

Restoring The Rights Of Child Victims Of Sexual Crimes In Indonesia Throughs Victim Impact Statement

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Abstract

The position of victims in the Indonesian Criminal Justice System currently seems to have been "discriminated against" by criminal law and the criminal justice system itself, this is due to the lack of regulations that pay attention to the rights and interests of victims, both in the form of protection and restoration of their rights, One of which is that victims are still unable to actively participate in defending their rights fairly because the role of victims is only as evidence in the form of victim witness statements in trials in their own cases. Likewise with children who are victims of sexual crimes in Indonesia who currently still need serious attention from the state, based on existing facts and data, it has been proven that the state is still unable to fulfill and restore the rights of child victims of sexual crimes fairly. So the researcher analyzes how the Victim

Impact Statement can be the answer to the problems regarding victims today. This study applies a type of juridical-normative legal research with a qualitative approach. This study applies primary, secondary and tertiary legal materials as study materials. This study found that with the recommendation of the Victim Impact Statement which is based on the 'right to be heard', just as the accused can provide their perspective in providing justification or defense for themselves, the victim also has the right to convey an opinion or statement from the victim's perspective regarding the crime they experienced to be used as a consideration by the judge in making a fair and balanced decision, both for the victim and the accused.

Keywords *juvenile criminal justice system; Sexual Crimes; Victim Impact Statement*

I. Introduction

Law as a tool to achieve justice is expected by the community to be able to provide a sense of justice that is equal and equal between one another, which is able to provide a sense of satisfaction and happiness for the entire community¹. Of course the community wants the same and equal justice, as in the judicial process related to equality before the law. Which of course in terms of achieving a balanced and impartial trial for one party only, it requires an element of justice in the

¹ Sholehudin, U. (2011). Law and Justice from the Perspective of Sociology of Law Studies, Malang: Setara Press

judicial process².

Indonesia as a state of law has a basic foundation that serves as a guide for the entire community in fighting for their rights and obligations to obtain justice in law enforcement in Indonesia, namely through one of the philosophies outlined in article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which is the basis for all Indonesian people in fighting for justice, which reads: "Everyone is entitled to recognition, guarantees, protection and legal certainty that is fair and equal before the law"³.

Reflecting on this article, it can be interpreted that all people without exception have the right to obtain fair recognition, guarantees and legal certainty. Although humans have various perspectives on views in addressing the concept of justice for themselves and others, it is the main task of the state through its law enforcement officials to be able to fulfill the rights and obligations of the entire community to be able to provide a sense of justice that the community aspires to⁴. However, if you look at the reality of the law in society, sometimes it is different from what is expected and aspired to. So that based on this, there is a distance between the law and its essence.

This also occurs in law enforcement towards justice for victims, which until now still needs serious attention by the state. In the current reality, demands for justice in fulfilling

² erusalem, M. A. (2020). "Victim Impact Statement Arrangements that are Fair for Victims". Thesis. (Malang: Brawijaya University).

³ Sukardi, S., & Purnama, H. R. (2022). Restorative Justice Principles in Law Enforcement and Democracy in Indonesia. *JILS*, 7, 155.

⁴ Susilo, A. B. (2011). Just Law Enforcement in the Perspective of the Philosophy of Legal Hermeneutics: An Alternative Solution to the Problems of Law Enforcement in Indonesia. *Perspective*, 16(4), 214-226.

victims' rights to losses due to the victimization they experience are often hampered and neglected by the state. At least, this often happens to victims of sexual crimes, especially against children, where the fulfillment of their rights as victims is only given normatively, but in reality its implementation is still difficult⁵.

The state, through its state institutions, considers that law enforcement carried out against victims already reflects a form of fulfillment and restoration of victims' rights. However, the reality that occurs today, as evidenced by existing data and facts, says otherwise. One of the problems that is often found in Indonesia is the problem of sexual crimes. This problem attracts a lot of attention from a fraction of the many cases that continue every day and every year that always exist and never have an end or other language is never ending⁶. Based on data from the Indonesian Child Protection Commission (KPAI), it has recorded that the most dominant cases of sexual violence against children occurred in 2023, namely as many as 3,000 cases of sexual violence against children⁷. Then through data from the Online Information System for the Protection of Women and Children (SIMFONI-PPA) also noted that sexual violence ranks as the most common type of violence experienced by children in

⁵ El-Islam, M. S. (2023). "Victim Impact Statement as a Restoration of Victims' Rights in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence". Thesis, (Jakarta: UIN Syarif Hidayatullah Jakarta).

⁶ Nurdiana, M. A., & Arifin, R. (2019). The Crime of Rape: Case Reality and Law Enforcement in Indonesia. *Legal Literacy*, 3(1), 52-63.

