




Legal Reform for Victims in Criminal Justice System of Indonesia and Russian Juridical Review

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Abstract

The realization of justice in a criminal process cannot be separated from the position of the victim in the criminal justice system. Victims as parties directly dealing with criminal acts certainly expect their rights and interests to be properly accommodated. This article is written based on a method of normative juridical research with a comparative approach in victim protection regulation in Russia and Indonesia. In the process of resolving criminal cases through the criminal justice system in Indonesia, the victim's interests are represented by the Public Prosecutor so that they do not have access to have their wishes heard further. Even though in Law Number 1 of 2023 concerning the Criminal Code, sentencing guidelines and purposes of sentencing have been regulated, which in this case requires the role of the victim and/or

their family, and further regulation is needed in practice. This is of course very different from the position of the victim in the Criminal Procedural Code in Russia, which places the victim actively in the process of the criminal justice system. The presence of the prosecutor in court does not diminish the victim's right to fight for their rights, including by conducting private prosecution of the perpetrator in the form of material or immaterial compensation. To be able to realize the values contained in Pancasila which are not only as *Grundnorm* but also as *Grundwerten*, it is necessary to place this victim in the process of resolving criminal cases at every level in the criminal justice system.

Keywords *Victims, Criminal Justice System, Russia, Indonesia*

Introduction

The victim was a key player in the criminal justice system in the early Middle Ages. The process of prosecuting and establishing the guilt of those who commit crimes involves victims or members of their families. The criminal proceedings of the Inquisitor followed. The accused is only taken into account as a topic in the criminal justice system by the criminal procedure inquisitor. This method is closely linked to the use of torture to get confessions from the accused, the denial of legal representation to the accused, the presumption of guilt, and other heinous practices within the legal system.¹ Victims lost nearly all of their roles in the criminal justice system as a result of being replaced by governmental entities. Victim roles start to become less important and disregarded.² The *inquisitoir* principle in the criminal justice process was then replaced by the *accusatoir* principle.³ Since it

¹ Mirjan Damaška, "The Quest for Due Process in the Age of Inquisition," *The American Journal of Comparative Law* 60, no. 4 (2012): 919–54.

² Rocky Marbun and Muhammad Imanuddin, "Initiating a Principle Free from Pressure in the Investigation Process: Tracking the Semiotics of Investigator Communication," in *International Conference on Law, Economics and Health (ICLEH 2020)* (Semarang: Atlantis Press, 2020), 190–96, <https://doi.org/10.2991/aebmr.k.200513.041>.

³ Ramdhan Kasim, "The Giving Legal Aid For The Poor On A Criminal Case," *Substantive Justice International Journal of Law* 1, no. 1 (2018): 33–45.

places greater emphasis on defending the rights of criminals than on victims, the accusatoir principle's application in the criminal justice system has evolved to actually disregard victims' rights. Beyond being punished by the criminals, victims frequently receive no benefits from the legal system. In actuality, victims of crime have suffered losses from the bad deeds of the offenders, both material and immaterial.

Right now, victims' rights play a significant role in the criminal justice system. Just as the law respects and defends the accused's rights, the rights must also be respected and safeguarded by the law.⁴ Even the United Nations in its strategy to eradicate sexual abuse stated "elevating 'the voice of victims themselves', and putting 'their rights and dignity' first".⁵ This shows how important it is to protect the rights of victims of crime in crime prevention strategies, even used as a measure of the success of a criminal justice system.⁶ Therefore, the fulfillment of victims' rights must be placed as a top priority in the criminal justice system.

Based on the General Assembly Resolution 40/34 of 29 November 1985, there are 4 rights of crime victims that must be fulfilled in the judicial process, namely access to justice and fair treatment, restitution, compensation, and assistance.⁷ Fulfillment of the rights of victims of crime in the judicial process was also reaffirmed by the United Nations in General Assembly resolution 60/147 of 16 December 2005, namely equal and effective access to justice, the right to adequate, effective and prompt reparation for the harm suffered, and

⁴ Anna Roberts, "Victims, Right?," *Cardozo Law Review* 42, no. 4 (2021): 1449–1512.

⁵ Jane Connors, "A Victims' Rights Approach to the Prevention of, and Response to, Sexual Exploitation and Abuse by United Nations Personnel," *Australian Journal of Human Rights* 25, no. 3 (2019): 498–510, <https://doi.org/10.1080/1323238X.2019.1707933>.

⁶ Patrick Bashizi Bashige Murhula and Aden Dejene Tolla, "The Effectiveness of Restorative Justice Practices on Victims of Crime: Evidence from South Africa," *International Journal for Crime, Justice and Social Democracy* 10, no. 1 (2021): 98–110, <https://doi.org/10.5204/ijcjsd.1511>.

⁷ UN General Assembly, "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: Resolution/Adopted by the General Assembly," Pub. L. No. A/RES/40/34 (1985).

right to relevant information concerning violations and repair mechanisms.⁸

In addition to being a part of the criminal justice system, victims' rights are also recognized as fundamental human rights in the Pancasila. A just and peaceful society is built around the principles of Pancasila, a set of values that lead Indonesians toward growth and are founded on divinity, humanity, unity, people, and social justice. Pancasila is meant to shield people from the ideas of law that oppose the existing quo and do not wish to turn the law into a mindless machine but rather into a moral establishment that strives for a just nation. The fifth Pancasila ideal, social justice, is defined as defending the oppressed members of Indonesian society. Social justice values include the cultivation of moral behavior that embodies a sense of kinship and reciprocal assistance. The need of treating people fairly and striking a balance between rights and obligations is also stressed. These criteria also include the critical component of respecting the rights of others. Furthermore, it is confirmed that people have a tendency to help others become independent. Each of these elements serves as a crucial cornerstone for achieving the goal of full social justice for all Indonesian citizens.

