis in order to explain the problem. End of the results of the analysis, it can be deduced based on the issues to be discussed.

Based on these two issues written on the formulation of the previous chapters, the first thing to do is to analyze the legal materials related to the legal protection of victims of shaman fractures. To describe the problems that both, the researchers will analyze the candidates about the urgency of protection of victims of such fractures shaman in criminal law reform.

RESULTS AND DISCUSSION

Shaman negligence Fracture Treatment

1. Elements of nature against the law of negligence shaman fracture

Negligence / negligent is one of the reasons that can be the basis of the person who did it. According to HA Zainal Abidin, the absence of prudence including *lata culpa* is not realized or in Indonesian called "negligence" (Farid, Zainal Abidin 1995). From these opinions it can be seen that punished a person caused by negligence caused by liver-heart in doing an act. The act in question

although done with the intent to help others, but in the end lead to something that can harm or threaten someone's life. Of such actions also further categorized as an offense / crime.

Omissions categorized as offenses based on the opinions HA Zainal Abidin yang concluded that according *Memorie Van Toelichting (MVT)* *lata culpa* (negligence) contained in a maker (*dader*) offense when:

- (1) Disadvantages thought required;
- (2) Lack of knowledge required; or
- (3) Disadvantages wisdom are needed.

Elements of the offense is not apart from nature against the law. nature against the law in the Dutch language called *wederrechtelijk* (*Weder*: contrary to, against while *recht*: law), according to Simon, *wederrechtelijk* or nature against the law is contrary to the law in general. While van Hamel defines unlawful nature is *onrechtmatig* or without the right/authority (Teguh Prasetyo and Abdul Hakim Barkatullah 2005).

According to the authors, based on the description above, the negligence is classified as an unlawful act that is objective when it conflicts with the law in general. If negligence resulted in the neglect of the rights of others, then these omissions can be mean as an unlawful act subjectively.

Opinion authors on PAF Lamintang based on the view that argues that the difference between these specialists partly because the Dutch *recht* can mean the law "and can mean" right "he said, in the Indonesian language that *wederrechtelijk* said. Means "unauthorized" to include the definition of "unlawful objective" and "contrary to the rights of others or the subjective law." (Teguh Prasetyo and Abdul Hakim Barkatullah 2005 ;Rasjidi, Lili. dan I.B. Wisa Putra 1993)

The formula outlined in "Standart Arrest" January 31, 1919 in the case of Cohen and Lindenbaum:

".... The interpretation is not unreasonable because the law is not the same fight against the law. According to the Hoge Raad unlawful act should be interpreted as "do" atai "not done" to rape the rights of others or in conflict with the legal obligations of the creators or decency or compliance within the community, either against themselves or somebody else " (Rachmat Setiawan 1982).

Shaman fracture itself is part of shamanic practices known in Indonesia. Since long practice of shamanism is an alternative to be one of the people's choice. Communities with poor economic conditions have always been using the services of a shaman. On the other hand, the practice of shamanism is also a means to commit fraud against the patient.

Shamanism is a term used to describe the humiliation of non-medical practice deception ends. Quackery is a pretense of non-medical skills or those who pretend to be an expert professional, have the knowledge or qualifications in several areas of expertise, but he does not have and is an impostor (Wikipedia 2014).

People who do not usually own quackery, they usually consist of a few people is one team that mode of operation is a fraud. To search for prey there are those who act as people who promote the herbalist's area of expertise, but its promotional nonsense and deceitful. If there is prey into a trap that has held an agreement then it starts to go to the house of the healer. With tricks quackery "Mbah si Shaman" guess the hearts and the willingness of patients, this is one of fraud that could bring down the dignity of the original shaman (Wikipedia, 2014).

At first Shaman is the selfless helper. With the Fraudsters posing as Shaman Shamanism is then dikenalah term that the negative value in the wider community that are associated as A fraudster. To deceive their prey usually offer a talisman or auspicious objects that are expensive, but

this is a delicate procedure that fraudulent way. There are also scammers posing as devout and with its TIM is actually the tricksters Fraudsters posing as religious people, it is also true Shamanism in the path of religion. How to trick him with the perfume that cost millions of rupiah and even up there perfume that cost up to over ten million even though it cuman bit with a special bottle of small size (Wikipedia, 2014).