⁷ Hidayat, D. (2024). Child Sexual Violence Reaches 3,000 Cases in 2023. Accessible on the web page: <https://www.rri.co.id/nasional/500834/kekerasan-seksual-anak-capai-3-000-kasus-di>

2023#:~:text=KBRN%2C%20Jakarta%3A%20Komisi%20Perlindungan%20Anak,kasus%2C%20sama%20di%20periode%20lalu

2024. Where the number of children as victims of sexual crimes in 2024 increased to 7,623 cases⁸.

More details based on data obtained from KPAI have shown that there are hundreds of cases of children as victims of sexual crimes every year. The data is presented in the following table:

Table 1. Data on sexual crimes against children in Indonesia

CASE	YEAR					
	2019	2020	2021	2022	2023	2024
Children as victims of sexual crimes	190	419	513	1250	3000	7623

Source: Indonesian Child Protection Commission (KPAI)

Based on the data above, it proves that the increasing cases of sexual crimes against children deserve serious attention by the state and this also proves that the state has not been able to uphold justice for children, especially towards the fulfillment and restoration of children's rights as victims of sexual crimes. This is reinforced by a research study conducted by the Indonesia Judicial Research Society (IJRS) regarding reflections on the handling of sexual violence in Indonesia in 2018-2020 and the publication of the study was issued in 2022.

In this study, IJRS quantitatively analyzed the first level

⁸ akinah, R. A. (2024). Child Sexual Abuse is a Big Threat in 2024. accessible at <https://data.goodstats.id/statistic/kekerasan-seksual-pada-anak-jadi-ancaman-besar-di-2024> FIZNL

court decisions from the Supreme Court's decision directory in the 2018-2020 timeframe, where a total of 735 decisions were analyzed. Then in this analysis, the majority of decisions, namely 72.1%, stated that the victims were women who were still children in the age range of 6-18 years and this proved that girls were very vulnerable to becoming victims of sexual crimes⁹. In addition, in the study there was another finding, namely that the majority of sexual crime cases against women and children only entered the court when they had experienced repetition or recurrence, namely (76.9%). Even the majority of victims of sexual crimes suffer from very concerning impacts, namely psychological impacts of 78%, physical impacts of 43.8%, from these impacts, only 0.1% of victims of sexual crimes were granted to obtain restitution and 19.2% did not apply. Meanwhile, for the majority of other decisions, no information was obtained regarding the proposed and granted restitution.

It is very sad to see the facts and data that have been provided by IJRS through a study conducted in the 2018-2020 focus period. In addition, the study also revealed the fact that victims who had a companion in resolving the case were only 8.7%, and those accompanied by a lawyer / legal advisor were only 0.4% and the rest did not have information on whether or not there was a companion for victims of sexual crimes, namely 90.9%¹⁰. This proves that the role of the state is lacking in upholding justice and fulfilling the rights of victims of sexual

⁹ Budiarti, I. A., Maharani, M., Tarigan, M., Ashila, B I., Wicaksana, D. A., Saputro, A. A., (2022). Reflections on Handling Sexual Violence in Indonesia (Indexation of court decisions in 2018 - 2020. Jakarta: Indonesia Judicial Research Society (IJRS) with support from the Australian Government through the Australia Indonesia Partnership for Justice 2 (AIP 2).

¹⁰ *ibid*

crimes, especially against children.

One of the factors that become obstacles or causes of difficulties in upholding justice and fulfilling the restoration of the rights of child victims of sexual crimes is inseparable from the unclear legal construction that currently regulates it. This problem factor has been previously encountered by Hassanudin in 2020, namely in his research entitled "Juridical Implications of Regulating the Rights of Victims of Sexual Violence in Law Number 12 of 2022 concerning Crimes of Sexual Violence."

He found problems that began when there were irregularities in Article 1 number 20 and Article 35 Paragraph (1) of Law Number 12 of 2022 concerning TPKS which explained that the rights of victims must be fulfilled by the state and the perpetrator. Then in article 60 paragraph (2) of the same law, it explains that the panel of judges and public prosecutors have an obligation to explore the impact on victims. Article 63 also explains that the panel of judges has an obligation to consider the recovery of victims in their decisions, namely those contained in Article 67 paragraphs (1) and (2) which explain the rights that victims have and the state is obliged to fulfill these rights, as well as taking into account the various rights in victim recovery contained in Article 70¹¹.

From the explanations in the articles mentioned earlier, it can be briefly concluded that children as victims of sexual crimes have the right to recover from the victimization they experience. The fulfillment of this right is generally the

¹¹ Hasanuddin, M. (2022). "Juridical Implications of the Regulation of the Rights of Victims of Sexual Violence in Law Number 12 of 2022 concerning Crimes of Sexual Violence." *Surya Kencana Dua Journal: Dynamics of Legal and Justice Issues* Vol. 9, no. 1 (2022): h. 1-15.

obligation of the state, but the perpetrator also has this obligation in terms of restitution. In terms of implementing the fulfillment of the victim's right to recovery, a court decision is needed as the basis for implementation, even the court decision is required to consider all the impacts received by victims of sexual violence crimes. However, the problem is: The current law does not have clarity regarding what is the basis for the judge's consideration in fulfilling and restoring the rights of child victims of sexual crimes and it can be questioned whether the basic basis of the judge's consideration can actually provide certainty of recovery based on the interests of the victim or not¹².