The current official procedures frequently disregard the rights of victims of these acts. The scam by a travel agent for the first Hajj pilgrimage, which was done by a husband and wife, is one instance of a situation where the rights of a victim of crime in Indonesia are neglected. It was discovered that this fraud case disregarded the victims' entitlement to compensation. This case resulted in 63,000 victims and a total loss of IDR 905.33 billion. The primary director of first trip was given a 20-year prison sentence and a 10 billion fine, according to the court's ruling. The wife of the director received an 18-year prison sentence and a 10-billion dollar fine. In the meantime, the Commissioner of First Travel and the Director of Finance received sentences of 15 years in prison and a fine of 5 billion. The court further

⁸ UN General Assembly, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: Resolution / Adopted by the General Assembly," Pub. L. No. A/RES/60/147 (2006); Francis D. Boateng and Gassan Abess, "Victims' Role in the Criminal Justice System: A Statutory Analysis of Victims' Rights in U.S.," *International Journal of Police Science & Management* 19, no. 4 (2017): 221–28.

determined that since the seized assets were acquired through the proceeds of criminal activity, they would be put up for auction and the earnings would be given to the state.⁹ The court's ruling prevented the victims of fraud from being compensated for their tangible damages, despite the fact that the state is required to uphold the rights of crime victims, including paying back any lost wages. This is in line with the United Nations Declaration on the Prosecution and Assistance of Crime Victims, which highlights each nation's duty to uphold the rights of those who have been the victims of criminal crimes in point 4 Part I of the General Principles:

“Reparation by the offender to the victim shall be an objective of the process justice. Such reparation may include (1) the return of stolen property, (2) monetary payment for loss, damages, personal injury and psychological trauma, (3) payment for suffering, and (4) service to the victim. Reparation should be encouraged by the correctional process.”

The Russian Criminal Procedural Code provides adequate regulation of the legal processes for the resolution of criminal matters within the criminal justice system. The arrangement about the victim's place in the criminal justice system, particularly in court, is one of them. Victims of criminal crimes are guaranteed the fulfilment of their rights, which are frequently overlooked, when they participate in the criminal justice system and can even actively participate in trials. It would be fascinating to investigate further the discrepancies between the rules in the Russian Criminal Procedural Code and the arrangements surrounding the status of victims of criminal crimes in Indonesia.

In her book *The Concept of Victim Protection in the National Criminal Justice System and the Islamic Criminal Law System*, Vivi Ariyanti highlights the differences between Islamic and national criminal law, emphasizing that victim protection must strike a balance between the interests of the public interest, society, the state, the

⁹ Supreme Court of the Republic of Indonesia, “Supreme Court Decision No. 3096 K/Pid.Sus/2018” (2019).

offender, and the victim.¹⁰ According to Legal Protection for Children Victims of Crimes of Sexual Violence by Syuha Maisytha Probilla et al., in order to strengthen the institutional existence of UPTD PPA, it is necessary to include basic regulations regarding UPTD PPA in the provisions of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.¹¹ Legal Defense for Sexual Harassment Victims According to studies by Rosania Paradiatz and Eko Soponyono, given the increase in sexual assault cases in Indonesia, it is imperative that criminal laws be drafted specifically for these situations. It is possible to effectively execute the creation of laws protecting victims of sexual assault, the resolution of sexual assault cases, and the protection of victims of sexual assault.¹² Determining the Status of Rape Victims to Perform an Abortion After the Ratification of Law Number 1 of 2023 by Tsabitha Afnan Putri Wahyudhi and Beniharmoni Harefa, conclude that the party with authority to determine when someone can have a legal abortion is the investigator and determining the status as a rape victim is during the investigation. This was concluded based on Law No. 12 of 2022 concerning Criminal Actions for Sexual Violence and National Police Chief Regulation (Perkap) No. 6 of 2019 contains criminal investigation.¹³

Implementation of Restitution for Victims of Crimes of Sexual Violence Maria Novita Apriyani This research shows that applications for restitution can be submitted by victims through LPSK at the same time as the criminal process, even starting from the beginning of the investigation. The obstacle experienced by law enforcement officials in implementing restitution for victims of sexual violence is that there are

¹⁰ Vivi Ariyanti, "Konsep Perlindungan Korban Dalam Sistem Peradilan Pidana Nasional Dan Sistem Hukum Pidana Islam," *Al-Manabij: Jurnal Kajian Hukum Islam* 13, no. 1 (2019): 33–48, <https://doi.org/10.24090/mnh.v0i1.2224>.

¹¹ Hafrida Hafrida and Helmi Helmi, "Perlindungan Korban Melalui Kompensasi Dalam Peradilan Pidana Anak," *Jurnal Bina Mulia Hukum* 5, no. 1 (2020): 119–36, <https://doi.org/10.23920/jbmh.v5i1.16>.

¹² Rosania Paradiatz and Eko Soponyono, "Perlindungan Hukum Terhadap Korban Pelecehan Seksual," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 61–72, <https://doi.org/10.14710/jphi.v4i1.61-72>.

¹³ Tsabitha Afnan Putri Wahyudhi and Beniharmoni Harefa, "Penentuan Status Korban Pemerkosaan Guna Melakukan Aborsi Pasca Pengesahan Undang-Undang Nomor 1 Tahun 2023," *Jurnal Mercatoria* 16, no. 1 (2023): 63–70, <https://doi.org/10.31289/mercatoria.v16i1.9439>.

no forced measures for perpetrators of sexual violence to pay restitution that is decided in court.¹⁴

This study offers statutory analysis of victims' rights in the regulation of the rights of crime victims in the Criminal Code and the Criminal Procedural Code of the Russian Federation and the Indonesian Republic. The main goal is to identify and address the issues of the position of victims in the criminal justice system in Russia and Indonesia and the regulation of fulfilling the rights of crime victims in Indonesia considering that Indonesia is based on the precepts of Pancasila as the basis of the state.

The research methodology is normative juridical. Normative juridical research is a type of study that looks at documents and makes use of secondary material, like laws and regulations, as well as expert opinions. This kind of normative research makes use of qualitative analysis, namely using statements or words rather than statistics to explain the data that is already available. The study, which describes the rights of crime victims via the criminal justice systems in Russia and Indonesia, is descriptive and qualitative in nature.

An approach used is a comparative approach. A comparative approach is research by comparing a particular legal system or legal institution with a particular legal system or other legal institution. This study obtained information from various aspects regarding the rights of victims of crime listed in the rights of victims in court as stipulated in Article 42 paragraph 2 Criminal Procedural Code of Russian Federal in Russia and Law Number 13 of 2006 concerning Witness and Victim Protection. This approach can help efforts to reform the law in the aspect of victims' rights in Russia and Indonesia.

Arrangements for the Rights of Crime Victims in the Law of the Russian Federation and in Indonesia

A. Regulation of the Rights of Victims of Crime in Russia

A static approach that had developed in Europe since the late 19th century with the characteristic that the state actually takes the position

¹⁴ Maria Novita Apriyani, "Implementasi Restitusi Bagi Korban Tindak Pidana Kekerasan Seksual," *Risalah Hukum* 17, no. 1 (2021): 1–10.

of the victim of crime began to receive criticism from advocates, especially in the US and then also in Europe, in the last decade of the 20th century. This marked the beginning of the shift in the victim's position. West Area. Proposals have been made for the criminal justice system to be reformed in order to give victims' interests priority in the interaction between the state and the offenders. The idea of punishment as a means to an end rather than as a tool to mend the connection between litigants is where change starts.¹⁵

The victim's part is crucial to the law enforcement procedure. Because few crime victims report crimes, the victim's perspective is not explored, making cases harder to uncover or less perfect when they are, and the criminal justice system lacks sympathy because it does not respect the victim's position, insensitivity to the victim's position in the criminal justice process results in a high dark number. If this is the case, then the Russian Federation has legal justification to enact laws and regulations that treat victims as valued members of society who can actively participate in the legal system.

