

## The Role of Victimology in the Protection of Crime Victims in Indonesian Criminal Justice System

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### ARTICLE INFO

#### Article history:

Received 11 January 2024

Revised 23 February 2024

Accepted 29 February 2024

Available online

<https://talenta.usu.ac.id/Mahadi>

E-ISSN: 2964-7185

P-ISSN: 3025-3365

#### How to cite:

Yunara, E., Kemas, T. (2024). The Role of Victimology in the Protection of Crime Victims in Indonesian Criminal Justice System. *Mahadi: Indonesia Journal of Law*, 3(01), 63-78

### ABSTRACT

Crime victims often find themselves in a consistently disadvantaged position, suffering physically, psychologically, and materially due to the crimes they endure. Unfortunately, the state's attention to victims lacks the intensity given to criminals, with a predominant focus on the legal position and human rights of offenders. Striking a balance between justice for perpetrators and protection for victims is essential. Presently, victims are predominantly considered supplementary to the sufferer, serving as witnesses solely to establish the guilt of the perpetrator. This research uses legal normative methods and employs a descriptive-analytical approach to explore victim guarantees in the Indonesian criminal justice system. The study scrutinizes statutory regulations, emphasizing the role of victimology in safeguarding crime victims. Historically, victim protection primarily centered on the right to compensation. However, Law Number 13 of 2006 concerning Witness and Victim Protection, in conjunction with Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection, significantly expanded victims' rights. Despite this progress, the integration of victim rights into the criminal justice system remains incomplete. The Indonesian criminal justice system must prioritize and safeguard victims' interests, acknowledging the crucial role of victimology in advocating for the rights of those harmed by perpetrators.

**Keyword:** Victimology, Protection of Crime Victims, Indonesian Criminal Justice System.

### ABSTRAK

Korban kejahatan seringkali merasa berada dalam posisi yang selalu merugikan, menderita secara fisik, psikologis, dan materiil akibat kejahatan yang mereka alami. Sayangnya, perhatian negara terhadap korban kurang intens dibandingkan dengan perhatian yang diberikan kepada pelaku kejahatan, dengan fokus utama pada posisi hukum dan hak asasi manusia pelaku. Menemukan keseimbangan antara keadilan bagi pelaku dan perlindungan bagi korban sangat penting. Saat ini, korban sebagian besar dianggap sebagai pelengkap penderita, hanya berfungsi sebagai saksi untuk membuktikan kesalahan pelaku. Penelitian ini menggunakan metode normatif hukum dan pendekatan deskriptif-analitis untuk mengeksplorasi jaminan korban dalam sistem peradilan pidana Indonesia. Studi ini mengkaji peraturan perundang-undangan, dengan menekankan peran victimology dalam melindungi korban kejahatan. Secara historis, perlindungan korban terutama berpusat pada hak atas kompensasi. Namun, Undang-Undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi dan Korban, bersamaan dengan Undang-Undang Nomor 31 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi dan Korban, secara signifikan memperluas hak-hak korban. Meskipun ada kemajuan ini, integrasi hak-hak korban ke dalam sistem peradilan pidana Indonesia masih belum lengkap. Sistem peradilan pidana Indonesia harus memprioritaskan dan melindungi kepentingan korban, mengakui peran penting victimology dalam advokasi untuk hak-hak mereka yang dirugikan oleh pelaku.



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<http://doi.org/10.26594/register.v6i1.idarticle>

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**Keyword:** Victimologi, Perlindungan Korban Kejahatan, Sistem Peradilan Pidana Indonesia.

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## 1. Introduction

In the realm of criminal justice in Indonesia, there is a lack of emphasis on protecting victims compared to the attention given to perpetrators. Victims of crime often suffer physically, psychologically, and financially due to the crimes committed against them. Despite this, victims are primarily seen as witnesses in criminal cases, tasked with proving the guilt of the perpetrator. Unfortunately, the discussion around crime victims as a matter of public interest is rare in criminal law. Consequently, when a crime occurs and the perpetrator is convicted, it is assumed that the victim has received sufficient protection.<sup>1</sup>

In situations like this, criminal law is considered to have abandoned the victim because it fails to address the recovery needs of the victim, which encompass losses in the form of physical, psychological, and financial aspects resulting from the criminal incident they experienced.<sup>2</sup>

Victims play a crucial role as witnesses in the criminal justice system, especially during police investigations and court proceedings. Their testimonies are essential for shedding light on the criminal acts and are considered valuable evidence in trials. Despite this central role, victims are often seen primarily as witnesses, and their statements are vital for the investigation process and the pursuit of justice.

However, in the current state of the criminal justice system, the status and position of the victim are not recognized as that of a party in a criminal case. The victim's role is often overlooked by law enforcement officials,<sup>3</sup> since the paradigm on criminal justice system still focusing on retributive justice to punish the criminal offender. The functioning of the criminal justice system, both within institutions and legal frameworks, is predominantly offender-oriented, as reflected in the participation of crime victims in the criminal justice system that merely as providing evidence, placing them outside the system rather than recognizing them as interested parties actively involved in the system.<sup>4</sup> As a result, the existence of crime victims is subordinated and often disregarded, contributing to the risk of secondary victimization in the criminal justice system.<sup>5</sup>

The focus of the State appears to be more on the status and protection of criminal offenders rather than crime victims. This protection for perpetrators is outlined in Articles 50 to 68 of Law Number 8 of 1981 on the Criminal Procedure Code (Kitab Undang-Undang Hukum Pidana-KUHAP). Offenders are entitled to rights such as rehabilitation, offender treatment, social adaptation, and correctional care.<sup>6</sup> Perpetrators of crimes are provided with significant facilities by the State, which underscores the importance of respecting the human rights of these offenders. However, the principles of justice and respect for human rights should prioritize a balance that considers not only the rights of perpetrators but also those of victims.

Article 27 Section (1) of the 1945 Constitution of the Republic of Indonesia states that all citizens, regardless of their status in the eyes of the law and government, are obligated to respect the law and government. This constitutional provision reflects the State's commitment to treat every citizen with fairness

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<sup>1</sup>Susan E. Gegan Nicholas Ernesto Rodriguez, 'Victims' Roles in the Criminal Justice System: A Fallacy of Victim Empowerment?' (1992) 8 Saint John's Journal of Legal Commentary, p. 230, as quoted by Mahrul Ali and Ari Wibowo, "Compensation and Restitution Oriented to Victims of Crime", *Juridika*, Volume 33, No. 2, May 2018, p. 261.

<sup>2</sup>Karyn Ellen Polito, "The Rights of Crime Victims in the Criminal Justice System: Is Justice Blind to the Victims of Crime?", (1990) 16 New England Journal on Criminal and Civil Confinement, p. 242-243, as quoted by Mahrul Ali and Ari Wibowo, *Ibid*,

<sup>3</sup>Adil Lugianto, "Reconstruction of the Protection of the Rights of Crime Victims", *MMH Journal*, Volume 43, No. 4, October 2014, p. 553.

<sup>4</sup>Mudzakkir, "The Position of Crime Victims in the Indonesian Criminal Justice System Based on the Criminal Code and Draft Criminal Code", *Journal of Legal Sciences*, Volume 14, No. 1, March 2011, p. 29.