Therefore, based on the discussion previously mentioned, a forum is needed for victims of sexual crimes, especially against children, to be able to fight for justice in restoring their rights as victims and increasing fair participation in the criminal justice system which focuses not only on perpetrators, but also focuses on increasing victim participation. Problems like this have actually been resolved in several countries, namely by using the Victim Impact Statement mechanism.

Victim Impact Statement is defined by Erez and Rogers as follows: "a statement made by the victim and addressed to the judge for consideration in sentencing. It usually includes a description of the harm in terms of financial, social, psychological and physical consequences of the crime. In some jurisdictions a VIS also includes a statement regarding the victim's feelings about the crime, the offender and a proposed

¹² El-Islam, M. S. (2023). "Victim Impact Statement as a Restoration of Victims' Rights in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence" Thesis. (Jakarta: UIN Syarif Hidayatullah Jakarta).

sentence, referred to as a victim statement of opinion.” (“Victim impact statements - Australian Institute of Criminology”)¹³. Which means that a statement is made by the victim regarding the impact they feel directly such as the financial impact, social, psychological and physical harm they experience as part of the judicial process. With the concept of Victim Impact Statement, it can increase victim participation and change the criminal paradigm from perpetrator-centric to victim-centric. So that the Victim Impact Statement mechanism is able to overcome the injustice and imbalance between the rights of the perpetrator and the rights of crime victims¹⁴.

Based on the description above, the author is interested in conducting a deeper analysis of the Victim Impact Statement if it is enacted in Indonesia as a form of effort to restore the rights of child victims of sexual crimes in a fair manner, where several problems related to the topic under study, namely 1.) How is the Urgency of Victim Impact Statement for Child Victims of Sexual Crimes in Indonesia? 2.) How is the Concept of Victim Impact Statement in Indonesia to Restore the Rights of Child Victims of Sexual Crimes from the Perspective of Justice for Children?

II. Methods

¹³ Risnaulan Arisanti & Nurani Ajeng Utami, Optimizing Restorative Justice Value in Prosecution Using Victim Impact Statement, Proceedings of the 3rd International Conference on Law, Governance, and Social Justice (ICoLGaS 2023) accessible at <https://www.atlantispublishing.com/proceedings/icolgass-23/125995694>

¹⁴ Susetyo, H. (2024). Fulfillment and Protection of Procedural Rights of Victims of Terrorism on Victim Impact Statements in the Criminal Justice System. Southeast Asian Journal of Victimology, 2(1), 35-58.

The approach the author uses is a qualitative approach. Qualitative research is research used to research on a natural object condition, where the researcher is the key instrument¹⁵. The type of research that the author will use in this research is Normative Juridical or Doctrinal research. Normative legal research is one type of legal research methodology that emphasizes its analysis of the laws and regulations that apply and are relevant to the legal issues that are the focus of the research. The focus of this research is in accordance with the formulation of problems and research objectives in the introduction, namely first the Urgency of Victim Impact Statement for child victims of sexual crimes in Indonesia, and second the Concept of Victim Impact Statement to Restore the Rights of Child Victims of Sexual Crimes from the Perspective of Justice for Children.

III. Result and Discussion

A. The Urgency of Victim Impact Statements for Child Victims of Sexual Crimes in Indonesia

What exactly do victims of crime need? This question is highly relevant in terms of the perspective to focus on mainstreaming the rights and interests of victims of crime in criminal law and the criminal justice system. Victims of crime need continuous and appropriate support and services to recover from the physical pain and deep psychological trauma they have suffered. This component includes what is needed by victims, their families and the communities they come into contact with. According to

¹⁵ Sugiyono. (2021). Quantitative, Qualitative, and R&D Research Methods. (Bandung: Alfabeta, 3rd cet.).

victimology studies, there are several needs of crime victims in addition to bringing the perpetrator to trial¹⁶. These needs include the following:

- Safety: Preventing or protecting against perpetrator threats and revictimization; crime prevention through collaborative problem solving; restored sense of individual and community safety.
- Access: Having the right to participate in the judicial process and the right to obtain information and services, regardless of the circumstances of an individual and their family.
- Information: Receive information both verbally and in writing about the judicial process and receive clear, concise and friendly victim services.
- Support: Obtaining services and assistance to enable participation in the process of obtaining justice, recovery from trauma, and repair of damage caused by the offender.
- Sustainability: Consistent support through the justice and trauma recovery stages.
- Voice: Empowerment to talk about individual case processing. The criminal justice system is a system that is the main spearhead in carrying out criminal law enforcement.