2. Causality (causalities) negligence in handling the shaman fracture patients

Every event in the world is a series of events that cause an impact of such events. Events that one cause of an event will inevitably lead to good or bad result. From the sequence of events that relate to each other is a causal relationship (causality). These events certainly can be seen in everyday life, both natural events such as flowing water caused by high and low surface of the earth. Social events that occur, for example a low level of education for the poor and the repercussions for the economy of a low level (Kansil, C.S.T., 1989 ;Lamintang, P.A.F., 1984)

Not only the natural and social events, is the causality also associated with a criminal event or crime. In criminal law, an action can be started from the causes and consequences both for the offender and the person / people who are victims of such events. Previous writers have expounded on omissions by shamans fractures in his patients. To the authors need to analyze the causal relationship of negligence committed by herbalists such fractures.

Etymologically, Causality or causalities derived from the word causa which means the cause. (Anon 2004) Causes words in Law Dictionary defined by reason or legal basis; a cause that can cause an incident (M. Marwan and Jimmy 2009). Based on the above understanding, it can be deduced that the causality is a saying about causality. In the science of criminal law theory of causality is intended to establish an objective relationship between human actions with unintended consequences legislation. The determination of causation in criminal cases be a difficult problem to solve. Book of Criminal Justice Act itself does not clue about the cause and effect relationship that may cause offense. Although in several articles of the Criminal Code explained that in certain offenses necessary to have a certain result in order to convict against the manufacturer. (Farid Zainal Abidin 1995)

The criminal action is divided into two, namely the crime of formal (formel delicten) and the crime of material (MATERIEEL delicten). Formal criminal acts are criminal acts that are formulated to perform a tikah prohibit certain behavior. This means that in the formulation of specific actions explicitly mentioned that the subject of a ban. In connection with the criminal case, if the act was done then it can be termed as a criminal offense, regardless of the impact. For example, the crime of theft of article 362 of the Criminal Code. If the theft has been completed, it can be referred to as a criminal offense. (Adami Chazwani 2002)

The author argues, an overview of the above description, a negligence committed by herbalists fracture cannot be classified as liability or liability. It is as described earlier that negligence is an element of guilt in a criminal act that cannot be applied to liability without fault.

If we refer to the opinion AZ Abidin and A. Hamzah, the characteristics or error element in a broad sense, ie (AZ Abidin 1995; A. Hamzah 1991):

- (1) Failure by the manufacturer accountable
- (2) The existence of psychic connection between creators and their actions are deliberate or a mistake in the narrow sense (culpa)
- (3) The absence of basic negation of criminal remove accounted for a deed to the failure by the author.

Acts that can be accounted maker is someone who is meant in Article 44 (1) of the Criminal Code, "Whoever does a deed which could not be accounted to him for his soul defect in growth or

impaired due to illness could not be convicted". In other words, that could not be accounted for are those that were born or suffering from mental illness ("madman").

With regard to the responsibilities of an offense maker, there is some reason to abolish criminal prosecution or criminal omission. A person accused of committing a crime, it can be argued criminal defense or reason for removal. According to Barda Nawawi Arief, the reason can be general (called general defense), meaning it can be submitted for a crime or offense in general; and can also be special (special called defense) that may be filed for certain crimes or criminal acts. Including the general defenses, among others (Arief, Barda Nawawi 2011):

- (a) *compulsion* (Coercion)
- (b) *intoxication* (Toxicity / hangover)
- (c) *Automatism* (Movement reflex)
- (d) *Insanity* (Madness / insanity)
- (e) *infancy* (Minors)
- (f) *consent* of the victim (victim Agreement)

Legal Aspects of Negligence Victims Protection Against Shaman Fracture Treatment

The agreement in the state is to provide welfare for the people of Indonesia. As it is written in the preamble of the Constitution of 1945, that is by "promoting the general welfare". To reach a country where its people in a prosperous state, then the state in carrying out the law should provide protection. The legal protection given to protecting the rights of citizens (individuals). In terms of protection of these rights, it is necessary to look beyond the protection of victims of criminal acts that can harm the rights of citizens in Indonesia (Marpaung, Leden 2008; Poernomo, Bambang 1985).