<sup>5</sup>Maya Indah, *Victim Protection A Perspective of Victimology and Criminology*, Second Edition, (Jakarta: Kencana Prenada Media Group, 2014), p. 97.

<sup>6</sup>*Ibid*, the rights of criminals (suspects or defendants) are more regulated in the Criminal Procedure Code than the rights of victims, such as: the right to legal aid, presenting de charge and expert witnesses, compensation, rehabilitation and pre-trial.

and equality, ensuring that everyone is subject to the same laws without discrimination, whether they are perpetrators of crimes or victims of criminal acts.

This commitment is in line with the humane values embodied in Pancasila, the Indonesian ideology, and the 1945 Constitution of the Republic of Indonesia, which serve as the guiding principles for Indonesians in shaping the legal framework from the 1945 Constitution to subsequent statutory regulations. However, in practice, the Criminal Procedure Code, which forms the foundation for implementing the criminal justice system, does not fully incorporate and uphold the principles outlined in the 1945 Constitution and Pancasila.<sup>7</sup>

The Criminal Procedure Code contains provisions related to victims' rights, as outlined in Articles 98 to 101, which cover the right to seek compensation for losses resulting from criminal acts. Additionally, Article 108, Section (1), grants victims the right to report or complain about criminal acts, while Articles 109 and 140, paragraph (2), elaborate on the right to exercise control over the actions of investigators and public prosecutors. This includes the right to object to the termination of an investigation and/or prosecution. Article 133 allows victims to request expert information in the interest of justice, and Article 134 addresses the right of the victim's family to be informed in advance when a post-mortem examination will be conducted on a deceased victim.

However, the prevailing perception is that the criminal justice system is designed to prosecute suspects rather than to serve the interests of crime victims. This perspective stems from viewing crime as an offense against the state, with harm to individual victims considered secondary, and redress is no longer seen as part of the criminal justice process. Victims are often advised to seek remedies through hiring a lawyer and pursuing civil court action. The criminal justice system is perceived as serving the community rather than benefiting individual victims. Its objectives include determining guilt, rehabilitating offenders, imposing penalties, and ensuring justice, rather than actively restoring victims or vindicating them.<sup>8</sup> The loss of the victim's role in the criminal justice system can basically be based on four weaknesses that it currently has, such as:<sup>9</sup>

1. Criminal acts are defined more as attacks on government authority than as attacks on victims or society;
2. Victims are only part of the evidentiary system and are not interested parties in the ongoing process;
3. The process is only focused on efforts to punish perpetrators and prevent crime without looking at efforts to repair the losses caused and restore balance in society;
4. In the solution, the focus of attention is only directed to the process of proving the perpetrator's guilt. Therefore, communication only takes place in one direction, namely between the judge and the perpetrator, while the main concept of dialogue, namely between the perpetrator and the victim, does not exist at all.

The protection and status of crime victims in the current criminal justice system are challenging to ensure justice and are not easily resolved from a legal standpoint. The interests and protection of crime victims have not received serious attention from the state for a long time, in contrast to the focus on punishing criminals, which remains primarily retribution-oriented.<sup>10</sup>

Historically, this trend can be traced back to the implementation of the Hammurabi Code, where the criminal justice system primarily focused on the penal aspect of criminal law. The main emphasis was on ensuring that criminals were punished in accordance with the crimes they were proven to have committed. This strong focus on the offenders led to neglect and lack of serious attention towards victims and the protection of their rights.<sup>11</sup>

<sup>7</sup>Ibid, p. 3.

<sup>8</sup>William F. McDonald, 1977, "The Role of the Victim in America" in Randy E. Barnett and John Hegel III, eds., 1977, *Assessing The Criminal: Restitution, Retribution, and the Legal Process*, Cambridge: Ballinger Publishing Company, p. 29-296, in Mudzakkir, Op.Cit, p. 30.

<sup>9</sup>Eva Achjani Zulfa, "Restorative Justice and Pro-Victim Justice", in Adrianus Meliala, *Reparations and Victim Compensation in Restorative Justice*, (Jakarta: Witness and Victim Protection Institute and Department of Criminology, FISIP UI, 2011), p. 27.

<sup>10</sup>NCO Sura Priambada, "Victimology in the Criminal Justice System Regarding the Interests of Victims", *Legal Articles*, No Year, p. 1.

<sup>11</sup>Ibid, p. 2, as quoted from Bambang Poernomo, *Law and Victimology*, Postgraduate Program in Criminal Law, Padjadjaran University, Bandung, 2001/2022. In Hamurabi's law, the relationship between the victim and the perpetrator and their family is very dominant in the process of administering revenge punishment. The implementation of Hamurabi's law then faces obstacles when the perpetrator or his family has a high position and has the power to defend themselves, then revenge does not take place or instead turns into resistance by the perpetrator against the victim. Here the position of the victim is that they do not receive proper legal protection and justice, so an alternative solution is sought, namely restitution if it is private or compensation if it is public.

The Indonesian criminal justice system does not recognize the existence and position of protecting crime victims as seekers of justice. Unlike civil proceedings and state administration, crime victims cannot be actively involved. In this case, they cannot directly file criminal cases in court but must go through designated law enforcement agencies, namely the police and prosecutors.<sup>12</sup>

In the Criminal Code (*Kitab Undang-Undang Hukum Pidana-KUHP*) and Criminal Procedure Code, crime victims are only provided protection in the form of compensation for criminal acts committed by the perpetrator of the crime. The definition of a crime victim extends beyond an individual who suffers losses due to a crime, as crime victims are intricately connected to the evolving and diverse nature of crimes. Moreover, thoughts and discussions about crime victims are expanding alongside developments in crime. Discussion on crime victim's role encompass a broader range of issues, including political, social, economic, and even human rights considerations,<sup>13</sup> in which aligns with the issuance of several laws, such as Law Number 26 of 2000 on Human Rights Courts, Law Number 15 of 2003 on the Eradication of Criminal Acts of Terrorism, Law Number 23 of 2004 on the Elimination of Domestic Violence, Law Number 21 of 2007 on Eradication of the Crime of Human Trafficking, Law Number 8 of 2010 on Prevention and Eradication of the Crime of Money Laundering, and Law Number 31 of 2014 on Amendments to Law Number 13 of 2006 on Witness Protection and Victims, hereinafter referred to as the Witness and Victim Protection Law. In the Witness and Victim Protection Law, the rights of crime victims are expanded wider than in criminal Procedure Code as it not only in terms of the right to compensation.

However, despite the existing Witness and Victim Protection Law that regulates the protection of the rights of crime victims, their interests are often overlooked in the criminal justice system by the parties involved in the enforcement process, such as the police, prosecutor's office, and court. Crime victims are typically not directly included or involved in the justice process to advocate for their rights. Theoretically, in the Integrated Criminal Justice System, the State assumes some of the rights of crime victims, such as investigating and prosecuting offenders who have violated the rights of the victims. In other words, the interests of crime victims are represented by State actors, namely law enforcement officials (police and public prosecutors).