The criminal justice system must be able to provide protection and legal certainty to all people involved in a criminal case to be able to carry out the criminal justice process fairly and impartially. An ideal criminal justice system must be able to provide a sense of justice to all parties involved in a criminal case to obtain legal

¹⁶ IACP, (2000). What do Victims Want? Effective Strategies to Achieve Justice for Victims of Crime, US Department of Justice, Washington 2000 <https://www.theiacp.org/sites/default/files/2018-08/WhatDoVictimsWantSummitReport.pdf>

protection. Victims also have the right to speak out and express opinions or statements in court, allowing them to be involved in the judicial process. For victims who are in certain circumstances or who belong to vulnerable groups, such as people with disabilities and child victims of sexual violence, are also entitled to special services and support by the state. The state is obliged to provide special protection to them, in order to assist victims to be able to give testimony during the criminal justice process¹⁷. The presence of Victim Impact Statement is an answer to what is actually needed for victims of crime as a form of protection and restoration of their rights. Whereas the concept of Victim Impact Statement itself is not necessarily present in criminal procedure law in several countries in the world, the presence of the concept is based not only to assist in increasing the active participation of victims in the criminal justice process, but also to help victims to be able to voice opinions or statements that are fair to victims of crime regarding the losses or consequences of crimes experienced by victims of crime. With the recommendation of the Victim Impact Statement based on the 'right to be heard', just as defendants can provide their perspective in providing justification or defense for themselves, victims also have the right to express opinions or statements from the victim's perspective regarding the crime they experienced to be used as a consideration for the judge in making a fair and balanced decision, both for the victim and the defendant. Through the Victim Impact Statement, the judge will also get information that certainly cannot be obtained from the defendant, namely information that is only known by the victim, namely information about the impact, danger and suffering that has been caused as a result of the criminal act committed by the perpetrator of the crime. In terms of terminology and language, the Victim Impact Statement can be interpreted based on the words. Victim or victim

¹⁷ Eddyono, S. W. (2020). Handling Child Victims Mapping Child Victim Services in Several Institutions. Jakarta: ICJR

can be interpreted as "person who suffers death, injury, hardship, or loss", or in Indonesian, a person who experiences death, injury, hardship and loss. Then Impact has a meaning that can be understood as "strong effect on someone or something", which translates into Indonesian as a strong impact experienced by someone or something. And the word statement which can be interpreted and understood as "formal account of events, views etc", which means a formal statement about events, views, and so on¹⁸. Based on these three words, it can be understood and concluded that the Victim Impact Statement has the meaning of a formal statement either orally or in writing from a victim of crime which in this case is carried out in court, then provides an overview that emphasizes the physical, emotional, social, financial, psychological and other impacts experienced by victims of crime as a result of criminal acts committed by the perpetrator of the crime. The Victim Impact Statement is different from the victim's testimony regarding the chronology of the crime committed by the offender against the victim, but rather explains and emphasizes how the crime affected the victim's life and what impact the victim experienced as a result of the crime committed by the offender¹⁹. The existence of the Victim Impact Statement according to a former United States judge more precisely in the state of Utah, namely Paul G. Casell, he provides justification for the existence of the Victim Impact Statement which can be divided into four parts²⁰. These four things can be understood as a form of purpose and benefit of the Victim Impact Statement, namely:

1. For the judge's information

¹⁸ Bull, V. (2011). Oxford Learner's Pocket Dictionary, England: Oxford University Press.

¹⁹ CDPP Australian Federal Protection Service (2013), Victim Impact Statement. Australia: Australian Federal Protection Service.

²⁰ Cassell, P. G. (2008). In defense of Victim Impact Statements. Ohio St. J. Crim. L., 6, 611.

2. As a benefit to the victim
3. Explain the impact and suffering of the victim to the perpetrator.
4. Enhance the value of fairness in the sentencing process.

The Victim Impact Statement is also a spearhead of human rights for victims of crime. There are many human rights values reflected in the Victim Impact Statement mechanism. This mechanism also reflects several articles contained in the Universal Declaration of Human Rights, namely in articles 6 and 7 of the UDHR, the essence of which can be understood in the article is that everyone has the right to be treated as a subject before the law and everyone has the right to be treated equally and equally before the law. before the Victim Impact Statement resulted in victims who were not considered as subjects of law, but as objects and spectators of the crimes they experienced themselves. The rights contained in the Victim Impact Statement are also related to what is regulated in the Declaration of Basic Principle of Justice for Victims of Crime and Abuse Power, namely in article 4 and article 6 (b), the essence of which can be understood that the dignity of victims must be respected and appreciated, and treated with sympathy. Victims also have the right to be able to participate in the judiciary and also have the right to have their views, opinions and statements considered before the court.

Then based on the facts that have been found, there are still shortcomings in terms of victim participation in the criminal justice system in Indonesia which actively has not been able to match the provisions in the Victim Impact Statement mechanism. These shortcomings are certainly not a reason for the non-enactment of the Victim Impact Statement in Indonesia, so another analysis is needed to find out why it is needed and what is the urgency of the Victim Impact Statement in Indonesia.

Due to the main topic of discussion in this research is the Victim Impact Statement as an effort to restore the rights of child victims of sexual crimes, then in this discussion, the author will analyze how the urgency of the Victim Impact Statement in Indonesia focuses on cases of crimes against child victims of sexual crimes. In analyzing the urgency of enforcing the Victim Impact Statement mechanism in Indonesia, the author takes the parameters of the basics of the formation of laws and regulations as the author's analysis knife in examining the Urgency of the Victim Impact Statement in Indonesia, which is regulated in Law Number 15 of 2019 concerning amendments to Law Number 12 of 2011 concerning the formation of laws and regulations of the House of Representatives of the Republic of Indonesia Number 1 of 2014 concerning rules of order, namely in article 115 explaining that the formation of laws and regulations must include philosophical, juridical, and sociological foundations²¹.