It is crucial to define a victim as previously mentioned in order to safeguard those who experience losses due to criminal activity. According to the Russian Federation's Criminal Procedure Code, a victim is any natural person who sustains bodily, property, or moral harm as a result of criminal activity. If a criminal conduct damages a victim's property or reputation, this also applies to victims who are legal organizations. An individual must go through a decision made by the court, investigator, prosecutor, or inquirer in order to be identified as a victim. By this definition, any natural person or legal organization has the potential to become a victim. The 2005 Victim Declaration only mentions a person as a victim, without explaining whether a natural person or a legal entity is included in a person. The regulation of who is a victim in the Criminal Procedural Code of the Russian Federation does not include a close relative of the victim of a crime. This can lead to legal consequences, for example in terms of who has the right to represent the rights of the victim and the legal interests of the victim if the victim dies.

¹⁵ Andrea & Tomas Gabris Kluknavska, "Criminal Law Between The Capitalist and Socialist Paradigm?," *Russian Law Journal* 5, no. 4 (2017): 66.

Criminal Code of the Russian Federation No. 63-Fz of June 13, 1996 provides the possibility for victims of crime to receive from the perpetrators of crimes in the form of compensation for material losses and psychological suffering as well as restitution for damages suffered by victims as a result of criminal acts. These provisions are contained in Article 75 and Article 76 of the Criminal Code of the Russian Federation regarding Release from Criminal Responsibility. Release from Criminal Responsibility in Connection with Active Repentance and Release from Criminal Responsibility in Connection with Reconciliation with the Victim are the two categories of such releases. When someone commits a minor or medium-level crime for the first time, they are subject to the terms of the Release from Criminal Responsibility. Specific requirements for obtaining Release from Criminal Responsibility in Connection with Active Repentance are that the perpetrator, after committing the crime, surrenders, assists in uncovering the crime, provides compensation or restitution for all losses suffered by the victim. While the special conditions for obtaining Release from Criminal Responsibility in Connection with Reconciliation with the Victim are that the perpetrator of the crime has reconciled with the victim and restitution for the loss suffered by the victim. Just reconciling with the victim does not necessarily make the perpetrator free from criminal responsibility.

In addition to reconciliation, the perpetrator must also compensate for the losses suffered by the victim. The awarding of compensation and restitution by perpetrators of crimes to victims can also be taken into consideration by judges to reduce punishment in their decisions, even though the crimes are included in the category of serious crimes. What is interesting is the arrangement in Article 104.3 of the Criminal Code of the Russian Federation, where payment of compensation to the victim takes precedence over the confiscation of the perpetrator's property. For example, the perpetrator wants to provide compensation to the victim but the judge in his decision states that the property belonging to the perpetrator must be confiscated. So, the perpetrator must first pay compensation to the victim and then, if there is any, the state confiscates the rest of his assets. This shows the importance of providing compensation to victims of crime.

Criminal Procedure Code of Russian Federation No. 174-FZ of December 18, 2001 regulates the protection of victims' rights and

interests in the criminal justice process. The judiciary is obliged to notify victims of their rights, responsibilities and responsibilities and guarantees for the protection of the use of their rights. In addition to security protection for the victim, a close relative of the victim can get security protection if they receive threats to their life, physical, psychological and/or property.

The Criminal Procedure Code of the Russian Federation also places victims in an important position in the criminal justice process. One of them is giving the victim the opportunity to take an active role in the prosecution of the perpetrator. This is confirmed in Article 22 of the Criminal Procedural Code of Russia where the victim, his legal representatives and/or representatives have the right to take part in the prosecution of the perpetrator. The right of the victim to play a role in criminal prosecution can be seen in criminal cases of private prosecution and criminal cases of the private-public prosecution. In criminal cases of private prosecutors, the prosecution of perpetrators can be based on the initiation of the victim or their legal representatives. If the victim or their legal representative does not file a lawsuit, then the perpetrator cannot be brought to justice. Criminal cases of private prosecutors are the subject of accountability elimination if the perpetrator reconciles with the victim and provides restitution to the victim. In criminal cases of the private-public prosecutor, only the victim can initiate prosecution of the perpetrator.

The legal representative of the victim cannot initiate prosecution of the perpetrator. Criminal cases of the private-public prosecution, the perpetrator can still be held accountable even though the perpetrator has reconciled with the victim and paid compensation to the victim unless the victim or his legal representative submits a request to stop the criminal case. Crimes that fall into the light or medium category can be committed by a private prosecutor by means of the victim or his legal representative submitting a report directly to the court and acting as a prosecutor on his own behalf. If the victim dies, the report can be made by his close relative or by the public prosecutor. Prosecution can occur with or without the participation of the Public Prosecutor. When the victims are people who are in the state of dependence or are unable to use or defend their legal rights and interests for certain reasons and there is a need to find the perpetrators and bring them to justice, the mode of

trial becomes the public prosecutor versus the private person.¹⁶ In these circumstances, the public prosecutor has the right to refer his case to court even without a request for prosecution from the victim.

The presence of the Public Prosecutor for certain cases, which are classified as mild or medium cases, in private-public prosecution trials aims to change the behavior of the defendant. The presence of the public prosecutor in court, in particular, is related to the difference in strata between the accused and the victim so that it is hoped that the court will be able to provide justice to both the accused and the victim. Even though the victim does not wish to prosecute the perpetrator, the prosecutor is still required to prosecute the perpetrator in criminal cases of private prosecution and criminal cases of the private-public prosecution by taking into account the circumstances of the victim, such as a person who is in the state of dependence or a person who is unable to use the rights they have for certain reasons.

If the victim or their attorney files a request to halt the case, the court and public prosecutor have the authority to end the case they are currently working on. This holds true for major and intermediate crimes that are committed for the first time and in which the offender has made amends with the victim and given the victim compensation.