To address the losses experienced by victims, it is crucial to provide protection to enable them to recover from the damages caused by a criminal act. This recovery can take the form of compensation or restitution.<sup>14</sup>

The concept of compensation and restitution originates from the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985. Restitution is detailed in Articles 8 to 11, while compensation is outlined in Articles 12 to 13.

Regarding the protection of crime victims and the treatment of perpetrators in criminal law, the victim's experience of harm due to the perpetrator's actions is closely tied to criminology and victimology. These disciplines share a symbiotic relationship. They encompass the interactions between the victim and the offender, as well as the victim and the criminal justice system (including the police, prosecutor, and court). Additionally, victimology involves the relationships between the victim and other social groups and institutions, such as the media, business sectors, and social movements.

Criminal law focuses on defining criminal acts as prohibited and deserving of punishment. In contrast, criminology examines these acts as human behavior within the broader social context. Moreover, a crime committed by an offender is understood to cause harm to another party—the victim or the party experiencing losses due to the criminal act. Victims of crimes are inherently individuals who have suffered loss, a concept central to victimology.<sup>15</sup>

Meanwhile, victimology is a study or field of knowledge derived from criminology. Its main focus is on crime, precisely the consequences of the crime that result in victims. Victimology is employed to explore the role and position of victims in society when a crime occurs, as well as how society responds to crime victims. Its primary function is to examine the extent of a victim's involvement in committing a crime and the protection that the government or state should provide to those who have become crime victims.

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<sup>12</sup>Mudzakir, "The Legal Position of Crime Victims in the Criminal Justice System", Inaugural Dissertation for Professor at the University of Indonesia, April 6 2001, p. 1.

<sup>13</sup>JE Sahetapy, *Victimology A Potpourri*, (Jakarta: Pustaka Sinar Harapan, 1987), p. 96, as quoted by Ni Putu Rai Yulianti, "The Position of Crime Victims in the Criminal Justice System in Indonesia Based on the Criminal Procedure Code (KUHP)", *Legal Communication Journal*, Volume 1, Number 1, February 2015, ISSN: 2356- 4164, p. 84.

<sup>14</sup>Mahrus Ali and Ari Wibowo, "Compensation and Restitution Oriented to Victims of Crime", *Juridika*, Volume 33, Number 33 Number 2, May 2018, p. 262.

<sup>15</sup>JE Sahetapy, *Victimology of a Bungan Rampai*, (Jakarta: Pustaka Sinar Harapan, 1987), p. 59.

In victimology, the legal interests of victims are not solely considered from the perspective of criminal law or criminology; they must also be examined from the standpoint of civil law, addressing how victims should be compensated in terms of civil rights or material aspects arising from the consequences of criminal acts. Despite the existence of restitution and compensation institutions as means to protect victims, their effectiveness in reality has not been optimal, as it still requires active participation from individuals.

## 2. Method

In conducting juridical-normative research, a systematic approach is crucial. This method involves a thorough examination of legal principles, doctrines, and jurisprudence to develop a comprehensive understanding of the legal framework under study. By integrating a literature review, existing scholarly works, legal commentaries, and relevant publications are analyzed to identify gaps, trends, and evolving perspectives within the legal discourse. Additionally, secondary data such as statutes, regulations, and case law are used as foundational resources to support the analysis and synthesis of legal concepts. This methodological approach enables a comprehensive exploration of legal norms, theories, and their practical applications, thereby contributing to the advancement of legal scholarship and the enhancement of jurisprudential understanding.

## 3. Result and Discussion

### 3.1 Crime Victims

According to Andrew Nash, crime victims have been overlooked for a relatively long time. Victims remain neglected parties in the criminal justice system.<sup>16</sup> The definition of victim was initially defined only from a religious perspective, focusing on spiritual suffering rather than suffering due to a crime.<sup>17</sup>

The word "victim" actually has various meanings and continues to evolve. It can also result in various interpretations of meaning. Various definitions of the word "victim" have been put forward by experts, and definitions originating from international conventions discuss issues relating to victims of crime.<sup>18</sup> The word victim actually comes from Arabic, namely *qaraba*, which means to approach/approach; what is approached/approached is God.<sup>19</sup> Then in Ancient Hebrew culture and civilization, the term sacrifice refers to the meaning of sacrifice or being sacrificed, namely sacrificing a person or animal for worship or a hierarchy of power.<sup>20</sup>

Etymologically, victim is a translation of the word victim (English), *victima* (Latin): meaning victim, which establishes the word "victimology". In terms of terminology, victimology means a study that studies victims, the causes of victims, and the consequences of causing victims, which is a human problem as a social reality.<sup>21</sup> In the Indonesian Dictionary, the term sacrifice is defined as a gift to express devotion, loyalty, and so on.<sup>22</sup> Sacrifice is also defined as: first, a gift to express devotion and loyalty; secondly, people suffer as a result of an event, evil deed and so on.<sup>23</sup> Poerwadarminta, known as Father of Indonesian Dictionary, states that sacrifice (1) a gift to express devotion (willingness); (2) people who suffer accidents due to their own or other people's actions (lust); (3) dead people; (4) people who die due to accidents, natural disasters such as floods, earthquakes and so on. Victims can also be defined as people who suffer from crimes, unlawful acts and other wrongdoings.

Arif Gosita defines victims as individuals or groups who suffer physical and spiritual harm due to the actions of others seeking to fulfill their own or others' interests, which conflict with the human rights interests of the injured party. This definition can apply to both private individuals and government entities. On the other hand, Bambang Waluyo defines a crime victim as someone who has experienced physical or mental suffering, property loss, or death as a result of the actions or attempted actions of a perpetrator of a criminal offense or

<sup>16</sup>Andrew Nash, "Victims by Definition", Washington University Law Review, Volume 85, 6, 2008, p. 1424-1425, as quoted by Mahrus Ali, Victimology, (Depok: PT Rajagrafindo Persada, 2021), p. 29.

<sup>17</sup>Mahrus Ali, 2021, Ibid,

<sup>18</sup>John Kenedi, Protection of Witnesses and Victims (Study of the Legal Protection of Crime Victims in the Judicial System in Indonesia), (Yogyakarta: Pustaka Belajar, 2020), p. 25.

<sup>19</sup>Riza Nizarli, "The Position of Crime Victims in the Criminal Justice System in Indonesia", Journal of Canon Law, ISSN 0854-5499, December 1993, p. 50.

<sup>20</sup>John Kenedi, 2020, Op.Cit, p. 26.

<sup>21</sup>Didik M.Arief Mansyur and Elisatris Gultom, The Urgency of Protection of Crime Victims: Between Norms and Reality, (Jakarta: PT. RajaGrafindo Persada, 2008), p. 73.

<sup>22</sup><https://kbbi.kemdikbud.go.id/entri/korban>, accessed on 01 November 2022.

<sup>23</sup>Big Indonesian Dictionary, Fourth Printing, (Jakarta: Balai Pustaka, 1993), p. 461.

similar acts.<sup>24</sup> Victims are predominantly defined as individuals who experience physical or psychological suffering due to a harmful event. Another definition, proposed by Muladi, describes victims as individuals or groups who have suffered various losses, including physical, mental, emotional, and economic, or significant violations of their fundamental rights, as a result of actions or omissions that violate criminal laws, including abuse of power, in any given country.<sup>25</sup> According to Muladi, the definition of victim in question is not only the victim of crime, but also the victim of abuse of power.