Indonesia specifically regulates the protection of victims of crime or criminal act (offense). About the victim of a crime by Abdussalam, dividing the victim into several types as follows (Abdussalam, 2007; Yulia, Rena 2010):

- (1) Individual victims, is each person as an individual gets good suffering mental, physical, material or non-material.
- (2) Victims of institutions, each institution is suffering losses in its function that causes prolonged loss resulting from government policies, private policies or natural disasters.
- (3) Victims of the environment, are any of the natural environment in which contains plant life, animals, human beings and society as well as all the bodies of living growing and sustainability is highly dependent on the natural environment tesebut who have suffered damage caused by government policy is wrong and deeds both human individuals and people who are not responsible.
- (4) Victims of society, the nation and the State, is a society that treated unfairly riminatif disk, tmpang overlap sharing development and civil rights, political rights, economic rights, social rights and cultural rights.

Based on the types of victims above, the victim of the offense relating to the negligence committed by herbalists fractures can be classified as an individual victim. According to the authors, that the victims of negligent quack fracture also suffer both mental, physical, material and non-material. Mentally, victims of negligence shaman fracture under pressure or depression in the face of reality must have lost one or more limbs due to infection in the wound so it must be done as an amputation.

Physical suffering of the victims because of loss of one or more limbs. The physical pain resulting in the victim's body into a lifelong disability that hinders victims in their daily activities. Defective condition of the victim is also an effect on productivity and economically affects the victim's income of subsistence. In other words, materially victims of negligence shaman must

endure physical suffering broken for life and non-materially victims also suffer psychological consequences to severe depression and stress.

Furthermore, the typologies of the victims are identified according to the circumstances and the victim's status, as follows (Dikdik M Arief Mansur and Eliatris Gultom 2007):

- (a) *unrelated Victims* ie victims that have no relation at all with the perpetrators, for example in the case of aircraft accidents. In this case the responsibility rests on the perpetrators.
- (b) *provocative Victims* ie someone who is actively pushing itself into the victim, for example in the case of cheating, where the victim as well as perpetrators.
- (c) *Victims participating* ie someone who does not do but by his attitude actually pushed himself into a victim.
- (d) *biologically Victims* ie those who physically has the disadvantage that causes it to become a victim.
- (e) *socially weak Victims* ie those who have a weak social position that causes it to become a victim.
- (f) *self victimizing Victims* ie those who fall victim to crimes they have committed themselves, for example, victims of drugs, gambling, abortion, prostitution.

Guarantee against damages victims of negligent handling of a shaman fracture

In the previous description, the author has elaborated on the rights of victims of crime or a criminal act. In the description of this sub-chapter the author intends described how the provision of guarantees against losses victim omissions by shamans fractures.

During this time the focus of protection for victims of crime have only been during the process of handling cases. But protection is not only the victim, but also should pay attention to the losses suffered by victims of crime or offense. Efforts to provide compensation for this guarantee exists only in the sphere of civil law, namely in the event of an unlawful act (*onrechtmatigdaad*). Compensation of an unlawful act in question is an act of default.

Understanding losses nearly as stated also by Yahya Harahap, compensation is "real loss" or "*fietelijke nadeel*" posed act of default (M. Yahya 2010). If we look at this opinion, it is a loss is a loss that is manifest arising from a tort. Furthermore, according Sudarto compensation is an obligation imposed on those who have acted against the law and inflict harm on others for the mistake (Sudarto 2002).

Offense itself is one act that is against the law. Therefore, according to the authors that are real losses are losses incurred directly. However, the procedure for obtaining compensation itself under Article 98 Book of the Law of Criminal Procedure. It covers "paragraph (1) if an act is the basis of the charges in an examination of the criminal case by the district court cause harm to another person, then the chief judge of the trial at the request of the person can be set to combine lawsuits for damages to the criminal case that; Paragraph (2) The request referred to in paragraph (1), must be filed no later than before the public prosecutor filed criminal charges. In the event that the public prosecutor was not present,

The formulation of the article above explains that a criminal act that resulted in losses for victims, redress can judge may order to combine the cases. According to Andi Sofyan, with the granting of incorporation claim for compensation in the criminal case under article 101 Criminal Procedure Code, the provisions of the rules of procedural law applicable to the civil examination compensation lawsuit. In civil law, called the parties to the claim for compensation is the Plaintiff and Defendant. The plaintiff is the party or parties who filed the lawsuit on a case because they feel their rights have been violated by a person, while the defendant is the person or parties sued and filed tried in the courts for allegedly violating anyone's rights (Andi Sofyan 2013).