Referring to the three aspects that are the parameters for analyzing the urgency of regulating the Victim Impact Statement in Indonesia, the author can be described as follows.

1) Philosophical Foundation

Philosophical foundation is a view or idea that is used as the basis for legal ideals to pour thoughts and desires into the formation of a new regulation²². If we relate it to the Victim Impact Statement, then the description of the values of Pancasila can be used as the basic foundation of the philosophical values of the Indonesian nation which the author can describe as follows:

²¹ Maulani, A. M., & Windari, R. (2022). Victim Impact Statement in the Criminal Justice System: A Legal Urgency. *Rechtidee*, 17(1), 27-53.

²² Noviawati, E. (2018). Constitutional Foundation for the Formation of Laws and Regulations. *Galuh Justisi Scientific Journal*, 6(1), 53-63.

- Fair and Civilized Humanity Subekti in a study conducted by Rokhmah (2016) stated that the Precept of humanity means that communication between humans must always be fair²³. Based on this opinion, the justice of communication (in this case is opinion or "voice") is something that must be owned by everyone, including victims of crime who in this case are given the opportunity to speak fairly in order to fight for their rights fairly through the Victim Impact Statement.
- Social Justice for all Indonesian People Herbert Lionel Adolpus Hart in a study conducted by Ruman (2012), stated that the general principle of justice is certain equality or certain inequality, which can be interpreted that the treatment of similar things in a similar way, as well as different treatment in different ways²⁴. Reflecting on this opinion, then in the context of criminal law, the criminal offense experienced by the victim can be the same between other victims, but the suffering experienced is not necessarily the same. So if you look at this, a Victim Impact Statement is needed as a forum for victims to be able to express their opinions in front of the trial, with the aim of conveying information to the judge regarding the impact and influence experienced by victims due to criminal acts committed by criminals, in order to provide a different perspective from the

²³ Rokhmah, D. PANCASILA, Child Abuse and the Threat to the Nation's Generation.

²⁴ Ruman, Y. S. (2012). Legal Justice and its Application in Court. *Humaniora*, 3(2), 345-353.

defendant so that the judge can consider the fairest possible decision.

2) Juridical Foundation

Juridical foundation is a view or reason that can reflect how the regulation to be formed is able to overcome legal problems or fill the existing legal vacuum by analyzing existing rules, as a consideration in the formation of laws and regulations (See Appendix to Law No. 12/2011 concerning the formation of laws and regulations). 12/2011 on the formation of laws and regulations). So in analyzing the urgency of enacting the Victim Impact Statement, an existing and relevant law is needed as the juridical basis for the enactment of the Victim Impact Statement in Indonesia: Namely the provisions regarding human rights that already exist in Indonesia, because human rights are the soul of the Victim Impact Statement. The provisions that the author can make as an analysis knife, one of which is contained in the 1945 Constitution of the Republic of Indonesia and Law Number 39 of 1999 concerning Human Rights. In addition, some laws that have a relationship with the enactment of the Victim Impact Statement in Indonesia can be taken from the Criminal Procedure Code, Law Number 11 of 2012 concerning the juvenile justice system, and Law Number 12 of 2022 concerning TPKS, Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection, and several international conventions such as UDHR and UNCRC.

3) Sociological Foundation

Evi Noviawati (2018) explains that the sociological foundation is an overview that explains the phenomena or events that actually occur in society, in the form of needs or

demands or problems that society experiences²⁵. Sociological foundations are associated with empirical facts that occur in society, both their development and how society can deal with existing problems. sociologically, legal reform is carried out because it full fills the will and needs of the community. In connection with the sociological foundation, there are several links as a consideration for the enactment of the Victim Impact Statement in Indonesia, namely regarding:

- Overview of sexual crimes against children in Indonesia
- Child Victims of Sexual Crimes are Hindered in Accessing Justice for Their Rights
- Disregard for the Impact and Neglect of Restoration of Rights for Child Victims of Sexual Crimes

Based on the three main points previously explained, in the form of an overview of cases of sexual crimes against children in Indonesia, obstacles for child victims of crime in accessing justice for their rights, and neglect of the impact and restoration of children's rights as victims of sexual crimes in Indonesia, proving that law enforcement against cases of sexual crimes against children is still far from optimal and victims still do not fully get justice for the restoration of their rights as victims of crime. So in this case the author strongly agrees with the implementation of the Victim Impact Statement in Indonesia as an effort to restore justice for child victims of sexual crimes.

²⁵ Noviawati, E. (2018). Constitutional Foundation for the Formation of Laws and Regulations. *Galuh Justisi Scientific Journal*, 6(1), 53-63.

