

How Criminology and Victimology Answer the Problem of Rape Victim Protection?

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Abstract

This paper explores the intersection of criminology and victimology in addressing the multifaceted challenge of protecting rape victims. Rape, as a heinous crime, not only inflicts physical harm but also leaves enduring psychological scars on survivors. Drawing on criminological perspectives, the paper delves into the root causes of sexual violence, examining societal and systemic factors that contribute to its prevalence. Understanding the underlying dynamics is crucial for formulating effective preventive measures. In parallel, victimology provides a lens to analyze the experiences of rape survivors, emphasizing the need for a comprehensive support system. Examining the role of law

enforcement, legal frameworks, and community support, this paper evaluates the existing mechanisms for victim protection and their efficacy. Special attention is given to the challenges faced by rape victims in reporting incidents, seeking justice, and reintegrating into society. The paper further explores emerging trends and innovative approaches within criminology and victimology that aim to enhance rape victim protection. This includes the integration of technology, victim-centered legal reforms, and community-based initiatives. By synthesizing insights from these disciplines, the paper proposes a holistic framework for addressing the complex issues surrounding rape victim protection. Ultimately, the synthesis of criminological and victimological perspectives provides a comprehensive understanding of the challenges faced by rape victims and offers valuable insights for policymakers, law enforcement, and support organizations. The proposed framework encourages a multidisciplinary approach to create a more robust and empathetic system that prioritizes the protection and well-being of those affected by sexual violence.

Keywords

Victimology, Criminology, Rape Crime, Victim Protection, Human Rights

I. Introduction

Various kinds of crime develop a lot in society. Crime as a symptom is always crime in society, and is part of the whole social processes of historical products and is always linked to economic

processes that so affect human relations.¹ Victims of criminal acts who are basically weak parties and are always disadvantaged in the occurrence of a crime need to establish regulations that protect the interests of victims of criminal acts in the criminal justice system. It turns out that the above is not in line with the positive criminal law regulations in Indonesia, many regulations provide rights to perpetrators, defendants or suspects of criminal cases but very few regulations provide protection to victims of criminal acts. Protection of a suspect who is more than a victim of a crime is evident from the principles adopted by the Criminal Procedure Code (KUHAP), namely:

1. Equal treatment before the law without any discrimination.
2. The presumption of innocence.
3. Violations of the individual rights of citizens (i.e. in the case of arrest, detention, search, and seizure) shall be based on law and carried out by warrant.
4. A suspect is about to be informed of the suspect and the prosecution against him.
5. A suspect and a defendant are entitled to the assistance of legal counsel.
6. A defendant has the right to appear before the court.
7. There is a free trial and it is done quickly and simply.
8. The judiciary should be open to the public.
9. Both suspects and defendants are entitled to compensation and rehabilitation.

¹ Soerjono Soekanto, 1981, *Criminology an Introduction*, Ghalia Indonesia, Jakarta, p. 118.

10. There is an obligation of the court to control the implementation of its rulings.

Looking at the ten principles above, normatively the Criminal Procedure Code only pays attention to the rights of perpetrators of crimes, without giving space to victims to fight for their rights. Meanwhile, victims of criminal acts in the Criminal Procedure Code (Criminal Procedure Code) are only regulated in a few articles, namely articles 98-101 of the Criminal Procedure Code. Victimology, which is essentially a complement or completion of existing criminal etymology theories, seeks to explain the problem of the occurrence of various crimes or the imposition of victims of crime in dimensionally true proportions and aims to provide a rationale for reducing and preventing suffering and pain in this world. So, it is clear that rational, responsible, and beneficial victimology is a means to fight for human rights and obligations.

In rape cases, it does cause various problems in solving the case, especially in the process of investigation, investigation, prosecution and at the stage of sentencing. The difficulties that exist are not included in the evidentiary process in this case ascertaining the presence or absence of rape or other sexual violence if there are no witnesses present in the field. Victims experience various sufferings both in the psychological, physical and social sides. Even in court, the victim must be a victim as well as a witness to what happened in her. So that it suffers greatly for the victim where the victim must remember what happened to him.

Not a few of these rape crimes, can be processed to court and up to the verdict. However, in the judge's sentence, the perpetrator is rarely sentenced to the maximum sentence in

accordance with what is stated in Chapter XIV concerning the crime of decency, precisely articles 281 to 296 of the Criminal Code (Criminal Code), especially in the rules on rape. Protection and attention to the rights of victims is an absolute matter that must be considered and considered in the legal policy to be made. The realization of equal justice and general welfare must be achieved so that the protection of rape victims becomes an obligation that must be fulfilled in the context of obtaining justice and recovery from their suffering.