JE Sahetapy stated that what is meant by victim is an individual, legal entity who suffers injuries, damage or other forms of loss that are felt both physically and psychologically. These losses are not only seen from a legal perspective, but also from an economic and political perspective, as well as from a social and cultural perspective. Those who become victims in this case can be due to the victim's own fault, the victim's role directly or indirectly, and without the victim's role.<sup>26</sup>

According to Zvonimir Paul Separovic victims are those persons who are threatened, injured, or destroyed by an act or commission by another (man, structure, organization, or institution) and consequently, a victim would be by a punishable act (not only criminal act but also other punishable acts as misdemeanor, economic offenses, non-fulfillment of work duties or form an accident (accident at work, at home, traffic accident) suffering may be caused by another man (man-made victim) or other structure where people are also involved.<sup>27</sup> Based on the definition above, a victim is a person who experiences suffering due to the actions of other people, whether humans, structures, organizations, and institutions, whether caused by a crime, violation of obligation, or accident/disaster.<sup>28</sup>

The United Nations (UN) defines victims in the international legal framework through the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. According to this declaration, victims are individuals or groups who have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights. This harm arises from acts or omissions that violate criminal laws within member states, including laws prohibiting the criminal abuse of power. The definition of victims under the UN declaration includes individuals, groups, communities, and countries, and the concept of harm encompasses various forms of loss and deprivation of rights caused by both actions and inactions.<sup>29</sup>

The definition of victim from a narrow perspective is only limited to crime victims, namely as someone who has suffered loss as a result of a crime and/or whose sense of justice has been directly disturbed as a result of their experience of being the target of a crime (a victim is a person who has suffered damage as a result of a crime and or whose sense of justice has been directly disturbed by the experience of having been the target of a crime).<sup>30</sup> According to Mardjono Reksodiputro, citing JE Sahetapy's opinion, there are 4 (four) definitions of victim, such as:<sup>31</sup>

1. Victims of conventional crimes, such as murder, rape, assault, theft;
2. Victims of unconventional crimes such as terrorism, piracy, illegal narcotics trafficking, organized crime and computer crime;
3. Victims of unlawful abuse of economic power such as violations of labor regulations, consumer fraud, violations of environmental regulations, fraud in marketing and trade by transnational companies, violations of tax regulations and so on;
4. Victims of abuses against general law (illegal abuses of public power) such as violations of human rights, abuse of authority by authorities, including unlawful arrest and detention and so on.

Mahrus Ali defines victims as people who, individually or collectively, have suffered losses, including physical or mental injury, suffering, emotional, economic loss, or substantial violations of their fundamental

<sup>24</sup>Bambang Waluyo, *Victimology of Victim and Witness Protection*, (Jakarta: Sinar Graphic, 2011), p. 9.

<sup>25</sup>Muladi, "Human Rights in the Perspective of the Criminal Justice System", in Muladi, *Human Rights: Nature, Concepts and Implications in the Perspective of Law and Society*, (Bandung: Refika Aditama, 2005), p. 107, as quoted by Mahrus Ali, 2021, *Op.Cit*, p. 30.

<sup>26</sup>JE Sahetapy, *Victimology An Anthology*, (Jakarta: Pusat Sinar Harapan, 1987), p. 25.

<sup>27</sup>Zvonimir Paul Separovic, *Victimology*, (Zegreb: Studies of Victims, 1985), p. 8, in Adil Lugianto, 2014, *Loc.Cit*,

<sup>28</sup>*Ibid*,

<sup>29</sup>Adil Lugianto, 2014, *Op.Cit*, p. 554. Also note Lilik Mulyadi, "Legal Efforts Taken by Crime Victims Examined from the Perspective of the Criminal Justice System in the Decision of the Supreme Court of the Republic of Indonesia", *Law Journal*, No Year, p. 1.

<sup>30</sup>Muladi and Barda Nawawi Arief, *Criminal Theories and Policies*, (Bandung: Alumni, 1984), p. 78.

<sup>31</sup>JE Sahetapy, 1987, *Op.Cit*, p. 96-97.

rights through acts or omissions, which is a violation of the criminal law in force in member countries, including laws prohibiting crimes of abuse of power.<sup>32</sup>

Under Indonesian laws victim is regulated in the following statutes:

1. The Criminal Code (KUHP), the term victim is known as the complainant (Article 72 of the Criminal Code);
2. Law Number 8 of 1981 on Criminal Procedure Law (KUHP), the term victim in the Criminal Procedure Code itself is often found with a variety of different terminologies, such as interested third parties (Articles 80 and 81 of the Criminal Procedure Code); the injured party (Articles 98 and 99 of the Criminal Procedure Code); the reporter (Article 108 of the Criminal Procedure Code); and victim witnesses (Article 160 of the Criminal Procedure Code).
3. Law 26 of 2000 on Human Rights Courts, victims are individuals or groups, and the suffering or loss experienced includes physical, mental, emotional or economic; these victims are limited to victims of genocide and crimes against humanity;
4. Law Number 27 of 2004 on the Truth and Reconciliation Commission, victims are individuals or groups of people who experience suffering, whether physical, mental, or emotional, economic loss, or experience neglect, reduction, or deprivation of their basic rights as a result of rights violations. human rights, including victims or their heirs;
5. Law Number 13 of 2006, as amended by Law Number 31 of 2014 on Protection of Witnesses and Victims, in this law, a victim is defined as someone who experiences physical, mental suffering, and/or economic loss resulting from an act. criminal;
6. Law Number 21 of 2007 on the Eradication of the Crime of Human Trafficking, in Article 1 number 3, states that a victim is someone who experiences psychological, mental, physical, sexual, economic, and/or social suffering, which results in the criminal act of human trafficking;
7. Law Number 11 of 2012 on the Juvenile Justice System. Child victims are defined as children under 18 years of age who experience physical and mental suffering and/or economic loss caused by criminal acts.
8. Government Regulation Number 3 of 2002 on Compensation, Restitution and Rehabilitation for Victims of Serious Human Rights Violations. Victims are defined as individuals or groups of people who experience physical, mental, or emotional suffering, economic loss, or experience neglect, reduction, or deprivation of their basic rights as a result of serious human rights violations, including victims and their heirs;
9. Government Regulation Number 7 of 2018 on Providing Compensation, Restitution, and Assistance to Witnesses and Victims, in Article 1 point 2, it is stated that a victim is a person who experiences physical, or mental suffering and/or economic loss resulting from a criminal act.

According to the laws mentioned earlier, a victim is described as an individual or group who suffers either directly or indirectly, physically, mentally, emotionally, or economically, or experiences a violation of their rights due to a crime, resulting in tangible or intangible harm. This definition of "victim" extends beyond individuals to include legal entities, businesses, and organizations, including nations. Therefore, victims can be categorized as either individual victims or collective victims, depending on their characteristics. Direct victims are those directly impacted by the crime, while indirect victims, also known as pseudo or abstract victims, include communities, individuals, community groups, or society at large. Additionally, the losses suffered by victims can be quantified as either tangible, typically in monetary terms, or intangible, involving emotions such as fear, sadness, and psychological shock.