The rights bestowed upon victims within Article 42 part 2 of the Criminal Procedural Code of the Russian Federation encompass a comprehensive spectrum that can be effectively categorized into three distinct stages which are before, during, and after the proceedings. Prior to the initiation of legal proceedings, victims are vested with a series of crucial prerogatives. They still have the option to familiarize themselves with the exact details of the indictment in order to have a basic comprehension of the accusations made against the defendant. Victims continue to benefit from a number of rights that allow them to actively participate in the quest of justice as the legal proceedings progress. The right to introduce one's own testimony as evidence in court is one of the fundamental rights that are provided. In addition, victims have the right to refuse to have their close relatives called as witnesses; this is a

¹⁶ Vadim Volkov, "The Prosecutor Effect in Trials for Petty Violent Offences in Russia," *International Journal of Comparative and Applied Criminal Justice* 45, no. 2 (2021): 207–20, <https://doi.org/10.1080/01924036.2020.1732434>.

privilege that protects family relationships and guarantees the veracity of testimonies.

Even if they later decide to retract their testimony, victims who voluntarily give their evidence have a right to know the testimony's evidentiary value in relation to the criminal prosecution. The clause allowing for the submission of documentation enables victims to bolster their claims and advocate for themselves during the legal process. Crucially, victims have the ability to request that parties to the proceedings recuse themselves, protecting the fairness of the process. After the preliminary investigation is completed, victims are granted a range of rights designed to protect their right to information and to continue to be involved in the post-trial processes. They continue to have access rights to items related to the criminal case, which allows them to examine and gather relevant data for their files. This goes so far as to provide copies of rulings made by courts at different levels, which emphasizes even more how crucial victim participation in the legal system is. Furthermore, victims are entitled to use their agency through the filing of complaints and appeals, which allows them to participate in post-trial proceedings and request changes to decisions that affect their interests.

Based on the description of the rights of victims of these crimes, it is very clear that the Criminal Procedure Code of the Russian Federation places victims in an important position in the process of resolving criminal cases and can take an active role from the initial stages to trials in court. Even though there is a prosecutor, it does not eliminate the essence of the position of the victim who can still fight for their rights, including by carrying out a private prosecution against the perpetrator.

In addition to the rights outlined in Article 42 part 2, victims are also entitled to reimbursement for damages sustained as a result of criminal activity as well as expenses related to the legal system. Guarantees of compensation are crucial because they represent a substantial recourse for victims of crime¹⁷ and including the

¹⁷ National Criminal Justice Reference Service, "Section 4: New Directions in Financial Recover," in *New Directions from the Field: Victims' Rights and Services for the 21st Century* (U.S. Department of Justice, 1998), 355–72.

fundamental rights for victims of crime.¹⁸ Victims may also pursue damages for the moral distress they have endured. Although the amount of moral suffering is incalculable, the victim is entitled to monetary recompense. A court ruling establishes the amount of compensation. In fact, restitution made by the offender to the victim plays a crucial role in the criminal justice system since it shows the offender's sense of responsibility after realizing he has harmed the victim. If the agreed-upon social exchange actions like orders to make restitution eliminate threats to the victims' position and power and remove risks to the perpetrators' moral image, then victims and perpetrators will be more likely to make amends. Is it feasible to restore the victim's status and power and the perpetrator's sense of acceptance and belonging in society by making restitution?¹⁹ In order to provide victims with justice, the offenders must make amends for their losses, which may include psychological harm they have endured and physical compensation intended to help them accept responsibility. Victims must also be given access to broader social functions in an attempt to heal from the conflict.²⁰ The judge has the authority to decide whether to award the victim compensation or seize the offender's belongings. Victims receive reimbursement for their travel and lodging expenses, as well as compensation for lost wages resulting from summonses to the body of inquiry, the investigator, the public prosecutor, or the court.

The Criminal Procedure Code of the Russian Federation does not explicitly stipulate where the victim will receive compensation if the perpetrator has no more property to pay all or part of the compensation. In the 1985 Victim Declaration it was stated that when the perpetrator no longer has the property to pay all or part of the compensation, the state seeks to provide compensation costs for victims who suffer sustained significant bodily injury or impairment of physical or mental

¹⁸ National Criminal Justice Reference Service, "Section VI: New Directions in International Victim Assistance," in *New Directions from the Field: Victims' Rights and Services for the 21st Century* (U.S. Department of Justice, 1998), 413–28.

¹⁹ Stacy Hoskins Haynes, Alison C. Cares, and R. Barry Ruback, "Reducing the Harm of Criminal Victimization: The Role of Restitution," *Violence and Victims* 30, no. 3 (2015): 450–69, <https://doi.org/10.1891/0886-6708.vv-d-13-00049>.

²⁰ Christine Schwöbel-Patel, "The 'Ideal' Victim of International Criminal Law," *European Journal of International Law* 29, no. 3 (2018): 703–24, <https://doi.org/10.1093/ejil/chy056>.

health as a result of serious crime as well as the victim's family where the person who being a dependent died or became unable to work either mentally or physically as a result of a serious crime. So, the state does not bear the cost of compensation for all types of criminal acts if the perpetrators are unable to pay. There is no such arrangement in the Criminal Procedure Code of Russian Federation. However, the Criminal Procedure Code of the Russian Federation provides guarantees for victims to receive compensation for losses suffered as a result of crime. The Criminal Procedure Code of Russia does not specify the type of crime for which the victim is guaranteed compensation. The legal consequence of this arrangement is that victims can receive guaranteed compensation for all types of crimes. Another consequence is that the judge in his decision can ask the state to pay compensation if the perpetrator does not have the property to pay it. This can be seen from the authority of the judge to decide on the steps to be taken to compensate for the losses suffered by the victim.

The Criminal Procedural Code of the Russian Federation does not mention the position of close relatives whether they are victims or not. However, they can represent victims in the criminal justice process and receive the same rights as victims. If the victim dies as a result of a crime, the rights of the victim will be transferred to one of his close relatives. Unlike the provisions in the Declaration of Crime 1985, close relative can include victims of crime if they are the immediate family or defendants of the direct victim or people who suffer losses because they help victims who are experiencing distress or to prevent victimization. So that in any crime, when the victim dies, the close relative can still get restitution for the losses suffered.

The provisions in Article 45 Part 2 of the Criminal Procedure Code of the Russian Federation reaffirm the importance of the position of the victim that in order to protect the rights and legal interests of the victim, who are the minor or who are deprived of the possibility to defend their own rights and interest legal interests due to physical and psychological conditions, in a mandatory participation in a criminal case will be involved legal representatives or their representatives.