The legal protection afforded to victims of criminal acts in Indonesia and the comprehensive review of victimology concerning victim protection represent critical areas of inquiry. Firstly, the examination of the existing legal framework for victims raises questions about the adequacy and effectiveness of current measures in place to safeguard the rights and well-being of those impacted by criminal offenses. Understanding the specific provisions, limitations, and potential gaps within the legal system is crucial for identifying areas in need of reform or enhancement.

Secondly, exploring victimology in the context of victim protection offers insights into the experiences and challenges faced by individuals who have suffered from criminal acts. Delving into victim-centered perspectives provides a nuanced understanding of the support systems available, societal attitudes, and the efficacy of current victim protection mechanisms. This dual inquiry into legal protections and victimology aims to foster a comprehensive understanding of the complex landscape surrounding the safeguarding of victims in Indonesia.

II. Method

This study employs normative juridical research methods, utilizing various approaches to gather relevant data. The research incorporates the statute approach, examining legal provisions; the case approach, analyzing pertinent legal cases; and a comparative approach, facilitating a nuanced understanding through the comparison of legal frameworks. Additionally, literature research is integral to this study, involving the retrieval of secondary data from literature books, research findings, journals, articles, and pertinent legal regulations. This comprehensive methodology ensures a thorough examination of the subject matter, combining theoretical and practical insights to contribute to a nuanced understanding of the legal landscape under investigation.

III. Victims of Crime on Aspects of Victimology

The development and benefits of victimology are in line with the life system of society, where victimology can be formulated as a study that studies the problem of victims, the causes of victims, and the consequences of victim abuse, which is a human problem as a social reality. What is meant here by victims and those who cause victims can be individuals, a group, private corporations and governments.² Viewed from the point of view of Human Rights, the issue of interests of victims of criminal acts is part of human rights issues in general. The Universal Principles as embodied in

² Sunarso, Siswanto, *Viktimologi dalam Sistem Peradilan Pidana*. (Jakarta: Sinar Grafika, 2022).

The Universal Declaration of Human Rights (10 December 1948) and The International Covenant on Civil and Political Rights (16 December 1966) recognize that all people are equal to the law and are entitled to equal legal protection without any discriminatory treatment or attitude. Any act of violation of human rights guaranteed by the provisions of national laws and regulations.³

Article 9 paragraph (5) of the above Covenant outlines the principle of indemnity which outlines that anyone who has been the victim of the unlawful arrest or detention shall have enforceable right to compensation.⁴ The above formulations are

³ The Universal Declaration of Human Rights, United Nations General Assembly, December, 10, 1948. See also Soeparman, Parman. *Pengaturan Hak Mengajukan Upaya Hukum Peninjauan Kembali dalam Perkara Pidana Bagi Korban Kejahatan*. (Jakarta: Refika Aditama, 2007); Waltz, Susan. "Reclaiming and rebuilding the history of the Universal Declaration of Human Rights." *Third World Quarterly* 23, no. 3 (2002): 437-448; Kunz, Josef L. "The United Nations declaration of human rights." *American Journal of International Law* 43, no. 2 (1949): 316-323.

⁴ The principle of indemnity, underscores the idea that individuals who have suffered from unlawful arrest or detention possess a legally enforceable right to compensation. This principle is rooted in the concept of providing redress to those who have been wrongfully deprived of their liberty or subjected to unlawful restraint by authorities. Essentially, the principle of indemnity seeks to ensure that individuals who are victims of unjust arrest or detention are entitled to be restored, as much as possible, to the position they would have been in had the wrongful act not occurred. This restoration often involves financial compensation as a remedy. In legal terms, indemnity refers to the compensation or reimbursement for losses or damages suffered. In the context of unlawful arrest or detention, the principle of indemnity recognizes that such actions infringe upon an individual's fundamental rights, and the victim deserves compensation for the harm and inconvenience caused. This serves as a deterrent to unlawful actions by authorities and reinforces the importance of protecting individual liberties within the legal system. See also Arifin, Ridwan. "Revealing the Other Side of Human Rights Issue: How We Look to the Existed Various Problems." *Journal of Indonesian Legal Studies* 2, no. 1

then supported by the United Nations Convention Against Transnational Organized Crime, 2002, which in Article 25 provides the principle that States should take appropriate measures in Forms of means of providing assistance and protection to victims of violations covered by the Convention. The various principles outlined above have values that can support the victimological aspect, moreover can serve as a strong basis for the formulation of future laws for the benefit of victims of criminal acts in the formulation of regulatory arrangements for each state regarding the rights of victims of unlawful treatment.