B. Concept of Victim Impact Statement to Restore the Rights of Child Victim of Sexual Crimes Perspective of Justice for Children

The existence of Victim Impact Statement basically aims to provide a sense of justice for victims of crime in the criminal justice system. However, to enforce this mechanism in the Indonesian criminal justice system, of course, it needs to be equipped with proper arrangements on how the concept of Victim Impact Statement will be applied to criminal procedure law in Indonesia later, because proper arrangements will provide opportunities for this mechanism to run effectively and efficiently in accordance with the objectives to be achieved.

Based on several explanations regarding Victim Impact Statements that have been enacted in various countries of the world, which in this case the author takes reference from 3 countries, namely: The United States, the Netherlands, and Canada, based on this comparison, the author found some interesting facts about the Victim Impact Statement and its differences with criminal procedural law in Indonesia, which can be explained as follows:

1. Victim Impact Statements are not evidence;
2. Victim Impact Statements can be written and oral;
3. Victim Impact Statements are made before the sentencing hearing (in writing) and during the sentencing hearing (orally);
4. The Victim Impact Statement is not to determine the guilt or innocence of an accused;
5. The Victim Impact Statement affects the severity of the sentence;

6. Victim Impact Statements can be given to direct victims and indirect victims;
7. Victim Impact Statements allow victims of crime to have their say on what kind of sentence they would like to see imposed on offenders; and
8. A Victim Impact Statement can also be provided to a child victim of crime.

Based on this, the Victim Impact Statement arrangement in Indonesia can pay attention to the overview and concept of the Victim Impact Statement arrangement from the three countries previously described. From the comparison of the three previous countries, it can be seen that the Victim Impact Statement is regulated not as evidence, but as a consideration for judges in sentencing criminals.

In the United States, the position of the Victim Impact Statement is at the sentencing hearing or referred to as the sentencing process. This sentencing hearing is held after the defendant is found guilty at the trial process, so the Victim Impact Statement mechanism is implemented at the sentencing hearing process to influence the severity or leniency of the sentence to be given to the perpetrator of the crime.

This is of course different from the Indonesian legal process where the determination of the defendant's guilt or innocence coincides with the determination of the sentence, namely at the time of the reading of the final verdict. Whereas in the United States, it is separated between the determination of guilt and the determination of the amount of punishment to be given to the perpetrator of the crime. This difference will certainly greatly affect the regulation of the Victim Impact Statement in Indonesia later, because Indonesia must rethink the exact location of the Victim Impact Statement in the trial process.

This is similar to the process of reading or delivering a Victim Impact Statement in Canada, where the delivery of a victim impact statement in Canada is carried out at the sentencing hearing of the offender. However, the Victim Impact Statement form that has been written by the victim must first be submitted to victim services, the prosecutor, or the relevant court clerk just before the sentencing hearing against the offender takes place.

The position of the Victim Impact Statement in the sentencing hearing process can be said to be the right thing. With the location of the Victim Impact Statement mechanism in the sentencing process, the statement given by the victim regarding the impact of the crime she suffered is not intended to assist the judge in determining the guilt or innocence of the defendant, but to help the judge to consider the severity or leniency of the sentence to be given to the perpetrator of the crime. So that the position of the Victim Impact Statement is not as evidence that aims to make light of a case, as well as witness testimony, including victim witnesses who explain how the chronology of the criminal case is seen, heard, and experienced by themselves.

Based on this, it is certainly necessary to consider the separation between witness testimony and Victim Impact Statement if it is to be applied in criminal procedure law in Indonesia, the reason is none other than for the sake of justice for the victim himself. As the author has explained previously, the Victim Impact Statement will explain the impact of the victim's criminal act, how the effects and influences of the criminal act on the victim's life, and in certain circumstances such as if the victim dies or is seriously ill which results in the victim being unable to attend the trial, then the person who can convey it is the victim's family or the closest person to the victim who is also indirectly affected by the criminal act committed by the perpetrator of the crime.

The statement given by the victim or the victim's family is certainly subjective and can only be an 'opinion' because the statement does not have a benchmark for what restrictions can be conveyed by victims of crime. So in this case, the Victim Impact Statement certainly cannot be equated with evidence in the form of witness testimony, this is because witness testimony cannot be subjective or cannot be just an 'assumption' or 'opinion', but evidence in the form of witness testimony must be objective and the contents of the statement must be based on facts and must not be made up regarding a criminal event (See Article 185 paragraph (5) KUHAP).

Another reason that supports the separation of the Victim Impact Statement with evidence in the form of witness testimony is to emphasize that the Victim Impact Statement can also be used by minors who are victims of criminal acts, because the mechanism is only intended as material for the judge's consideration so that children who are not 15 years old can still make Victim Impact Statements without the need to be sworn in like witness testimony which must be sworn in before giving testimony (Article 160 paragraph (3) KUHAP). Thus, the validity of the Victim Impact Statement regarding the impact experienced by the child as a victim of crime is not assessed from the oath as well as evidence in the Criminal Procedure Code, but by simply being a victim of crime, the child has the right to speak and submit a Victim Impact Statement before the court.

In the United States, Canada, and the Netherlands, children as victims of crime may still exercise their right to a Victim Impact Statement. In particular, we can see in the Netherlands, where Victim Impact Statements are also given to victims of child pornography, minors who experience sexual abuse, incitement of minors to commit obscene acts, sexual abuse that abuses authority,

coercion of minors into prostitution or child victims of human trafficking²⁶.