### 3.2 Rights of Crime Victims

Protection of the human rights of crime victims in the Indonesian criminal justice system seems unequal compared to the attention and protection of perpetrators of crime. The rights of victims to be heard, the rights of victims to be presented before a court, the rights to be treated fairly, and the rights to respect human dignity are often ignored. The protections in the Criminal Code and Criminal Procedure Code protect the rights of criminals rather than supporting victims' rights.<sup>33</sup> Victims are treated as nothing more than a useful tool for reporting and prosecuting a criminal act and are only placed for evidentiary purposes without paying attention to adequate and maximum legal protection for victims, both material and immaterial protection.

<sup>32</sup>Mahrus Ali, 2021, Op.Cit, p. 31.

<sup>33</sup>Tri Hermintadi, Victims' Interests in the Criminal Justice System from a Victimological Perspective, (Jakarta: Badilag, 2009), p. 5.

Victims of crime are only needed as evidence whose statements can be asked before the trial, that is, only as witnesses.<sup>34</sup> The victim's position in the trial is that his presence is only to provide witness statements and listen to the complaints, suffering, and losses he has experienced.<sup>35</sup>

Victims of actual crimes should be accorded their rights to respectful treatment, recognizing their status as legal entities with equal standing before the law. Legal safeguards for crime victims, as a part of societal protection, can manifest in several ways, including the right to be informed about the progress of their case, access to free legal aid, and the assurance of physical and psychological safety. This includes protection from intimidation or reprisals related to past, present, or future testimony. Victims also possess the right to have their voices, needs, and information heard during legal proceedings and are entitled to restitution, compensation, and rehabilitation. Additionally, victims have the right to participate in the trial.<sup>36</sup>

According to David Boyle<sup>37</sup>, crime victims are generally entitled to a number of rights, namely the right to participation<sup>38</sup>, representation rights<sup>39</sup>, the right to protection<sup>40</sup>, and the right to participation.<sup>41</sup> Complete and detailed regulations regarding the rights of crime victims are contained in Directive 2012/29/EU of the European Parliament and of the Council in 2012, in general according to the directive, the rights of victims consist of 3 (three), namely as follows:<sup>42</sup>

1. The right to information and services, which includes:
  - a. The victim's right to understand and be understood;
  - b. The victim's right to receive information from the first encounter with law enforcement;
  - c. The victim's right to translation of written evidence according to the language they understand;
  - d. The victim's right to obtain information about the case;
  - e. The victim's right to obtain an interpreter;
  - f. The victim's right to access services according to needs and loss/trauma;
  - g. The victim's right to obtain services, such as compensation schemes, psychological services, and advice to be free from secondary victimization or retaliation by the perpetrator;
2. The right to participate in the judicial process, which includes:
  - a. The victim's right to have his or her statement heard at trial and have it be used as evidence;
  - b. The victim's right to decide not to prosecute a case;
  - c. The victim's right to a sense of security in the context of restorative justice services;
  - d. The victim's right to legal assistance;
  - e. The victim's right to compensation for all costs;
  - f. The victim's right to return his property;
  - g. The victim's right to obtain restitution from the perpetrator/defendant;
  - h. The victim's right to obtain new residence in another country.
3. The right to protection and recognition of special needs, which include:
  - a. The right to protection;
  - b. The victim and his family have the right not to meet/contact directly with the defendant;
  - c. The victim's right to obtain protection during the investigation process;
  - d. Victims have the right to have their privacy protected;
  - e. The right to an individual victim assessment to identify specific protection needs;
  - f. Victims with special needs have the right to be protected during the trial process;
  - g. The right of children as victims to obtain protection during the trial process.

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<sup>34</sup>John Kenedi, 2020, Op.Cit, p. 80-81.

<sup>35</sup>Mary Margaret Gianni, "The Procreative Power of Dignity: Dignity's Evolution in the Victims Rights Movement," *Drexel Law Review*, 9, 2016, p. 63-63, as quoted by Mahrus Ali, 2021, Op.Cit, p. 20.

<sup>36</sup>Benson Chinedu Olugbuo and George Mukundi Wachira, "Enhancing the Protection of the Rights of Victims of International Crimes: A Model for East Africa", *African Human Rights Law Journal*, 11, 2011, p. 630-631, as quoted by Mahrus Ali, 2021, Op.Cit, p. 21-22.

<sup>37</sup>David Boyle, "The Rights of Victims: Participation, Representation, Protection, Reparation", *Journal of International Criminal Justice*, Volume 4, 2, 2006, p. 309-313, as quoted by Mahrus Ali, 2021, Op.Cit, p. 21.

<sup>38</sup>The right to participation is the right to participate in determining the form of protection and security provided by the state.

<sup>39</sup>The right to representation includes the right to have information or suffering experienced before the court heard.

<sup>40</sup>The right to protection includes the victim's right to obtain physical or psychological protection during or after the trial process takes place.

<sup>41</sup>The right to reparation is related to the victim's right to obtain restitution from the perpetrator and compensation from the state.

<sup>42</sup>Mahrus Ali, 2021, Op.Cit, p. 23-27.



Furthermore, according to Arif Gosita, determining the rights and obligations of victims is based on the level of involvement and functional responsibility of the victim in the criminal act. The involvement and functional responsibility ensure that the formulation of rights and obligations in a regulation or law is easily understood by many people yet can be scientifically justified. According to Arif Gosita, victims' rights consist of:<sup>43</sup>

1. The victim has the right to receive compensation for his or her suffering, in accordance with the ability to compensate the victim and the level of involvement/participation/role of the victim in the occurrence of the crime, delinquency, and deviation;
2. Has the right to refuse compensation for the benefit of the victim maker (does not want to be compensated because he does not need it);
3. Have the right to receive compensation for the heirs if the victim dies as a result of the action; has the right to receive guidance and rehabilitation;
4. Have the right to recover their property rights;
5. Has the right to refuse to be a witness if this will endanger him;
6. Have the right to receive protection from threats from victims if they report and become witnesses;
7. Have the right to obtain legal assistance;
8. Has the right to use legal remedies (*rechtsmiddelen*).

According to Van Boven, the rights of victims are the right to know, the right to justice and the right to reparation (recovery), namely rights that refer to all types of recovery. The recovery referred to is in the form of material recovery as well as non-material recovery.<sup>44</sup> Meanwhile, according to JE Sahetapy, victims have the following rights:<sup>45</sup>

1. Receiving services (assistance, restitution, compensation);
2. Refuse service to his heirs;
3. Get back his property rights;
4. Refuse to be a witness if there is no protection for him;
5. Receive protection against threats from the perpetrator if the reporter becomes a witness;
6. Get information about the problems they face;
7. Can carry out work;
8. Receive appropriate services before the trial, during the trial, and after the trial;
9. Obtain the assistance of legal counsel;
10. Using legal remedies.