B. Regulation of the Rights of Crime Victims in the Law of the Republic of Indonesia

Victim comes from the Latin word *victima* which means an object of a ritual sacrifice that has experienced a shift to become a harmed party.²¹ Although there is no agreement on who is included in the definition of a victim of crime, regulation regarding the legal definition of a victim of crime is very important.²² This definition aims to determine who can be called a victim of a crime so that their rights must be protected in the process of law enforcement.²³ Ambiguity regarding the meaning of the victim can pose risks.²⁴ The strict definition of a victim of crime only defines a victim as someone who is physically the direct target of criminal activity.²⁵ Differences in the legal definition of victims of crime can undermine the approach to be used in protecting the rights of victims of crime and hinder understanding of the role of victims of crime in the criminal justice system.²⁶

The 1985 Victim Declaration defines victims as people who, both individually and collectively, have suffered losses, including physical or psychological suffering, emotional suffering, economic loss or a substantial reduction of their fundamental rights, through actions or inaction that violate criminal law and applicable laws, including all laws against criminal abuse of power.²⁷ The definition of victim in the Code of Practice for Victims of Crime is also extended to include close relatives of the victim, namely the spouse, the partner, the relatives in

²¹ Yevgen Galona, "From Ritual to Metaphor: The Semantic Shift in the Concept of 'Victim' and Medieval Christian Piety," *International Review of Victimology* 24, no. 1 (2017): 83–98, <https://doi.org/10.1177/0269758017732923>.

²² Magnus Lindgren and Vesna Nikolić-Ristanović, *Crime Victims: International and Serbian Perspective* (Serbia: Organization for Security and Cooperation in Europe, Mission to Serbia, Law Enforcement Department, 2011).

²³ Danielle Hughes, Emma Colvin, and Isabelle Bartkowiak-Théron, "Police and Vulnerability in Bail Decisions," *International Journal for Crime, Justice and Social Democracy* 11, no. 3 (2022): 122–38, <https://doi.org/10.5204/ijcsd.1905>.

²⁴ Tessa Lacerda, "'Victim': What Is Hidden behind This Word?," *International Journal of Transitional Justice* 10, no. 1 (2016): 179–188.

²⁵ Matthew Hall, "Counting Crime: Discounting Victims?," *International Review of Victimology* 28, no. 1 (2021): 3–32, <https://doi.org/10.1177/0269758021995909>.

²⁶ Robyn Holder, Tyrone Kirchengast, and Paul Cassell, "Transforming Crime Victims' Rights: From Myth to Reality," *International Journal of Comparative and Applied Criminal Justice* 45, no. 1 (2021): 1–13, <https://doi.org/10.1080/01924036.2020.1857278>.

²⁷ UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: resolution/adopted by the General Assembly.

direct line, the siblings and the defendants of the victim, other family members that are considered as a closed relative at the discretion of the service provider. However, this expansion is limited to close relatives whose victims died as a direct result of criminal acts.²⁸ Due to the misconception that victims are out for vengeance, victims are not actively participating in the legal system, which naturally makes it difficult to achieve justice as victims will never be happy.²⁹ Howard Zehr changed his perspective after realizing that the victim needed to take center stage in the pursuit of justice rather than just being a supporting player who was included. Previously, he believed that the victim's role was seen as a diversion and that justice should be served for the offender.³⁰

It goes without saying that the victim should have priority in the criminal justice system given their losses and suffering. The interests of victims must be taken into consideration in order to provide compensation, return the situation to as it was, and satisfy wants in various ways. When agreements for victim rights are made in the Law of the Republic of Indonesia No. 8 of 1981 concerning the Indonesian Criminal Procedural Code as included in the Russian Federation's Criminal Procedural Code, this will come to pass. Although the state has a Public Prosecutor to help safeguard victims' interests, victims are still able to participate actively in the legal process.

Arrangements for the protection of the rights of victims of crime, in particular, are regulated in the Indonesian Criminal Procedural Code, Indonesian Criminal Code and Law Number 13 of 2006 jo Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. Arrangements for the rights of crime victims are also scattered in regulations outside

²⁸ Ministry of Justice (MoJ), *Code of Practice for Victims of Crime* (UK: Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office, 2015).

²⁹ Judith Lewis Herman, "Justice From the Victim's Perspective," *Violence Against Women* 11, no. 5 (2005): 571–602, <https://doi.org/10.1177/1077801205274450>.

³⁰ Budiono Abdul Rachmad, Madjid Abdul, and Suryokumoro Herman, "Treatment Formulation for Future Victims of Narcotics Abuse," *Russian Journal of Agricultural and Socio-Economic Sciences* 6, no. June (2022): 87, <https://doi.org/10.18551/rjoas.2022-06.10>.

the three laws.³¹ However, the protection of victims contained in laws other than the Criminal Procedure Code and the Criminal Code only applies to crimes regulated in these laws.

There is no definition of a crime victim in the Indonesian Republic's Criminal Procedure Code. A victim is defined by the Indonesian Republic's Penal Code as someone who experiences financial, psychological, or physical harm as a result of a crime. The Indonesian Republic's Criminal Code does not specify whether victims are natural people or legal entities. This can be problematic because judges might view a victim exclusively as a natural person, excluding legal entities. The victim's close relative is likewise excluded from the definition of victim. Even so, it is crucial to ascertain who would stand up for the victim's rights and legal interests in the event of the victim's death or mental illness. Article 108 of the Indonesian Criminal Procedure Code serves as an illustration. Everyone who hears, sees, or becomes a victim of a crime has the right to report or register a complaint, according to the article. According to this article, children who are victims of abuse but have not personally experienced, witnessed, or seen crimes against their parents are not allowed to denounce such crimes to authorities.

Article 5 paragraph 1 of Law Number 13 of 2006 jo Law No. 31 of 2014 lists the following rights of crime victims: (1) protection for one's own security, family, and property, and freedom from threats; (2) involvement in the process of choosing and deciding on security protection and support measures; (3) information-giving without coercion; (4) lack of entangling questions; (5) acquisition of case updates; (6) acquisition of court rulings; (7) acquisition of information regarding the release of the convicted party; (8) identity withheld, (9) A new identity was obtained; (10) A temporary or new place of abode was obtained; (11), compensation for transportation expenses was obtained where necessary; (12) Legal advice was obtained; (13) Temporary living expenses support was obtained until the protection deadline expired; and/or (14) Assistance was received.

The provisions in Article 5 paragraph 1 apply to Victims in criminal acts of gross human rights violations, corruption crimes,

³¹ Safaruddin Harefa, "Criminal Law Protection On Online Victims Of Victims," *Veteran Law Review* 2, no. 1 (2019): 33–45.

money laundering crimes, terrorism crimes, trafficking in persons, narcotics crimes, psychotropic crimes, sexual crimes against children, and other crimes that result in the position of the victim being faced with a situation that is very dangerous to his life. Victims of crimes that are not included in these types of crimes may not obtain the rights as stipulated in 5 paragraph 1 of Law Number 13 of 2006 jo Law No. 31 of 2014. Victims of any crime can get restitution. Submissions for restitution by victims are made through the Witness and Victim Protection Agency.