Developments in national law were initially not very responsive to the interests of victims. But with various international congresses discussing the issue of victimhood, it seems that attention to victims of criminal acts is starting to lift. As is known there are at least 3 (three) international meetings on the same theme, namely: The Congress in Geneva discussed "new forms and dimensions of crime; The Congress in Caracas in 1980 followed up on crime and the abuse of power, offenses and offenders beyond the reach of law; then the congress in Milan 1985 which discussed victims of crime, which it connect the new dimentions of criminality and crime prevention in the context of development, convention and non-conventional crime, illegal abuse of economic and public power. The three international congresses paid quite a lot of attention to the aspect of victims

(2017): 79-82; Huda, Khoiril, and Ridwan Arifin. "Human Rights in Indonesia: Between Protection, Fulfillment, and Law Enforcement." *Lex Scientia Law Review* 2, no. 2 (2018): 119-122; Putranto, Ade. "Capturing Human Rights Issues in Indonesia: Some Controversial Cases." *Lex Scientia Law Review* 1, no. 1 (2017): 1-4; Muhtada, Dani. "Human Rights in Indonesia: A Never Ending Topic." *Journal of Indonesian Legal Studies* 2, no. 1 (2017): 1-2.

related to new developments in the form of criminal acts and legal development, which is thought to be related to the Declaration on Justice and Assistance for Victim.⁵ In connection with the

⁵ The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in 1985, represents a pivotal international document outlining fundamental principles regarding the treatment of victims. One of its central tenets is the promotion of victims' access to justice, emphasizing that they should be treated with fairness, dignity, and respect throughout legal proceedings. This principle aims to rectify the historical imbalance in legal systems, ensuring that victims are not marginalized but rather integrated into the justice process. A critical aspect of the declaration is the principle of restitution. Victims are recognized as having the right to restitution, compensation, and rehabilitation. This acknowledgment reflects an understanding that victims often suffer not only physically and emotionally but also financially. By granting them the right to restitution, the declaration seeks to address the economic impact of crimes and contribute to the victims' recovery and rehabilitation. Moreover, the UN Declaration underscores the need for the protection of victims. Adequate measures must be taken to shield victims from intimidation and retaliation, recognizing that their cooperation in legal proceedings is crucial for the pursuit of justice. This protection extends beyond the courtroom, encompassing broader societal contexts where victims may face risks due to their involvement in legal processes. Information and participation are integral components of the declaration, emphasizing that victims have the right to be informed about the progress of their cases and to actively participate in legal proceedings. This ensures transparency in the legal process and empowers victims, allowing them to make informed decisions about their involvement in the pursuit of justice. Additionally, the declaration recognizes the importance of affording special consideration to vulnerable victims. This includes children, as well as victims of human trafficking and other forms of exploitation. By highlighting the unique needs of these individuals, the declaration emphasizes a nuanced and compassionate approach to victim assistance, striving to address their vulnerabilities and provide tailored support. *See also* Setiawan, Andry, et al. "Gender Based Violence in Higher Education: A Model of Protection and Law Enforcement." *Indonesian Journal of Advocacy and Legal Services* 5, no. 1 (2023): 65-80; Angkasa, Angkasa, et al. "Development of a Restitution

declaration, States are expected to assume various responsibilities thinking about compensation such as among others creating compensation programs for victims such as insurance programs.

The dimension of compensation for the suffering of victims is associated with the restitution system, which in the sense of victimology is related to the repair or restoration of physical, moral, property and rights losses of victims resulting from criminal acts. The main character of this restitution indicates the responsibility of the maker for the claim of restitutive actions of a criminal nature in criminal cases, which in the sense of victimology is related to the repair or restoration of the physical, moral, property and rights losses resulting from criminal acts. In contrast to compensation, compensation is requested on the basis of a petition, and if granted must be paid by the community or state, while restitution is demanded by the victim to be decided in court and if accepted the claim, must be paid by the perpetrator of the crime.