In addition, other arrangements that need to be considered to support the implementation of the Victim Impact Statement in the criminal justice system in Indonesia is by updating the paradigm of understanding of victims. The renewal referred to here is by expanding the definition of victims by distinguishing between victims who are directly affected and victims who are indirectly affected. The definition of directly affected victims can use the existing definition of victims, while the definition of indirectly affected victims can be interpreted as examples of the victim's family or the victim's closest people such as lovers or close friends.

The purpose of expanding the definition of victims is of course intended for the implementation of the Victim Impact Statement in Indonesia. As the author has previously analyzed the comparison of the use of the Victim Impact Statement in the three countries in the previous sub-chapter, where the Victim Impact Statement can be used by directly affected victims, it can also be used by indirect victims if in certain cases the directly affected victim dies or is unable to conduct a Victim Impact Statement in court. Reflecting on this, it is necessary to consider the paradigm of understanding victims by expanding it for the benefit of the Victim Impact Statement which requires direct and indirect victims to use the mechanism.

The implementation of the Victim Impact Statement in Indonesia must also be complemented by alignment with the mechanisms of trial in the Indonesian criminal procedure law. Victim Impact Statement needs to be included in the criminal procedural law without having to harm the interests of the defendant, but also must still pay attention to the interests of

²⁶ Victims Info. (2020). The Rights of Victims of Crime in Criminal Proceedings. Accessible at: <https://www.infovictims.lt/en/the-rights-of-victims-of-crime>

victims who have not previously been comprehensively regulated in the Indonesian criminal justice system. This means that if the Victim Impact Statement is to be included in the Indonesian criminal procedure law, then this can change the system and order of law that has existed in Indonesia before, so that further study and analysis should be carried out by the more authorized party, in this case the government regarding the alignment to balance the current legal system with the Victim Impact Statement mechanism if it is to be applied in the Indonesian criminal justice system in the future.

However, there are several inputs from the author regarding alternative changes that can be made to the criminal procedure law in Indonesia in order to harmonize the adoption of the Victim Impact Statement in Indonesia. There are 2 alternative forms that the author initiated, namely:

1. Applying the Victim Impact Statement after the evidentiary hearing process but before the reading of the charges; and
2. Applying the Victim Impact Statement in accordance with the legal process that applies in the United States, which is applied at the Sentencing hearing. This means that the hearing to determine the guilt of the defendant and the sentencing hearing (if found guilty) must be separated, so that later the Victim Impact Statement mechanism will be implemented at the sentencing hearing against the defendant, as a consideration for the judge to determine the severity or leniency of the sentence against the defendant.

The first alternative that the author suggests is generally not too difficult to implement in criminal procedure law because it does not touch or change the order of procedure in criminal cases in Indonesia, in this case the arrangement is only by adding one activity, namely the victim is given the opportunity to express his opinion about the impact of the crime he experienced through the Victim Impact Statement, which is carried out after the evidentiary

hearing but before the reading of the charges by the public prosecutor. This is of course to avoid the possibility of unobjectivity in the judge's consideration in deciding the case and resulting in the defendant not being treated fairly through the decision.

It should be noted that the Victim Impact Statement contains emotional victim statements regarding how the impact of the criminal offense experienced can affect their lives, and of course the statement by the victim of the crime is subjective and has no relation at all to the proof of the crime. Therefore, if this mechanism is placed in the evidentiary process, it will have an impact on the objectivity of the judge in deciding whether or not the defendant is guilty of committing a criminal offense. This is what the author wants to avoid if the Victim Impact Statement is applied to the evidentiary process, where in the end the one who is harmed is the defendant because the defendant is found guilty only because of the judge's compassion for the victim's suffering expressed through the Victim Impact Statement mechanism²⁷.

Therefore, the process of proving a crime should not be intervened in subjective statements such as the Victim Impact Statement, the process of proof must be objective and the statements submitted by witnesses cannot be just 'assumptions' or 'opinions', but the content of the statement must be based on facts and cannot be made up, and of course the statement contains a criminal event and does not contain the impact of the crime experienced by the victim. The implementation of the Victim Impact Statement after the criminal proof process is intended to maintain the objectivity of the judge in deciding the case, let the criminal proof process be as a whole to prove the guilt or innocence of the defendant in committing a criminal offense, And let the

²⁷ Jerusalem, M. A. (2020). "Victim Impact Statement Arrangements that are Fair for Victims". Thesis. (Malang: Brawijaya University)

judge assess the evidentiary process objectively through evidence and based on his belief without being influenced by subjective statements outside the evidence recognized by the Law in accordance with the theory of negative evidence according to the Law (negatife wettelijk bewijstheorie) recognized in the Criminal Procedure Code, namely in finding the material truth the judge must rely on an evidence that has been determined by the Law and the evidence is believed by the judge²⁸. So it is appropriate if the Victim Impact Statement is carried out after the evidentiary process and before the reading of the charges by the public prosecutor, because later the charges filed and read by the public prosecutor are based on the contents of the facts that have been proven from the evidentiary process and based on the Victim Impact Statement submitted by the victim of the crime.