In several Indonesian laws, victim's rights are explained as follows:

1. In the Criminal Code, there are several articles that reflect the protection of victims, namely:
  - a. Article 80 of the Criminal Code, an examination to check whether or not a termination of an investigation or prosecution is valid or not can be submitted by an investigator or an interested third party to the chairman of the district court stating the reasons;
  - b. Article 108 paragraph (1) of the Criminal Code, every person who experiences, sees, witnesses, and/or becomes a victim of an incident which constitutes a criminal act has the right to submit a report or complaint or an investigator or investigator either verbally or in writing;
  - c. Article 133 paragraph (1), in the case of investigators in the interests of justice handling victims of injuries, poisoning or death which are suspected to be due to criminal acts. He has the authority to submit requests for expert information to medical experts, the judiciary, or other expert doctors;
  - d. Article 134 paragraph (1), in cases where it is absolutely necessary that a post-mortem can no longer be avoided, the investigator is obliged to notify the victim's family first;
  - e. Article 160 paragraph (1b), the first person to hear the statement is the victim who is a witness.
2. Law Number 8 of 1981 on Criminal Procedure Law (KUHAP), victims' rights consist of:
  - a. The right to exercise control over the actions of investigators and public prosecutors, namely the right to submit objections to the action of terminating an investigation and/or prosecution in their capacity as an interested third party (Article 109 and Article 140 paragraph (2) of the Criminal Procedure Code);

<sup>43</sup>Arif Gosita, 2004, Op.Cit, p. 75.

<sup>44</sup>Theo Van Boven, *Those Who Become Victims*, (Jakarta: Elsam, 2002), p. xv.

<sup>45</sup>JE Sahetapy, 1987, Op.Cit, p. 189.

- b. The victim's rights in his position as a witness (Article 168 of the Criminal Procedure Code);
  - c. The right for the victim's family, in the case of the victim's death, to allow or not the police to carry out a post-mortem or dig up the grave for an autopsy (Article 134 and Article 136 of the Criminal Procedure Code);
  - d. The right to claim compensation for losses suffered as a result of criminal acts in his capacity as the injured party (Articles 98 to Article 101 of the Criminal Procedure Code).
3. Law Number 13 of 2006 in conjunction with Law Number 31 of 2014 on Protection of Witnesses and Victims, among other things, victims have the right to:
- a. Obtain protection for personal security, family and property, and be free from threats relating to testimony that will be, is being, or has been given;
  - b. Participate in the process of selecting and determining forms of security protection and support;
  - c. Provide information without pressure;
  - d. Get a translator;
  - e. Free from ensnaring questions;
  - f. Obtain information regarding case developments;
  - g. Obtain information regarding court decisions;
  - h. Obtain information in the event that the convict is released;
  - i. Identity kept secret;
  - j. Get a new identity;
  - k. Get temporary residence
  - l. Get a new residence;
  - m. Obtain reimbursement for transportation costs according to needs;
  - n. Obtain legal advice;
  - o. Obtain temporary living expenses assistance until the protection period expires; and/or
  - p. Get assistance

Especially for victims of severe human rights abuses, beyond the aforementioned rights, they are entitled to receive medical and psychosocial support. They also have the right to compensation in instances of serious human rights violations, as well as the right to restitution or compensation for losses caused by the perpetrator of the crime, and the right to rehabilitation. Furthermore, victims have the right to provide testimony outside of court and are protected from prosecution for their testimony or reports.

### 3.3 How Victimology Studies on Crime Victims

Victimology is the English term victimology, which comes from the Latin words, namely *victima*, which means victim, and *logos*, which means study/science.<sup>46</sup> Therefore, victimology means a study that studies victims, the causes of victims and the consequences of victims which is a human problem as a social reality.<sup>47</sup> Victimology, stemming from criminology, is a field that focuses on the study of victims' experiences within the context of crime. It considers the aftermath of criminal acts and how individuals or groups are impacted. Victims are central to victimology as they are those who suffer loss, which is a direct result of criminal actions.<sup>48</sup>

According to Arif Gosita, the role of crime victims is often overlooked but is crucial in understanding the dynamics of crime. Victims are not passive bystanders; they play an active role in the crime's occurrence. In fact, a crime cannot happen without a victim, who is a key participant alongside the perpetrator, fulfilling the perpetrator's interests but suffering as a result. Therefore, understanding the victim's role is essential in understanding the relationship between criminals and their actions.<sup>49</sup>

According to JE Sahetapy, the definition of victimology is a science or discipline that discusses victims' problems in all aspects, not just discussing crimes and abuse of power, but also including victims of accidents and natural disasters.<sup>50</sup> Meanwhile, according to Arif Gosita, victimology is a field of science or study that examines victimization (crime) as a human problem which is a social reality, which includes all aspects related to victims in various areas of life and livelihood.<sup>51</sup> According to Parman Soeparman,

<sup>46</sup>Arif Gosita, 2004, Op.Cit, p. 65.

<sup>47</sup>Rena Yulia, *Victimology, Legal Protection for Crime Victims*, (Yogyakarta: Graha Ilmu, 2010), p. 43.

<sup>48</sup>JE Sahetapy, 1987, Op.Cit, p. 59.

<sup>49</sup>Arif Gosita, 2004, Op.Cit, p. 65-66.

<sup>50</sup>Dikdik M. Arief Mansur and Elisatris Gultom, *The Urgency of Protection of Crime Victims Between Norms and Reality*, (Jakarta: Raja Grafindo, 2007), p. 44.

<sup>51</sup>Arif Gosita, *Problems of Crime Victims*, (Jakarta: Bhuana Ilmu Popular, 2002), p. 40.

victimology is a part of criminology, which has the same object of study, namely criminal acts or criminal sacrifice (criminal victimization) and everything whose consequences can be a victim or criminogen. Victimology also studies the extent to which regulations regarding victims' rights have been implemented.<sup>52</sup>

Originally, victimology concentrated solely on examining crime victims. Criminologists were discontent with merely analyzing crimes from an offender-centered perspective. Principles, legal norms, criminal justice system frameworks, and practices were developed and executed to safeguard and assert the rights of offenders. The discussion of crime and its associated elements consistently centered on the perpetrators. As a result, victims were marginalized within the criminal justice system.<sup>53</sup>

Therefore, victimology centers its focus on the individual who becomes the victim. A person may become a victim due to their own actions, the direct or indirect actions of others, or even without any active involvement on their part, such as in cases involving natural disasters or circumstances beyond their control. These considerations suggest that victimology encompasses the study of how individuals become victims.