Government Regulation Number 7 of 2018 about the Provision of Compensation, Restitution, and Assistance to Witness Victims jo Law Number 13 of 2006 Jo Regulation Number 35 of 2020 respecting Amendments to Regulation Number 7 of 2018 governs the rights of crime victims to psychosocial rehabilitation and medical support. Victims of flagrant breaches of human rights, terrorist attacks, human trafficking, torture, sexual assault, and severe persecution are among the crimes against which they suffer. Experts who can aid in the victims' physical and mental rehabilitation provide the assistance; financial support is not provided. Victims, their relatives, and their legal representatives filed requests for help.

In circumstances of egregious human rights breaches or terrorist crimes, victims have the ability to petition the court for compensation from the state through the Witness and Victim Protection Agency. In the event that a terrorist dies, the victim's family is entitled to compensation. Through the Witness and Victim Protection Agency, victims may also petition the court for compensation from the offender. Victims sue offenders for losses incurred due to property damage, pain and suffering directly caused by their crimes, and expenses associated with receiving medical and mental healing. Victims, their relatives, and legal representatives may submit demands for compensation for egregious human rights breaches or terrorist crimes. The Witness and Victim Protection Agency will suggest compensation in particular for crimes involving flagrant violations of human rights and acts of terrorism, provided that the victim or his family does not file a claim for reimbursement with the government. Based on a recommendation by the Witness and Victim Protection Agency, the court will determine whether or not to grant the request for compensation. Restitution is paid to the victim's heirs' family in the event of the victim's death.

Law Number 13 of 2006 jo Law No. 31 of 2014 does not further regulate guarantees for victims of crime to receive compensation. Thus, there is a possibility that the victim of a crime will not receive compensation if the judge does not grant the victim's request for compensation. Even though the guarantee of receiving compensation is a significant remedy and includes a fundamental right for victims of crime.

The rights of victims of crime, in addition to being regulated in Law Number 13 of 2006, are also regulated in the Criminal Procedure Code of the Indonesian Republic. These rights include the right to make a report or complaint to investigators or investigators, to be presented as a witness in court, and to ask the judge to determine the merger of the lawsuit for damages with the criminal case. The Criminal Procedure Code of the Indonesian Republic does not regulate the obligations of law enforcement officials who handle criminal cases to notify the rights and obligations of victims in the judicial process. This regulation is very important because not all victims know the rights of victims, the legal interests of victims and their obligations in criminal justice. The role of the victim in the criminal justice process is taken over by the Public Prosecutor, both in ordinary criminal cases and complaint crimes.

The Criminal Code of Indonesia Republic regulates the victim's right to obtain compensation. Compensation payments to victims are included as additional punishment. A court decision may oblige the convict to pay compensation to the victim or heir. If the criminal payment of compensation is not carried out, the property or income of the convict is confiscated and auctioned off by the prosecutor to pay off the criminal payment of compensation. If after the confiscation and auction of assets or income it is found that the amount is insufficient or impossible to carry out, the punishment for payment of unpaid compensation is replaced by imprisonment, punishment for supervision, or punishment for social work.

Basically, Indonesia has made provisions that regulate protection for victims as previously described, namely protection contained in the Criminal Code and outside the Criminal Code, for example Law Number 12 of 2022 concerning Crimes of Sexual Violence. The provisions regarding the rights granted to victims are regulated in sufficient detail, however, at the practical level, especially in the field of criminal law, victims cannot directly intersect to claim their rights in

court. The right of the victim is more in his position as a witness in the criminal justice system. Obtaining the right to obtain legal assistance in the form of assistance from an advocate, but in this case the victim cannot participate in the proceedings directly to claim these rights.

Particularly in Indonesia, victims are even considered to have their interests represented by the public prosecutor so that they do not have more rights at trial in court. In fact, starting from the investigation process at the police level, prosecution up to the trial process in court, the victim is no more than a witness giving information related to the crime that happened to him. His testimony became one of the pieces of evidence used in the trial to be able to state that the defendant's actions were indeed proven. However, there are weaknesses in this case where the victim cannot fight for his own rights, for example related to the desire to get compensation or demand a restoration of the situation as desired by the victim.

Even though the Public Prosecutor as a representative of the state is considered to have represented the interests of the victim, he still cannot fulfill the victim's wishes. Each victim has his own interests, although some people want the perpetrators to get a deterrent effect from the actions they have committed by being given punishment, there are also many victims who only want to restore the situation as before with the consideration of getting compensation and having their needs met. This of course should be of particular concern to the State of Indonesia in placing victims of criminal acts as parties who take an active role in the process of the criminal justice system.

Article 98 Law no. 8 of 1981 concerning the Criminal Procedure Code in Indonesia regulates the provision of compensation to aggrieved parties and laws and regulations governing restitution for victims of criminal acts actually existed before Law No. 13 of 2006 was established but only limited to victims of certain crimes, namely victims of gross human rights violations and victims of criminal acts of terrorism. In the end, the regulation regarding restitution is based on Article 98 of the Criminal Procedure Code which is based on compensation for material losses only so that the scope of restitution in Law no. 13 of 2006 is not applicable. Provisions regarding restitution in Law no. 13 of 2006 has a wider scope, which can be in the form of returning property, paying compensation for loss or suffering, or reimbursing costs for certain actions, while the provisions regarding compensation in the Criminal

Procedure Code only focus on real losses resulting from non-criminal acts. Claims for immaterial compensation can be obtained by victims using civil law mechanisms.³² Compensation is also limited in delivery, in criminal procedural law it is carried out through the Public Prosecutor or waiting until the *inkracht* decision is made for a civil submission. This is due to the fact that there is no role for the victim in the criminal justice system other than as a witness because the prosecution of cases is carried out by law enforcement prosecutors.