A claim for damages can be filed in a merger case a criminal investigation as stipulated in Article 98 paragraph (2) Criminal Procedure Code, which establishes the time of filing a claim for damages in a merger, ie (Andi Sofyan 2013):

1. In the examination of the criminal case "unusual event" and "short event" (summary), the public prosecutor appeared in court, the claim for damages can only be submitted "at the latest, before the" public prosecutor filed criminal charges (*rekusitoir*); while
2. If the public prosecutor is not present in the case investigation "fast event" and the case investigation "road traffic", claims for damages can be filed no later than "before the judge handed down the verdict".

Urgency renewal of criminal law to the protection of victims of negligent handling of a shaman fracture

Renewal of the law is an effort to solve various problems that until now has not be solved by legislation that exists. The existence of criminal sanctions becomes a kind *ultimumremedium* or the most powerful legal means against all legal matters of society, nation and state.

However, legal advice in the form of regulations and laws (criminal) does not meet even the inadequate just when it appeared a great desire of all elements of society for a future law (*ius constituendum*) is good. Reform efforts in the framework of this criminal law enforcement needs to be done by updating, shaping and changing the old law as *ius operatum* or law in action with criminal sanctions to deter or prevent any person violating the law. The essence of reforms in criminal law is closely in touch with the issues or legal matters of positive law (*ius constitutum*) in the legislation as a consequence of Indonesia is a country of law.

Positive law is also called "the *iusconstitutum*" means laws that have been set for the current applied to a particular place or country. Soediman Kartohadiprodjo said that the reference to "the rule of law in Indonesia," it is "existing law in Indonesia", applies means that give legal effect to the events in the social life, now show the social life at the moment, and not in social life which are past, also not in life the future we aspire in the future; in Indonesia showed that there is social life in the Republic of Indonesia and not in other countries. Furthermore, he stated that, positive law is also called "the *iusconstitutum*" as opposed to "*iusconstituendum*" the rule of law in all aspire (Soediman, 1965).

Explanation Act of 1945 explicitly states that Indonesia is a country of law (*rechtstaat*) and not State power (*machtstaat*). Thus there are consequences attached to it, that the conception *rechtstaat* and conception of the rule of law puts human rights as one characteristic of the state *rechtstaats* tau uphold the rule of law, for a democratic state recognition and protection of the rights of human is one measure of the merits of a government.

Relating to the protection of victims, the state as one of the subjects of law needs to provide maximum protection to victims of crime or a criminal act. The protection given to the reform in the legislation.

As it has been described by Barda Nawawi Arief, that the renewal of the criminal law (penal reform) is part of the policy / political criminal law (Penal policy) (Barda Nawawi Arief 2011).The meaning and nature of criminal law reform is closely related to the background and the urgency of holding criminal law reform itself. The background of the criminal law reform can be viewed from the aspect of socio-political, sosiofilosofis, sociocultural, or of the various aspects of the policy (in particular social policy, criminal policy and law enforcement policies). This means that the meaning and nature of criminal law reforms are also closely related to the various aspects of it. Meaning of criminal law reforms also essentially must be a manifestation of the changes and updates to the various aspects of the policy underlying it. Thus, criminal law reform in essence implies, divulging efforts to reorient and reform criminal laws in accordance with the central values of sociopolitical,

sosiofilosofis and sociocultural Indonesian society that underlie social policy, criminal policy, and policy enforcement in Indonesia. In short it can be said, that the renewal of the criminal law in effect must be taken on a policy-oriented approach ("policy-oriented approach") as well as value-oriented approach ("value-oriented approach") (Arief, Barda Nawawi. 2011).

Guarantee against damages victims of negligent handling of a shaman fracture

In the previous description, the author has elaborated on the rights of victims of crime or a criminal act. In the description of this sub-chapter the author intends to describe how the provision of guarantees against losses victim omissions by shamans fractures.

During this time the focus of protection for victims of crime have only been during the process of handling cases. But protection is not only the victim, but also should pay attention to the losses suffered by victims of crime or offense. Efforts to provide compensation for this guarantee only exists in the sphere of civil law, namely in the event of an unlawful act (onrechtmatigdaad). Compensation of an unlawful act in question is an act of default.

Understanding losses nearly as stated also by Yahya Harahap, compensation is "real loss" or "fietelijke nadeel" posed act of default (M. Yahya 2010). If we look at this opinion, it is a loss that is manifest arising from a tort. Furthermore, according Sudarto, the compensation is an obligation imposed on those who have acted against the law and inflicting harm on others for the mistake (Sudarto 2002).