The author's second alternative is to adopt some of the legal concepts in the United States. This alternative is considered quite difficult because it will change a lot of the existing procedural arrangements, one of which is to separate the evidentiary process from the sentencing process. This means that the process of proving and determining the guilt of the defendant must be carried out first before the sentencing hearing against the defendant. So that later the Victim Impact Statement mechanism will be implemented at the sentencing hearing as a consideration for the judge to determine the severity or leniency of the sentence against the defendant.

However, it should be noted that if during the evidentiary hearing process the defendant is found not guilty through his determination, then the next hearing regarding the sentencing of the defendant is not carried out and the Victim Impact Statement is also not applied. Thus, the position of the Victim Impact

²⁸ Novita, A. B., Riyanto, A. D., & Al Ghifari, A. F. A. H. (2023). Theory of Evidence in the National Legal System. *Madani: Multidisciplinary Scientific Journal*, 1(5).

Statement in this case is not as evidence but as a consideration for the judge in sentencing.

In accordance with the author's previous explanation that the Victim Impact Statement is separated from evidence in the form of witness testimony, this aims to ensure that the evidentiary hearing process runs objectively and the defendant's guilt is proven based on the facts obtained from objective statements and not subjective statements. So that with the enactment of this arrangement, the rights of the defendant are still protected from arbitrary consideration of the judge's determination due to the influence of subjective statements from the Victim Impact Statement.

Victim Impact Statement basically aims to provide a sense of justice for victims of crime in the criminal justice system. The criminal justice system in Indonesia itself currently still does not actively involve victims in the trial process regarding the cases they experience, by switching to the Due Process Model, of course, it is very concerned about the rights of suspects and defendants as parties that must be protected. This is because this model prioritizes fact finding through formal procedures and pays attention to the rights of suspects and victims that must be fulfilled²⁹. And of course this has drawn a lot of criticism because it is too offender oriented and is considered to pay less attention to victims.

As a result, the restoration of the rights of victims of crime, in this case the rights of child victims of sexual crimes in *das sollen* order, in reality is still very difficult to achieve. This is because there are still many cases of sexual crimes involving children as victims, and in the decisions that have been analyzed previously, it can be concluded that the current criminal justice system has not been able to fulfill the restoration of the rights of child victims of sexual crimes. Although there are several regulations regarding the

²⁹ Pangaribuan, A. M. A (2018). *Introduction to Criminal Procedure in Indonesia*. Depok: Rajawali Press

restoration of victims' rights, one of which is contained in the TPKS Law, in practice there are still many decisions that do not provide a form of recovery to child victims of sexual crimes based on the facts and data that the author has provided in the previous chapters.

This problem will be addressed by the Victim Impact Statement in Indonesia. The Victim Impact Statement will provide an opportunity for child victims of sexual crimes as well as their families to be actively involved in the trial process in their criminal cases. This active involvement through the Victim Impact Statement will later be considered in the judge's decision so that the interests of the victim are considered and justice can be felt by child victims of sexual crimes and their families

IV. Conclusion

The urgency of the Victim Impact Statement for Child Victims of Sexual Crimes in Indonesia can be understood first about the challenges regarding the position of victims in the Indonesian Criminal Justice System, which currently seems to have been "discriminated against" by the criminal law and the criminal justice system itself, this is due to the lack of arrangements that pay attention to the rights and interests of victims both in the form of protection and restoration of their rights, one of which is that victims are still unable to actively participate to defend their rights fairly due to the role of victims who are only as evidence in the form of victim witness testimony in the trial of their own case. Likewise, children who are victims of sexual crimes in Indonesia currently still need serious attention by the state, based on the facts and data that the author has explained in the previous discussion chapter, it is very evident that the state is still unable to fulfill and restore the

rights of child victims of sexual crimes fairly. The implementation of the Victim Impact Statement in the Indonesian criminal justice system allows children as victims to be actively involved in the judicial process in order to fight for justice and the interests of restoring their rights as victims of crime. The involvement of victims through the Victim Impact Statement is intended to provide a sense of justice for victims of crime; The concept of Victim Impact Statement in Indonesia to restore the rights of child victims of sexual crimes from the perspective of justice for children can consider the following points if they want to enforce the Victim Impact Statement in Indonesia: 1.) Separating the Victim Impact Statement with Evidence in the form of Witness Statements; 2.) Expanding the definition of Victim into Victims directly affected and Victims indirectly affected;; 3.) Apply the Victim Impact Statement after the evidentiary hearing process but before the reading of the charges; and 4.) Applying the Victim Impact Statement in accordance with the legal process applicable in the United States, which is applied at the Sentencing hearing. This means that the hearing to determine the guilt of the defendant and the sentencing hearing (if found guilty) must be separated, so that later the Victim Impact Statement mechanism will be implemented at the sentencing hearing against the defendant. Then, taking an example from the formular Victim Impact Statement that has been applied in Canada according to the author is an appropriate thing.

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