In 2020, Indonesia has made several breakthroughs in the field of law, especially related to the process of resolving criminal cases using the concept of restorative justice which prioritizes the position of the victim in the criminal justice process. Previously, there were provisions regarding Guidelines for Implementation of Diversion at the Prosecution Level contained in the Republic of Indonesia Attorney General Regulation Number: PER-006/A/J.A/04/2015 relating to the handling of child cases. This diversion of child cases is also further regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. The tit for tat has begun to be regulated regarding this restorative justice which is contained in the Chief of Police Letter No. Pol.: 16/B/3022/XII/2009/Sde Ops which was then followed up with the Kabareskrim Telegram Letter Number: ST/110/V/2011, it is regulated that one form of pattern of solving social problems is through alternative routes, including through efforts settle cases out of court by applying the Alternative Dispute Resolution (ADR) concept. In the following developments, the Police Chief Regulation Number 6 of 2019 concerning Investigations of Criminal Acts and the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice emerged. Victims get the opportunity to be involved in the process of resolving criminal cases based on restorative justice, but only in the form of settlement outside of the settlement outside the trial. The interests of the victim in the criminal justice system can certainly be further realized if there are arrangements related to the criminal procedural law. The

³² Fauzy Marasabessy, "Restitusi Bagi Korban Tindak Pidana: Sebuah Tawaran Mekanisme Baru," *Jurnal Hukum & Pembangunan* 45, no. 1 (2016): 53–75, <https://doi.org/10.21143/jhp.vol45.no1.9>.

active participation of the victim in the criminal justice system will provide substantive justice as desired and deemed fair to the victim.

Barry Ruback, a professor of criminology and sociology at Penn State University who has a special interest in criminal victimization argues that the rate of reported crimes is far greater than the actual number of cases. This is because victims of crime do not want to report the cases they experience. Based on the results of research from Frank J. Cannavale, it shows that the main reason for unsuccessful prosecutions is because witnesses and victims of crimes are not treated properly in the criminal justice system so they do not cooperate in prosecutions.³³ As with the classic criminal justice system, which assumes that the victim of a crime is the state and not the real victim, the actual victim becomes a victim again for reasons of proof in the criminal justice process.³⁴

The position of the victim in the criminal justice system in Indonesia is almost the same as the provisions on the role of the victim according to European federal and state laws which grant the victim's rights after the completion of the filing of a criminal charge. Under Federal law, the rights of victims of crime will have an impact on sentencing, for example, only after the prosecutor has filed charges against the defendant and been sentenced. In fact, the elimination of the role of the victim at the beginning of the examination of a criminal case affects the process of disclosing and resolving the case itself.³⁵

The Crime Victims Rights Act, a component of the United States Justice for All Act of 2004, Pub. L. No. 108-405, 118 Stat. 2260 (effective Oct. 30, 2004), plays a pivotal role in acknowledging the rights of victims within federal criminal cases.³⁶ This Act lays out eight basic rights that victims in these situations are granted. These rights include the right to timely and accurate notice of all public court and

³³ Stacy Lee, "Crime Victim Awareness and Assistance Through the Decades," *National Institute of Justice Journal* 281 (2019): 1–10.

³⁴ Mark S. Umbreit, "Holding Juvenile Offenders Accountable: A Restorative Justice Perspective," *Juvenile and Family Court Journal* 46, no. 2 (2009): 31–42, <https://doi.org/10.1111/j.1755-6988.1995.tb00815.x>.

³⁵ Paul G. Cassell, Nathanael J. Mitchell, and Bradley J. Edwards, "Crime Victims' Rights During Criminal Investigations? Applying the Crime Victims' Rights Act Before Criminal Charges Are Filed," *Journal of Criminal Law and Criminology* 101, no. 1 (2014): 59–104.

³⁶ United States Department of Justice, "Crime Victims' Rights Act," Offices of The United States Attorneys, 2016.

parole processes pertaining to the offense, including the right to reasonable protection from the accused and the right to know whether the accused has been released from custody or has escaped. Additionally, victims have the right to attend these procedures, unless the court determines based on substantial and compelling evidence that their attendance would adversely damage their testimony. In addition, victims are entitled to present their views at any district court public procedure pertaining to release, plea, sentencing, or parole. They have the right to a fair and impartial treatment, protecting their privacy and dignity throughout the legal process; they have the right to full and prompt restitution as required by law; they have the right to proceedings free from undue delay; and they have the right to reasonable consultation with the government's representative in the case.

Even though the right to restitution has been regulated, the role of the victim in the criminal justice system has limitations, in contrast to the laws and regulations in Russia which provide opportunities for victims to take an active role in the process of resolving criminal cases. Although the public prosecutor also plays a role in court, individual victims can file charges. This is of course very different from in Indonesia because in the criminal justice system, the victim only acts as a witness who explains about the criminal acts that he has experienced, heard or seen for himself. The new victim has the right to apply for compensation after the judge's decision has been rendered that the defendant is guilty of committing a crime and is *inkracht* in nature or there is no other legal remedy.

Development of the Victim's Protection in Indonesia: How Pancasila Values Translated it?

The validity of each norm is that it can be traced back to the source of its validity, namely the *grundnorm*.³⁷ *Grundnorm* as the foundation for the validity of the legal order/legal norms.³⁸ Pancasila is

³⁷ R. W. M. Dias, "Legal Politics: Norms Behind the Grundnorm," *The Cambridge Law Journal* 26, no. 2 (1968): 233–59.

³⁸ Carlo Invernizzi Accetti, "The Temporality of Normativity: Hans Kelsen's Overcoming of the Problem of the Foundation for Legal Validity," *Philosophy & Social Criticism* 42, no. 1 (2015): 25–43, <https://doi.org/10.1177/0191453715580054>.

the *grundnorm* for the Indonesian nation, so Pancasila is the source of all sources of law as well as the center of values (*Grundwerten*). The hope that arises when the rule of law is based on Pancasila values can provide justice as expected, including one regarding access to justice. The principles contained in Pancasila include the principles of universal life, namely the principles of religiosity, humanity, nationality, sovereignty, and sociality.³⁹

The philosophical foundation or *weltanschauung* of the Indonesian state, known as Pancasila, serves as the nation's inspiration and guiding principle. Pancasila consists of five fundamental principles that serve as the ideological and legal foundation for the Indonesian nation.⁴⁰ Notonagoro claimed that Pancasila, also known as positive morality, is the fundamental state norm (*staatsfundamentalnorn*) since it incorporates state ethics that are governed by the Constitution's Preamble.⁴¹ The ideals of Pancasila are fundamentally concrete and intellectual, representing the practical worldview (or philosophy of life) of the Indonesian people. Pancasila is comprised of five fundamental principles: divine, human, unity, social, and justice ideals. These five admirable principles were taken from the national culture of Indonesia and are values that are shared by all people. After much thought and contemplation, pancasila values are also regarded as basic and peak values. Consequently, Pancasila's ideals are nothing more than lessons regarding a variety of life domains, including in this instance the legal domain.

According to Pancasila, justice is based on God's justice, justice that sets human rights as a top priority and humanizes people as social beings, justice that preserves unity and oneness in order to foster a national environment that provides justice for Indonesian citizens, the principle of justice that upholds the idea of deliberation in order to reach

³⁹ Soeprapto Soeprapto, "Implementasi Pancasila Dalam Kehidupan Ber Masyarakat Berbangsa Dan Bernegara," *Jurnal Ketahanan Nasional* 10, no. 2 (2005): 17–28, <https://doi.org/10.22146/jkn.22980>.