Victimology research endeavors to comprehensively examine various aspects related to the victim, including their role in the crime, their interactions with the perpetrator, their involvement in the criminal justice system, the extent of their losses or suffering, and the necessary measures for their protection and recovery. In essence, the scope of victimology is defined by the concept of "victimity," which encompasses all aspects related to being a victim.<sup>54</sup>

### 3.4 The Position of Crime Victims in the Indonesian Criminal Justice System

Based on the purpose of punishment in the existing criminal law, criminals provided rights such as rehabilitation, treatment of offenders, social readjustment, correctional care, and so on.<sup>55</sup> In the Indonesian criminal justice system, the perpetrator of a crime is considered to have violated the public interest. Consequently, the state assumes a monopoly over the reaction to this violation, acting as the representative of the public or society. The state's role is to ensure a fair process for offenders, and as such, it assumes a dominant position in the judicial process, excluding the direct participation of crime victims, who are the individuals suffering harm as a result of the crime. The Public Prosecutor represents the interests of crime victims in the legal proceedings, aligning with the principles of community protection, as supported by the social contract and social solidarity arguments.<sup>56</sup>

From a criminological and criminal law perspective, crime is a conflict between individuals that causes harm to the victim, society and the offender himself, where of these three groups, the interests of crime victims are the main part of the crime.<sup>57</sup> The reason that victims is the main part because they are basically the parties who suffer the most in a criminal act. Victims in the criminal justice system are only positioned as passive parties, whose involvement only adds to their trauma and increases their sense of helplessness and frustration because they are not provided with adequate legal protection by the state.<sup>58</sup> The absence of legal protection as an implication of the fact that victims have not been placed fairly in the criminal justice system can be studied through statutory regulations in the field of criminal law as well as through empirical observations in law enforcement practices.<sup>59</sup>

In every criminal case handling, law enforcement officers are often faced with the obligation to protect two interests that seem to be in conflict, namely the interests of the victim, who must be protected to restore his suffering because he has been a victim of crime mentally, physically and financially, and the interests of the accused. Even if the suspect is guilty, he is still a human being who has human rights that must not be violated.<sup>60</sup> In the integrated criminal justice system, the police and prosecutors are the gateway for criminal cases to enter the court; it is considered that they show a lack of respect of rights for victims.<sup>61</sup>

<sup>52</sup>Mahrus Ali, 2021, Op.Cit, p. 2-3.

<sup>53</sup>Mahrus Ali, 2021, Op.Cit, p. 4.

<sup>54</sup>JE Sahetapy, 1987, Op.Cit, p. 25.

<sup>55</sup>Maya Indah, 2014, Loc. City,

<sup>56</sup>Muladi and Barda Nawawi Arief, *An Anthology of Criminal Law*, (Bandung: PT Alumni, 1992), p. 78, as quoted by Lilik Mulyadi, Op.Cit, p. 2

<sup>57</sup>Lilik Mulyadi, Loc. City,

<sup>58</sup>Ni Putu Rai Yulianti, "The Position of Crime Victims in the Criminal Justice System in Indonesia Based on the Criminal Procedure Code (KUHP)", *Legal Communication Journal*, Volume 1, Number 1, February 2015, ISSN: 2356-4164, p. 87.

<sup>59</sup>Alen Triana Masania, "The Position of Crime Victims in the Criminal Justice System", *Lex Crimen*, Vol. IV/No.7/September/2015, p. 15.

<sup>60</sup>Mudzakkir, 2011, Op.Cit, p. 29.

<sup>61</sup>Ni Putu Rai Yulianti, 2015, Loc. City,

Article 229, Section 1 of the Criminal Procedure Code stipulates that individuals summoned to provide information are entitled to reimbursement of costs as per applicable laws and regulations. Section 2 emphasizes that the official issuing the summons must inform the witness or expert about their rights.

However, in practice, the criminal justice process primarily focuses on the actions of the crime suspect, determining whether they have violated the relevant legal articles. This process is aimed at seeking the material truth as comprehensively as possible. As a result, the complete protection of victims' legal interests and rights cannot be guaranteed within the criminal justice system. Victims are often utilized for the interests of law enforcement authorities, highlighting that victims and other involved parties do not play a central role in perfecting the enforcement of the law.<sup>62</sup> The implementation of Article 229 of the Criminal Procedure Code should be supplemented by detailed implementing regulations.

The relationship between crime victims and the police or prosecutors is viewed as an indirect one, lacking legal consequences. This stands in contrast to the direct legal relationship between a crime suspect and their lawyer, which entails legal consequences and is a purely legal relationship between two legal entities.<sup>63</sup> In resolving criminal cases, the law often prioritizes the rights of criminal perpetrators rather than the rights of crime victims. This is as stated by Andi Hamzah, that in discussing criminal procedural law, especially those relating to human rights, there is a tendency to examine matters relating to the rights of suspects without considering the rights of victims.<sup>64</sup>

Apart from that, almost all of the principles of criminal procedural law contained in the Criminal Procedure Code also prioritize the rights of crime suspects, which are not comparable to the protection of crime victims. According to Romli Atmasasmita, there are at least 10 (ten) principles adopted by the Criminal Procedure Code to protect citizens' rights in a fair legal process, such as:<sup>65</sup>

- 1) equal treatment before the law without any discrimination;
- 2) presumption of innocence;
- 3) violations of individual citizens' rights (i.e. in terms of arrest, detention, search and confiscation) must be based on law and carried out with a warrant;
- 4) a suspect should be informed of the suspicion and arraignment against him;
- 5) a suspect and defendant has the right to receive the assistance of legal counsel;
- 6) a defendant has the right to appear before court;
- 7) the existence of justice that is free and carried out quickly and simply;
- 8) justice must be open to the public;
- 9) suspects and defendants have the right to receive compensation (compensation) and rehabilitation; as well as
- 10) it is the duty of the court to control the implementation of its decisions.

As previously discussed, there are few regulations protecting the rights of crime victims compared to those protecting suspects and criminals, as evident in the Criminal Procedure Code and Criminal Code. This disparity places crime victims at a disadvantage compared to perpetrators. For instance, victims have limited legal recourse, such as appeals or cassations, if they perceive a court decision as unjust or detrimental to them, which differs from the legal remedies available to criminals.

In legal proceedings involving appeals, cassations, or reviews of court decisions, the legal interests and rights of victims are solely represented by a prosecutor. In the criminal justice system, victims play two distinct roles in the judicial process. Firstly, they serve as witnesses, providing testimony to reveal the crime during the investigation, prosecution, and court examination stages. Secondly, victims can act as injured parties, submitting claims for compensation against perpetrators who have caused them loss or suffering.<sup>66</sup> Therefore, the issue of the interests of crime victims is still being challenged from the perspective of criminal justice mechanisms due to lawmakers or legislative policies.<sup>67</sup> Furthermore, in the law enforcement process, the basic weakness is the neglect of the rights of crime victims in the process of handling criminal cases and

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<sup>62</sup>Pay attention to Alen Triana Masania, Loc.Cit,

<sup>63</sup>Mudzakkir, 2011, Loc. City,

<sup>64</sup>Andi Hamzah, Protection of Human Rights in the Criminal Procedure Code, (Bandung: Binabuat, 1986), p. 33.

<sup>65</sup>Romli Atmasasmita, Criminal Justice System (Perspective of Existentialism and Abolitionism), (Bandung: Binabuat, 1996), p. 41.

<sup>66</sup>JE Sahetapy, 1987, Op.Cit, p. 35.