Because the nature of such differences is still not realized in reality, there is often no difference between the two payments, because most importantly, attention to the victim first, then follows the form of payment for the victim's losses.⁶ In its

Model in Optimizing Legal Protection for Victims of Human Trafficking in Indonesia." *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 93-128; Yudistira, Febiahwan. "Legal Innovation for Protection of Victims of Domestic Violence." *Journal of Creativity Student* 4, no. 2 (2019): 189-214; Al Faraby, Muhammad Faisal. "Creativity of Protection of Rape Victims in Victimological Perspective." *Journal of Creativity Student* 4, no. 2 (2019): 143-156.

⁶ Priambada, Bintara Sura. "Viktimologi dalam Sistem Peradilan Pidana Tentang Kepentingan Korban." *Ratu Adil* 3, no. 2 (2014); Indah, Wulan Saputri, et al. "Deviant Behavior of Children in Social Media from Perspective of Law and Criminology: Does Creativity on Social Media

development regarding this victim, it has been stated in Law number 13 of 2006 concerning the Protection of Witnesses and Victims. Where the interests of victims are authorized to an institution established by law, namely the Witness and Victim Protection Agency (LPSK). The interests of victims through the LPSK are stated in Article 7 of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims as follows:

1. Victims through the LPSK have the right to apply to the court in the form of:
 - a. the right to compensation in cases of gross violations of human rights;
 - b. The right to restitution or compensation for which the perpetrator of the criminal act is responsible.
2. Decisions regarding compensation and restitution are rendered by the court.
3. Further provisions regarding the provision of compensation and restitution are regulated by Government Regulations.

According to the aforementioned law, although the rights and interests of victims have been authorized by the LPSK, in reality in the Criminal Justice System, victims remain as extras or only witnesses (victims) in trials, because the rights and interests of victims in (criminal) trials are still represented by the Police and Prosecutors. The above discussion that concerns the various interests of the criminal acts experienced by a person is systematically summarized into the field of study of victimology. In this case, victimology not only plays a role in the field of

criminal law, criminology, or penology, namely the science of sentencing, but also experts agree that an agreement is obtained that the problem of human victims is of interest in the light of civil law. Victimology is a study or scientific knowledge that studies the problem of criminal sacrifice as a human problem that is a social reality.

Victimology is part of criminology, which has the same object of study, namely criminal acts or criminal sacrifices (criminal victimization) and everything that consequently, can be a *victimogen* or *criminogen*. Victimology also studies the extent to which the implementation of regulations on victims' rights has been implemented. The aspect of victimology in national law can be seen especially in the Code of Criminal Procedure (KUHAP), in addition to the establishment of the Court on Human Rights, which has been implemented effectively in 2002, which is based on Law No. 26 of 2000. Furthermore, the implementation of the law on human rights is stated in Government Regulation Number 3 of 2000 concerning Compensation, Restitution, and Rehabilitation of Victims of Gross Human Rights Violations.

As contained in Article 1 point 3 which reads as follows: "*Victims are individuals or groups of people who experience suffering, whether physical, mental or emotional, economic losses, or experience neglect, reduction or deprivation of basic rights as a result of gross violations of human rights, including victims are their heirs*". In this case, the question is, whether the issue of interests of victims of ordinary criminal acts is included in human rights issues, because in the provisions in Article 1 point 3 it is only for victims of gross human rights violations, while victims of ordinary crimes are not mentioned in the provision. This needs further study, because if victims of ordinary crimes can be included in these provisions,

then victims of ordinary crimes can also enter the competence of human rights courts.

IV. Legal Protection of Victims of Criminal Acts

In the realm of legal protection for victims of criminal acts, the Code of Criminal Procedure provides explicit provisions aimed at ensuring the rights and remedies available to the aggrieved parties. Article 98, paragraph 1, delineates a crucial process whereby the aggrieved party can request the consolidation of their lawsuit into a criminal case. This request triggers a thorough examination by the district court, which assesses its jurisdiction to adjudicate the lawsuit, the foundational veracity of the claims, and the applicable laws governing the reimbursement of costs to the aggrieved party.

Furthermore, Article 100, paragraph 1, of the Code of Criminal Procedure sheds light on the dynamics at the appellate level in cases of a merger between a civil and a criminal case. According to this provision, the merger occurs automatically during the appellate examination, emphasizing the integrated nature of the legal processes involved. This procedural mechanism ensures that the consolidation of cases remains a seamless transition, particularly during the crucial stages of review and appeal.