⁴⁰ Cahya Wulandari, Indung Wijayanto, and Loso Loso, "Pancasila Feminism: Gender Equality Based on Values of Pancasila," *Pena Justisia: Media Komunikasi dan Kajian Hukum* 21, no. 1 (2022): 1–17.

⁴¹ Fernando Morganda Manullang, "The Purpose of Law, Pancasila and Legality According to Ernst Utrecht: A Critical Reflection," *Indonesia Law Review* 5, no. 2 (2015): 187–207, <https://doi.org/10.15742/ilrev.v5n2.141>.

consensus through representation in order to create justice for citizens in expressing their differing opinions, and the principle of justice that provides justice for all citizens without exception in accordance with their rights.⁴²

Justice is part of the Pancasila values which must be guided by and realized by the Indonesian nation. Access to justice is not easy to define, but there are two focuses that are the goal, namely that everyone can defend their rights and/or settle them under state laws and regulations. First, the system must be equally accessible to all, and secondly, it must lead to outcomes that are both individually and socially just.⁴³

Access to justice basically aims to provide protection for the rights of citizens with poor economic backgrounds, not only when facing their cases in court but also regarding the right to obtain information regarding court institutions.⁴⁴ The guarantee regarding the equality of rights is contained in the 5th precept of the Pancasila and paragraph IV of the Preamble of the 1945 Constitution and Article 27 of the 1945 Constitution. Legal protection is given without distinction and discrimination. This same legal position includes private law and public law, everyone has the right to get a defense from an advocate in accordance with the provisions of the law, not only for people who are able but also for people who are classified as poor or economically unable in order to obtain justice.⁴⁵

The concept of access to justice encompasses a number of factors, such as people's ability to obtain legal representation, the sufficiency of legal aid, the cost of delivering justice, steps taken to shorten and streamline the legal process, the availability of alternative means of delivering justice, the sufficiency of funding and resource arrangements

⁴² Ferry Irawan Febriansyah, "Keadilan Berdasarkan Pancasila Sebagai Dasar Filosofis Dan Ideologis Bangsa," *DIH: Jurnal Ilmu Hukum* 13, no. 25 (2017), <https://doi.org/10.30996/dih.v13i25.1545>.

⁴³ Bryant G. Garth and Mauro Cappelletti, "Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective," *Buffalo Law Review* 27 (1978): 181–292.

⁴⁴ Cassia Sphon, "Sexual Assault Case Processing: The More Things Change, the More They Stay the Same," *International Journal for Crime, Justice and Social Democracy* 9, no. 1 (2020): 86–94, <https://doi.org/10.5204/ijcsd.v9i1.1454>.

⁴⁵ Sunarjati Hartono, *Kapita Selekta Perbandingan Hukum* (Bandung: Citra Aditya Bakti, 1991).

for community law centers, and the accessibility of justice for indigenous peoples.⁴⁶

The United Nation General Assembly in 1985 adopted the declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power setting out some minimum standards in global law to protect the interests of victims by providing access to justice and fair treatment, compensation, restitution and assistance as a manifestation of the rights of victims.⁴⁷ Right to Due Process, Fairness, Dignity, Respect, and Privacy are among the twelve fundamental rights that victims have. These include the rights to notice, to be present and heard, to reasonable protection, to restitution, to information and referral, to apply for victim compensation, to proceedings that are free from unreasonable delay, to confer, to obtain a copy of the presentence report and transcripts, to standing, and to remedies.⁴⁸

The Indonesian Constitution of 1945 includes a list of every citizen's rights in Article 27, paragraph (1), which governs equality before the law. Moreover, the right to a fair trial and access to justice are guaranteed by Article 28 D of the 1945 Constitution. The expected justice derived from the values found in Pancasila is meant to shield people from the ideals of the law, rejecting the status quo and not seeking to turn the law into a mindless machine but rather a moral organization that seeks to lead people to a fair, prosperous, and happy existence. People should follow the law, not the other way around.⁴⁹

Regulating victims' rights requires support in fulfilling them. It is not impossible that there will be deficiencies in fulfilling the rights of victims of criminal acts. One very important right is the right to access justice especially for victims. Pancasila is a guiding star that gives direction for progress based on humanity, unity, consensus deliberation,

⁴⁶ Dean J. Spader, "Individual Rights vs. Social Utility: The Search for the Golden Zigzag between Conflicting Fundamental Values," *Journal of Criminal Justice* 15, no. 2 (2002): 121–36.

⁴⁷ Ashish Jain and Akanksha Singh, "Victim-Oriented Criminal Justice System-Need of the Hour," *Indian Bar Review* 44, no. 3 (2017): 125–37.

⁴⁸ Meg Garvin et al., "Fundamentals Of Victims' Rights: An Overview of the Legal Definition of Crime 'Victim' in the United States," *Victim Law Bulletin*, 2011, 1–13.

⁴⁹ Marthinus Mambaya, "The Law Enforcement Reform Based on Pancasila Values: A Critical Review," *Papua Law Journal* 1, no. 1 (2016): 27–40, <https://doi.org/10.31957/plj.v2i2.579>.

social justice for the Indonesian people. Therefore, the values of Pancasila which cannot be realized in real life become an obstacle for the Indonesian people to gain progress and happiness.⁵⁰

Conclusion

The definition of the victim must be included in the Criminal Code and the Criminal Procedural Code. The definition of victim must also include natural persons and legal entities and their close relatives. Victims, especially those who experience material losses, must obtain the right to compensation because compensation is a significant remedy and a fundamental right. Therefore, the Criminal Code must contain further provisions regarding if the payment of compensation by the convict is not made or the amount is insufficient. Victims must be included in the criminal justice process, especially related to private prosecution rights cases, both represented by their legal representatives and close relatives. In the criminal justice system, the position of the victim needs further regulation so that one of the goals of punishment can be achieved in relation to restoring balance, in this case including the rights of the victim. Although arrangements related to restorative justice have received a legal umbrella in the form of police regulations and prosecutorial regulations, they require further regulation in Indonesian Criminal Procedure Code in order to provide more legal certainty for victims of crime. The justice to be realized is of course not just formal justice but also substantial as the values contained in the values of Pancasila, including divine values, human values, unity values, community values and social justice values. Pancasila is not only a *Grundnorm* but also a *grundwerten* which purely comes from the Indonesian nation itself.

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*Injustice anywhere is
a threat to justice
everywhere.*

Martin Luther King

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