<sup>67</sup>Barda Nawawi Arief, Law Enforcement Issues & Crime Control Policies, (Bandung: Citra Aditya Bakti, 2001), p. 75.

the consequences that must be borne by crime victims because legal protection for crime victims does not receive adequate regulation.<sup>68</sup> It is appropriate that victims are given the same portion of the law to obtain their rights to submit their own legal remedies for certain matters directly if their rights are violated by the ongoing legal process regulated in statutory regulations, for example, regarding conviction or prosecution, the punishment is below the minimum penalty stated in the provision.

### 3.5 Protection of Crime Victims in Legislation

In addition to witnesses and victims, other individuals also play a significant role in uncovering certain criminal acts, such as justice collaborators (perpetrators), informants (whistle-blowers), and experts who can provide relevant information. If someone's statement is related to a criminal act, even if they did not directly witness or experience it, they should be afforded protection. This underscores the need to develop victim protection within criminal law and the criminal justice system.

The importance of victims' rights was highlighted at the VII/1985 UN Congress in Milan on The Prevention of Crime and the Treatment of Offenders, where it was emphasized that these rights should be considered an integral part of the entire criminal justice system.<sup>69</sup> In existing criminal law, victim protection primarily takes the form of "abstract protection" or "indirect protection." This means that the formulations of criminal acts in statutory regulations primarily aim to protect the legal interests and human rights of victims indirectly. In this context, a criminal act, as defined by positive law, is not considered an attack or violation of the legal interests of an individual victim personally and specifically, but rather a violation of "legal norms or order in the abstract." Consequently, victim protection is provided in an abstract manner rather than directly and concretely.<sup>70</sup> In other words, the system of sanctions and criminal responsibility is not aimed at directly and concretely protecting victims but only indirectly and abstractly protecting victims. So, the perpetrator's responsibility is not responsibility for direct and concrete losses or suffering of the victim but is more focused on personal or individual responsibility. According to Muladi, crime victims need to be protected for several reasons, such as:<sup>71</sup>

- 1) Society is considered as a form of institutionalized belief system, where this belief is reflected through norms expressed in institutional structures such as the police, prosecutor's office, courts, and so on. A crime that occurs against a victim means the destruction of that belief system, so that the regulation of criminal law and other laws relating to victims will function as a means of controlling that belief system;
- 2) There is a reason for the social contract and social solidarity: the state is said to monopolize all social reactions to crime and prohibit private actions. Therefore, if there are victims of crime, the state must pay attention to them;
- 3) Victim protection is usually linked to one of the objectives of punishment, namely conflict resolution. By resolving conflicts caused by criminal acts, it will restore balance and bring a sense of peace in society, at the same time it can be hoped to resolve conflicts/contradictions and also bring peace in society.

There are theoretically two regulatory models for protection for crime victims, namely:<sup>72</sup>

1. In the procedural rights model, victims are given the right to play an active role in the process of resolving criminal cases, such as the right to file criminal charges, assist the prosecutor or the right to be heard at every level of case examination where their interests are related, including the right to be consulted before being granted conditional release, as well as the right to make peace;
2. The service model, standard standards for the development of crime victims, which can be used by the police, for example guidelines for modifying victims and/or prosecutors in handling their cases, providing compensation as a restitutive criminal sanction and the impact of victims' statements beforehand. punishment imposed. Victims are seen as special targets who must be served in law enforcement activities or resolving criminal cases.

The following explains the protection for crime victims provided in statutory regulations:

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<sup>68</sup>Rena Yulia, Op.Cit, p. 103.

<sup>69</sup>Lilik Mulyadi, Op.Cit, p. 1

<sup>70</sup>Muladi and Barda Nawawi Arif, 1992, Op.Cit, p. 78.

<sup>71</sup>Muladi, Collection of Essays on Political Human Rights and the Criminal Justice System, (Semarang: Diponegoro University, 1997), p. 172.

<sup>72</sup>Muladi, Human Rights, Politics and the Criminal Justice System, (Semarang: BP Undip, 1997), p. 178.

1. In the Criminal Code, there is an implicit indication of legal protection for victims of crimes. This implication is evident in the judge's authority to impose a conditional sentence. For instance, Article 14c of the Criminal Code allows a judge to impose specific conditions on a convicted offender to compensate for all or part of the losses resulting from their criminal act. Articles 14c(1), 14a, and 14b suggest that the law provides indirect protection for crime victims, including the imposition of punishment with general and special conditions set by the judge to determine compensation for victims.
2. The Criminal Procedure Code provides legal safeguards for crime victims, emphasizing their interests in criminal proceedings. These protections are evident in Article 77 and Article 80, allowing victims to influence investigations and prosecutions by objecting to case closures or pursuing pre-trial actions. These rights ensure that criminal cases are resolved in accordance with the law. Articles 98 to 101 allow victims to claim compensation alongside criminal cases, enabling them to seek redress through civil means. Victims also have the right to withdraw as witnesses (Article 168), and families of deceased victims can decide on autopsies (Articles 134 to 136), reflecting considerations for religious and cultural sensitivities.

Law Number 31 of 2014, which amends Law Number 13 of 2006 on Witness and Victim Protection, defines protection as all efforts to uphold rights and provide assistance to ensure the safety of witnesses and/or victims. This protection is the responsibility of the Witness and Victim Protection Agency (Lembaga Perlindungan Saksi dan Korban-LPSK) or other institutions as specified.

Articles 5 to 6 of this law outline the rights of crime victims, including the right to compensation for serious human rights violations and restitution for losses caused by the perpetrator. Victims are also guaranteed protection throughout the criminal justice process and are allowed to testify in court with the judge's permission. Witnesses or informants are immune from criminal or civil prosecution for their reports or testimonies.

However, the protection provided by this law is limited and based on the level of threat to the victim, determined by a medical or psychological analysis considering the victim's history of previous criminal acts. To receive protection, victims must submit a written application to the LPSK, either voluntarily or at the request of an authorized official. Additionally, protected victims must not be the main perpetrators and must express a willingness to return assets obtained from the crime in a written statement.

This legal protection is specifically for victims facing real or anticipated physical or psychological threats. However, it is not comprehensive enough for victims who have suffered various actions. Informants and experts, for example, are protected based on the importance of their information and the threat of harm. In practice, experts providing information often face pressure and interference, affecting their ability to provide statements freely and based on their expertise. Therefore, experts who suffer losses should be considered victims and receive adequate protection.

#### **4. Conclusion**

The criminal justice system in Indonesia must prioritize the protection of victims' interests and consider the crucial role of victimology in advocating for the rights of those harmed by crimes. This approach signifies a shift from a solely retributive justice model, which focuses on punishing offenders, to a more balanced perspective that includes restorative justice. Restorative justice places emphasis on the rehabilitation of offenders and the restoration of the harm caused to victims and communities. By adopting a victim-oriented approach, the criminal justice system can better address the needs of victims, ensure their rights are protected, and promote a more comprehensive and just system overall.

#### **5. Recommendation**

While laws and regulations have attempted to address the legal protection of victims' rights, they still lack the specificity found in the rights granted to suspects or defendants. Additionally, the absence of implementing regulations from the government further complicates this issue. It is imperative that the government, legislative bodies, and national legislation promptly enact the necessary regulations. Furthermore,

there should be a thorough evaluation and revision of legal regulations, particularly regarding the legal interests of victims' rights.

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