In matters concerning claims for compensation, Article 101, paragraph 1, underscores the application of the rules of civil procedure. This implies that, unless explicitly regulated otherwise, the established provisions of civil procedure govern claims for compensation. This aligns the legal framework for seeking

compensation with established civil litigation norms, ensuring consistency and clarity in the pursuit of remedies for victims. The inclusion of such provisions reflects a commitment to a systematic and fair legal process, where victims are afforded due consideration and protection under the law.

In essence, these articles within the Code of Criminal Procedure collectively contribute to the legal scaffolding designed to safeguard the interests of victims. By delineating procedures for the merger of cases, addressing jurisdictional matters, and aligning compensation claims with established civil procedures, the legal framework seeks to provide comprehensive protection and redress for individuals impacted by criminal acts.

Based on the explanation of several articles above, it can be seen that the merger of compensation claims only provides opportunities for material losses, while the recovery of immaterial losses must still be filed separately through civil lawsuits which in practice are not easy. The enactment of Law No. 13 of 2006 concerning the Protection of Witnesses and Victims is a comprehensive thought from the State with political will to pay attention to and provide protection for witnesses and victims of criminal acts, although some material in this law must still be supplemented with implementing regulations. The enactment of this law is enough to provide fresh air for efforts to protect victims of criminal acts.

The basis for consideration of the need to regulate the law regarding the protection of witnesses and victims of criminal acts can be seen in the consideration section of Law No. 13 of 2006 letter b which states that law enforcement in seeking and finding clarity about criminal acts committed by criminal offenders often experience difficulties because they cannot present witnesses and /

or victims due to threats, both physical, and psychic, from certain parties. Though it is known that the role of victim witnesses in the criminal justice system occupies a key position in efforts to seek and find clarity about criminal acts committed by perpetrators. In the criminal justice system, victim witnesses play a key role in uncovering a material truth. It is no exaggeration if in article 184 paragraph (1) of the Code of Criminal Procedure (Code of Criminal Procedure) witness statements are placed first above other evidence in the form of expert statements, letters, instructions and statements of the accused. When the victim witness gives testimony, of course, it must be accompanied by assurances that the person concerned is free from fear before, during, and after giving testimony.

This guarantee is important to be given to ensure that the information to be given is really not purely fabricated, let alone the result of pressure from certain parties. This is in line with the understanding of the witness himself, as stated in article 1 point 26 of the Code of Criminal Procedure, namely a person who can provide information for the purposes of investigation, prosecution and trial about a matter that he hears himself, he sees alone and experiences himself. Talking about the guarantee of protection for witnesses and / or victims when giving testimony in the criminal justice system is certainly inseparable from the rights possessed by witnesses and / or victims themselves, in Article 5 paragraph (1) of Law No. 13 of 2006 concerning the Protection of Witnesses and Victims states that witnesses and victims have the right to:

1. Obtain protection for the safety of his person, family, and property, and be free from threats regarding the testimony he will, is, or has given.

2. Participate in the process of selecting and determining forms of security protection and support
3. Provide unstressed captions
4. Get a translator
5. Free from entangled questions
6. Get information about case progress
7. Get information about court rulings
8. Knowing what the convict is released
9. Get a new identity
10. Getting a new place of residence
11. Obtain reimbursement of transportation costs according to needs
12. Get legal advice
13. Obtain temporary cost-of-living assistance until the coverage period expires

In general, these rights tend to give a greater portion to the position of witnesses than the position of victims in the criminal justice system. Victims do not receive the same portion of bail as witnesses. The position of the victim is not only to participate in the process of choosing and determining the form of protection and security support or to be able to obtain information about court decisions or even the victim can know in the event that the convict is released. However, as the aggrieved party, the victim is also entitled to compensation. Law No. 13 of 2006 concerning the protection of witnesses and victims in article 7 states that victims can apply for the right to compensation (in cases of human rights violations) and the right to restitution or compensation for which the perpetrator of the crime is responsible. However, the application for the right to compensation, restitution or compensation above must be submitted to the court through the

witness and victim protection agency. In practice, this kind of mechanism is certainly not simple.

Thus, it can be said that victims of criminal acts who have been the object of violence and oppression by perpetrators until now become neglected parties, especially when related to the criminal justice system. The existence and legal position of victims of criminal acts in the criminal justice system is not favorable for victims of criminal acts, because they are hit in the fundamental problem that victims are only witnesses (whistleblowers or victims). Victims are not part of the elements involved in the criminal justice system, unlike defendants, police and prosecutors.⁷ This results in the victim of a criminal act having no legal remedy, if he objects to a court decision, such as an appeal or cassation if the court decision is considered unfair or detrimental to him.