Offense itself is one act that is against the law. Therefore, according to the authors that are real losses are losses incurred directly. However, the procedure for obtaining compensation itself under section 98 Book of the Law of Criminal Procedure. It covers "subsection (1), if an act is the basis of the charges in an examination of the criminal case by the district court cause harm to another person, then the chief judge of the trial at the request of the person can be set to combine lawsuits for damages to the criminal case that; subsection (2), the request referred to in subsection (1), must be filed no longer than before the public prosecutor filed criminal charges. In the event that the public prosecutor was not present,

The formulation of the section above explains that a criminal act that resulted in losses for victims, redress can judge may order to combine the cases. According to Andi Sofyan, with the granting of incorporation claim for compensation in the criminal case under section 101 Criminal Procedure Code, the provisions of the rules of procedural law applicable to the examination of civil compensation lawsuit. In civil law, called the parties to the claim for compensation is the Plaintiff and Defendant. The plaintiff is the party or parties who filed the lawsuit on a case because they feel their rights have been violated by a person, while the defendant is the person or parties sued and filed tried in the courts for allegedly violating anyone's rights (Andi Sofyan 2013).

A claim for damages can be filed in a merger case a criminal investigation as stipulated in section 98 paragraph (2) Criminal Procedure Code, which establishes the time of filing a claim for damages in a merger, ie (Andi Sofyan 2013):

1. In the examination of the criminal case "unusual event" and "short event" (summary), the public prosecutor appeared in court, the claim for damages can only be submitted "at the latest, before the" public prosecutor filed criminal charges (requisitoir); while
2. If the public prosecutor is not present in the case investigation "fast event" and the case investigation "road traffic", claims for damages can be filed no longer than "before the judge handed down the verdict".

Seeing the problems of victims of negligence by shaman loss of fracture, then the real losses is loss incurred physical (permanent disability). A person suffering from physical harm that their permanent disability in limbs caused by negligence shaman fractures, should get compensation

from the offender (shaman fractures). This reason based on the fracture cause by shaman negligence is an act that has the properties against the law (Helmi ZN 2011; FKUI 2005).

As the authors have described in previous chapters, the victims who suffer disability from negligence causing fractures shaman economically can offend to do daily activities, and affects the productivity of subsistence. To that end, the shaman fractures as a principal offense should be responsible and provide compensation of loss suffered by the victims of his actions.

Urgency renewal of criminal law to the protection of victims of negligent handling of a shaman fracture

Renewal of the law is an effort to solve various problems that until now has not be solved by legislation that exists. The existence of criminal sanctions becomes a kind ultimatumremedium or the most powerful legal means against all legal matters of society, nation and state.

However, legal advice in the form of regulations and laws (criminal) does not meet even the inadequate just when it appeared a great desire of all elements of society for a future law (ius constituendum) is good. Reform efforts in the framework of this criminal law enforcement needs to be done by updating, shaping and changing the old law as ius operatum or law in action with criminal sanctions to deter or prevent any person violating the law. The essence of reforms in criminal law is closely in touch with the issues or legal matters of positive law (ius constitutum) in the legislation as a consequence of Indonesia is a country of law. (Gosita, Arif. 1986; Moeljatno, 2002)

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Relating to the protection of victims, the state as one of the subjects of law needs to provide maximum protection to victims of crime or a criminal act. The protection given to the reform in the legislation (Hadjon, Philipus M 1987; Hartono, Sunaryati 1991).

CONCLUSION

Based on the description of the discussion in Chapter 4, the results of this study the authors concluded as follows:

1. Legal protection for victims of negligence has been set in legislation but the legal protection given to victims of handling shaman fracture is still very weak because they not have specifically provide protection to victims negligent handling of a shaman fractures, but in general only provides protection for victims of crime;

2. Urgency of protection for victims of fractures shaman performed to ensure specific legal protection against negligence resulting in losses and or disabilities that will or are being sustained due to the criminal acts that need a policy in criminal law reform.