In relation to victims and elements involved in the criminal justice system, some legal expert opinions are colored with pros and cons, especially about compensation for victims of criminal acts. The counter opinion states that the inclusion of victims' interests in the criminal process will complicate the criminal process and is not in accordance with the principles of quick, cheap and simple justice. In addition, the doctrine taught that there is a distinction between public law and private law where

⁷ Erez, Edna, and Julian Roberts. "Victim participation in the criminal justice system." *Victims of Crime* 3 (2007): 277-297; Sebba, Leslie. *Third parties: Victims and the criminal justice system*. (The Ohio State University Press, 1996).

criminal law and criminal procedural law are state affairs, not individuals.⁸

V. Forms of Compensation to Victims in the Perspective of Victimology

Claims for compensation due to criminal acts are filed through civil procedures. While the pro-opinion states that the entry of the interests of the aggrieved party in criminal proceedings is a form of legal protection for all communities, not only those who are accused of violating criminal law, but people who are victims of criminal law violations. In Article 99 of the Criminal Procedure Code, it is formulated about losses caused by criminal acts that can be prosecuted through criminal procedures, namely only losses suffered by victims of a civil nature in the form of costs or costs that have been incurred by the victim, while other losses must be filed through ordinary civil lawsuits.

This is not worthy of comparison with the suffering of the victims. Other material losses that are not costs incurred for recovery and losses suffered by victims cannot be sought compensation through criminal procedures. The description above shows that the issue of interests of victims of criminal acts is still challenged from the point of criminal justice mechanism, because lawmakers (legislative policies)²⁶ are strongly influenced by the wishes of streams in society who want to prioritize the protection of the human rights of criminal offenders, thus

⁸ Ariyanti, Vivi. "Konsep Perlindungan Korban dalam Sistem Peradilan Pidana Nasional dan Sistem Hukum Pidana Islam." *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 1 (2019): 33-48.

forgetting the principle of balance and protection which is the basic principle of the legal philosophy of Pancasila. The form of compensation to victims can be divided into 3, namely:

1. The provision of compensation to victims, namely as contained in Article 1 point 4 PP No. 44 of 2008 is compensation provided by the state because the perpetrator is unable to provide full compensation for which he is responsible.
2. The provision of restitution to victims, namely as contained in Article 1 point 5 PP No. 44 of 2008 is compensation given to victims or their families by perpetrators or third parties, which can be in the form of return of property, payment of compensation for loss or suffering, or reimbursement of costs for certain actions.
3. The provision of assistance to victims, namely as contained in Article 1 point 7 PP No. 44 of 2008 is a service provided to victims and / or witnesses by the Witness and Victim Protection Agency in the form of medical assistance and psycho-social rehabilitation.

For victims of robbery in a taxi, the most important compensation is psycho-social rehabilitation. Because the impact of the robbery crime on the victim makes the victim's mentality chaotic. Through psycho-social rehabilitation, mental efforts of victims of robbery can be restored again as before and so that victims can use public transportation services like society in general. To obtain this compensation, the victim, her family, or her attorney must apply to the court through the Witness and Victim Protection Agency. However, if the perpetrator is unable to provide compensation as it should, the government will provide compensation

VI. Victimology in the Victim Protection Perspective

The term victimology comes from the Latin *victima* which means victim and *logos* which means science. In simple terms, victimology means the science of victims (crimes). While in terminology, victimology is a study that studies victims, the causes of victims and the consequences of victim abuse which are human problems a social reality. Victimology is a scientific study / study that studies a victimization (criminal) as a human problem that is a social reality. Victimology provides a good understanding of victims of crime as the result of human actions that provide physical, mental, and social suffering. Victimology tries to provide an enlightening understanding of the problem of crime by studying victims of crime, the process of victimization and its consequences in order to create wisdom and preventive measures and suppress crime more responsibly.

Crimes resulting in victims as objects of victimological study became more widespread after the fifth United Nations Congress in Geneva in 1975 and the Sixth Congress in 1980 in Caracas, which called attention to the fact that victims of crimes within the scope of victimology are not just conventional crimes such as extortion, theft, molestation, etc. But also, unconventional crimes, such as terrorism, piracy, and white-collar crime. While in the Seventh UN Congress in 1985, it produced an agreement to pay attention to certain crimes that are considered or considered dangerous such as economic crime, environmental, offences, illegal trafficking in drugs, terrorism, apartheid, and industrial crime. The perspective of victimology in studying victims provides

an orientation for community welfare, community humanitarian development, in an effort to make people not become victims in a broad sense, this is to prioritize human rights and the side of human suffering.

Victimology provides a better understanding to protect victims. Victimology in the perspective of victim protection is also contributed in criminal law, especially in criminal matters and criminal law enforcement frameworks. If so far consideration from the perpetrator's point of view dominates, then the study of victimology as an applied science will make the crime and punishment of perpetrators more proportional and accountable. The existence of the position and role of the victim in the occurrence of the crime, can be used as one of the considerations for the judge to determine the type and severity of the crime assigned to the perpetrator as victim protection.

VII. Legal Protection for Victims of Rape in Indonesia

Rape is a criminal offense formulated in article 285 of the Criminal Code: *"Whoever by force or by threat of force compels a woman to have sex outside marriage with her, because guilty of rape shall be punished with imprisonment for not more than twelve years."* When viewed from the formulation obtained in article 285 of the Criminal Code above, rape is an act of coercion to have sex and can be punished for it. Rape is indeed a matter that concerns individuals, but it must be made a public matter because of its actions. Rape is clearly a crime that violates human rights that causes physical, psychological and social harm. Protection of rape

victims is still a problem in law enforcement in Indonesia. but in the UN convention itself even provides more space for the possibility of rape to the realm of the household. This is in line with the UN's concern for upholding human rights where most rape cases put women in a vulnerable position and this clearly occurs gender discrimination that violates human rights.⁹

Protection in Law Number 13 of 2006 concerning the Protection of Witnesses and Victims contained in Article 1 paragraph (6) is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and / or victims which must be carried out by the witness and victim protection agency (LPSK) or other institutions in accordance with the provisions of the applicable law. Legal protection is an illustration of the working of legal functions to realize legal objectives, namely justice, expediency and legal certainty. Legal protection is a protection given to legal subjects in accordance with the rule of law, both preventive and in repressive forms, both written and unwritten in order to enforce legal regulations in other words legal protection as an illustration of the function of law, namely the concept where law can provide justice, order, benefit, and peace. One form of protection for victims of crime and which is the right of someone who is a victim of a crime is to get compensation and restitution.¹⁰

⁹ Prehatiningsih, Febry Dwi, et al. "Reconstruction of Legal Norms Through Harmonization of Sexual Crime Laws." *Unnes Law Journal* 9, no. 1 (2023): 45-66; Paramuditha, Citra. "Efforts to Protect Victims of Rape Crime: Law and Society Study." *Semarang State University Undergraduate Law and Society Review* 2, no. 2 (2022): 155-180.

¹⁰ Zainurohmah, Zainurohmah, et al. "Provisions of Legal Aid as a Form of Protection for Child Victims of Rape." *The Digest: Journal of Jurisprudence and Legisprudence* 4, no. 1 (2023): 21-46; Novianti, Dian, and Erika Sudrajat. "Discourse on Legal Aid for Children in Rape Crime Cases

Compensation is given by the state to victims of gross human rights violations while restitution is compensation to victims of criminal acts given by perpetrators as a form of responsibility. The current national criminal law enforcement places victims only positioned as witnesses to reveal the perpetrator's actions in court even though Indonesia as a legal country that guarantees the recognition and protection of human rights, has regulated the rights of victims in criminal proceedings, one of which is the right to file a claim for compensation.¹¹

Rape victims are in dire need of outside support and role because of the severity of their suffering. So that the recovery of the victim's condition becomes a serious concern in the crime of rape because in this case the losses experienced lead to the victim's psychic resulting in prolonged trauma. It can be described that the protection of rape victims is very necessary because:

1. In the legal system, especially in the judicial system, it is still on the side of the perpetrator and has not paid full attention to the rights that must be received by the victim. In its

(Study of Decision Number 138/Pid. Sus/2020/PN. Pti)." *The Digest: Journal of Jurisprudence and Legisprudence* 3, no. 2 (2022): 73-104; Al Faraby, Muhammad Faisal. "Creativity of Protection of Rape Victims in Victimological Perspective." *Journal of Creativity Student* 4, no. 2 (2019): 143-156.