REFERENCES

- Abdussalam. 2010. *HAM dalam Proses Peradilan*. Jakarta: PTIK.
- Abdussalam. 2007. *Kriminologi*. Jakarta: Restu Agung.
- Arief, Barda Nawawi. 2011. *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru*. Ed. 2. Jakarta: Kencana.
- Black, Joyce M. 1993. *Medical Surgical Nursing*. Philadelphia: W.B Sainders Company.
- Brunicardi, FC, dkk. 2004. *Schwartz's Principle of Surgery*. USA: The McGraw-Hill Companies.
- Chazawi, Adami. 2002. *Pelajaran Hukum Pidana 2: Penafsiran Hukum Pidana. Dasar Pemidanaan & Peringatan Pidana, Kejahatan Aduan, Perbarengan & Ajaran Kausalitas*. Jakarta: PT Raja Grafindo Persada.
- De Jong, Sjamsuhidayat. 2011. *Buku Ajar Ilmu Bedah* Ed. 3. Jakarta: Penerbit Buku Kedokteran, ECG, 2010
- Farid, Zainal Abidin. 1995. *Hukum Pidana I*. Jakarta: Sinar Grafika.
- FKUI. 1995. *Kumpulan Kuliah Ilmu Bedah*. Jakarta: Binarupa Aksara.
- Fuady, Munir. 2009. *Teori Negara Hukum Modern (Rechtstaat)*. Bandung: Refika Aditama.
- Gosita, Arif. 1986. *Viktimologi dan KUHAP*. Jakarta : Akadmika Presindo.
- Hadjon, Philipus M. 1987. *Perlindungan Hukum Bagi Rakyat Indonesia*. Surabaya: Bina Ilmu.
- Hamzah, Andi. 1991. *Asas-asas Hukum Pidana*. Jakarta: Rineka Cipta.
- Hartono, Sunaryati. 1991. *Politik Hukum Menuju Satu Sistem Hukum Nasional*. Bandung: Alumni.
- Helmi ZN, 2011. *Buku Ajar Gangguan Muskuloskeletal*. Jakarta: Salemba Medika.
- Ibrahim, Johni. 2007. *Teori & Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing.
- Kansil, C.S.T. 1989. *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*. Jakarta: Balai Pustaka.
- Lamintang, P.A.F. 1984. *Dasar-dasar Hukum Pidana Indonesia*. Bandung: Sinar Baru.
- Mansur, Dikdik M. Arief. Elisatris Gultom. 2007. *Urgensi Perlindungan Korban Kejahatan: Antara Norma Dan Realiti*. Jakarta: Raja Grafindo Persada.
- Marpaung, Leden. 2008. *Asas Teori Praktik Hukum Pidana*. Jakarta: Sinar Grafika.
- Marzuki, Peter Mahmud. 2011. *Penelitian Hukum*. Jakarta: Kencana.
- Moeljatno. 2002. *Asas-Asas Hukum Pidana*. Jakarta: Sinar Grafika.
- Oerswari, E. 1989. *Bedah dan Perawatannya*. Jakarta: PT Gramedia.
- Poernomo, Bambang. 1985. *Asas-asas Hukum Pidana*. Jakarta: Ghalia Indonesia.
- Raharjo, Satjipto. 2000. *Ilmu Hukum*. Bandung: PT. Citra Aditya Bakti.
- Rasjidi, Lili. dan I.B. Wisa Putra. 1993. *Hukum Sebagai Suatu Sistem*. Bandung : Remaja Rusdakarya.
- Salter, RB. 1999. *Textbook Disorders and Injuries of The Muskuloskeletal System*. Third Ed. USA: Lippincott Williams and Wilkins
- Solomon, L., D. Warwick dan S. Nayagam. 2010. *Apley's System of Orthopaedics and Fractures Ninth Edition*. London: Hodder Education.
- Yulia, Rena. 2010. *Viktimologi Perlindungan hukum terhadap korban kejahatan*. Yogyakarta: Graha Ilmu.
- Raharjo, Satjipto. 1993, *Penyelenggaraan Keadilan dalam Masyarakat yang Sedang Berubah*, Jurnal Masalah Hukum.

Muhammad Ardi Munir,
Doctoral Student,
Department of Sociology Science /
Department of Health Humanities and Bioethics,
Faculty of Medicine, Tadulako University
Email: ardi.spot@yahoo.com

Jubair,
Department of Criminal Law Science,
Faculty of Law Sciences,
Tadulako University Indonesia
Email: jubairhukum62@gmail.com

Kartini Malarangan,
Department of Criminal Law Science,
Faculty of Law Sciences,
Tadulako University Indonesia
Email: k.malarangan@yahoo.com

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