¹¹ Annisa, Sigma Febby. "Children as Victims of Sexual Abuse: Has the Law Provided Enough Justice?." *The Indonesian Journal of International Clinical Legal Education* 2, no. 4 (2020): 435-448; Naziah, Firqotun. "Analysis of Legal Protection for Women Victims of Rape." *Lex Scientia Law Review* 1, no. 1 (2017): 105-112; Ilyasa, Raden Muhammad Arvy. "Legal and Victimological Perspective on Sexual Violence against Children Cases in Indonesia." *The Indonesian Journal of International Clinical Legal Education* 3, no. 3 (2021): 281-300.

application, attention to victims is lacking, but it is still focused on the rights given by perpetrators.

2. Rape makes the victim experience multiple sufferings where the victim feels prolonged physical and psychological suffering. So that this protection can alleviate the suffering of victims and can help victims out of the problem.
3. Law enforcers are helped a little by victim protection efforts because victims remain in good condition so as to speed up the disclosure of their cases.
4. The stigma of society that still considers rape victims is a shame to express and read.
5. Rape is a crime of human rights violation because it violates the rights of women. The victim is clearly a loss.

Protection of victims is needed to benefit rape victims as follows:

1. Victims can be separated from their registration psychologically and physically.
2. The victim feels safer from various forms of threats that can disturb him.
3. The victim can testify in her testimony.
4. Victims become more cared for and supported
5. Noble self-confidence grows from the victim's own self.
6. The negative stigma in society towards rape victims can disappear
7. The victim gets the spirit to continue living again as before

In this context, the protection of victims, particularly in cases of sexual assault such as rape, is imperative for several compelling reasons. First and foremost, providing protection allows victims to undergo the necessary processes of recovery, both psychologically and physically, without the added burden of

potential harm. By offering a secure environment, victims can begin to detach themselves from the traumatic experience and gradually rebuild their lives. This separation is crucial for the well-being of the individual, as it enables them to focus on healing without the constant threat of further psychological or physical distress.

Ensuring the safety of victims extends beyond the immediate aftermath of the crime. Shielding them from various forms of threats not only contributes to their overall sense of security but also facilitates their ability to cooperate with authorities during investigations and legal proceedings. When victims feel protected, they are more likely to come forward, report the crime, and actively participate in the pursuit of justice. This, in turn, strengthens the criminal justice system's ability to hold perpetrators accountable for their actions.

Moreover, the protection of victims creates an environment conducive to open communication and the sharing of testimonies. When victims feel safe to testify without fear of retribution or intimidation, the legal process becomes more effective. This empowerment contributes to the victim's sense of agency, allowing them to speak their truth and actively participate in the pursuit of justice. Additionally, the provision of care and support further bolsters the victim's resilience, fostering a positive trajectory toward recovery and helping them regain a sense of normalcy in their lives. By addressing the psychological, emotional, and societal aspects of victimization, comprehensive protection plays a pivotal role in restoring the victim's self-confidence and empowering them to embrace life beyond the traumatic event.

VIII. Conclusion

In conclusion, the current legal framework in Indonesia, as outlined in the Criminal Code, Criminal Procedure Code, and the Law on Sex Workers, reveals a fragmented and limited approach to the protection of victims' rights. While the Law on Sex Workers provides a broader scope for victim rights, its effective implementation faces hindrances due to constraints within the Legal Aid Agency for Victims (LPSK). Recognizing these challenges, there is a crucial need for a comprehensive reconstruction of victim rights protection to establish a unified and harmonized legal framework. It is evident that victims of criminal acts, particularly rape victims, face significant hurdles within the criminal justice system, where they are primarily treated as witnesses rather than active participants in the legal process.

Specifically addressing the unique challenges faced by rape victims, it becomes imperative to acknowledge the complex nature of their suffering, encompassing physical, mental, and other losses. The role of the victim as an accuser and witness adds an additional layer of burden throughout the legal proceedings and beyond. To alleviate this burden, there is a pressing need for enhanced protection mechanisms, ensuring the safety of victims from all forms of threats. Legislative instruments such as Law number 13 of 2006 concerning the protection of witnesses and victims, along with Government Regulation number 44 of 2008 concerning the provision of compensation, restitution, and assistance, offer essential frameworks to address these issues. Moving forward, a comprehensive and integrated victim protection mechanism within the criminal justice system is imperative to foster a more

supportive and secure environment for victims, especially those who have endured the trauma of sexual assault.

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