



## Obstruction of regulation of the rights of victims of criminal acts in the Indonesian criminal justice system

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### Abstract

Regulations regarding the protection of the rights of victims of criminal acts have actually been widely contained in the Criminal Procedure Code (KUHAP) as well as in other legislation, but in the practice of criminal justice, victims are often not positioned as parties seeking justice as regulated in various regulations on the protection of victims' rights in Indonesia. Using a library research method with a normative research approach, the author examines regulations related to the concept of victim rights protection in the criminal justice system in Indonesia. The results of the research are: 1) Regulations governing victim protection in Indonesia are contained in Article 98 paragraph (1) of the Criminal Procedure Code, Article 5 paragraph (1) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection, Article 19 paragraph (1) of Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, Article 1 of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2022 concerning Procedures for Settling Applications and Providing Restitution and Compensation to Victims of Crime, and Article 66 paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code. 2) Forms of obstruction in the enforcement of victims' rights regulations include: The old and National Criminal Code only regulate the formulation and punishment of criminal offense for the perpetrator. The old Criminal Code only regulates the formulation of criminal offenses, responsibility and criminal penalties and has not yet determined the type of criminal restitution, or compensation. The Criminal Procedure Code prioritizes the rights of the defendant, rather than the victim, and does not provide opportunities for victims to take legal remedies against court decisions. Crime victims only act as passive reporters and witnesses and law enforcement officials tend to focus on proving the guilt of the suspect/defendant. In addition, existing laws and regulations regulate the rights of prisoners more than victims.

**Keywords:** Regulation, victims' rights, criminal justice system

### Introduction

Indonesia as a state of law has ratified the Universal Declaration of Human Rights in 1948 or also known as the UN Charter of Human Rights which is the International Covenant on Civil and Political Rights through Law Number 12 of 2005 and Law Number 39 of 1999 concerning Human Rights. This means that the Indonesian legal system must respect human rights and other fundamental rights without discrimination <sup>[1]</sup>. One of the fundamental rights is regulated in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, namely that the state guarantees all citizens equal status in law and government, must uphold the law and government with no exceptions. This means that anyone involved in legal matters, both victims of criminal acts and perpetrators of criminal acts, have the same position before the law. Unfortunately, in the Indonesian criminal justice system, the position of victims is not given enough attention. This is because the applicable criminal procedure law in Indonesia still relies on the protection of offenders (offender oriented) <sup>[2]</sup>.

In the theory of criminal procedure law, there are two models of protection for victims, namely the procedural rights model and the services model. Based on these two models, Indonesia uses the services model. This model emphasizes the retrieval of victims who have experienced trauma, fear and distress as a result of crime, as well as the provision of restitution and compensation. The services model authorizes the Public Prosecutor to represent the interests of the victim, but the drawback is that the

aspirations of the victim in this model are not considered, resulting in dissatisfaction from the victim and the family.

The trigger is that procedurally victims do not have the opportunity to express their dissatisfaction with the prosecutor's charges or the judge's decision <sup>[3]</sup>. The procedural law that is still based on the protection of offenders (offender oriented) has caused the rights of victims to be neglected. In every case of crime, the prosecutor as the public prosecutor focuses more on the completion of the indictment and charges based only on punishing the perpetrator and does not consider that the victim and his/her family have also suffered material losses that cannot be replaced only by the punishment of the perpetrator.

The fact that the victim also does not understand that in fact the criminal law system through the Criminal Code (KUHP) has accommodated the legal interests of the victim that the victim can demand restitution to the perpetrator as a reimbursement of the material losses suffered by the victim or his family due to the perpetrator's actions. In addition, existing law enforcement officials, including investigators, prosecutors and judges, do not inform victims of their rights, such as how to apply for restitution and compensation or other legal remedies that can be taken by victims in order to enforce their rights because they have become victims of crime.

Regulations regarding the protection of the rights of victims of criminal acts have actually been widely contained in the Criminal Procedure Code (KUHAP) as well as in other laws that are scattered outside the KUHAP, but until now, in the

practice of criminal justice, victims of criminal acts are often not positioned as parties seeking justice as regulated in various regulations regarding the protection of victims' rights that already exist in Indonesia. Instead, regulations are practiced by giving greater priority to the perpetrators of criminal acts to get attention in the form of legal assistance, remission, parole, rehabilitation, social readaptation, and others so that victims are only used as evidence for Investigators and Public Prosecutors.

Victims are people, either individually, in groups or communities, who suffer injuries, physical, mental, emotional, economic losses or damage to human rights as a result of actions / inactions carried out by perpetrators in violation of criminal law in a country. A victim of crime can also be defined as someone who suffers loss as a result of a crime. A victim can also be defined as a person whose sense of justice has been disturbed as a result of their experience as a target (target) of crime [4].

Victims as parties who suffer and are harmed by criminal offenses or crimes are usually only involved when providing testimony. Victims of crime are not authorized to be actively involved in the investigation and trial process [5]. During the trial, victims feel dissatisfied with the charges filed by the public prosecutor and the verdict imposed by the judge because it is considered not balanced with the losses experienced by the victim. This is due to the fact that the current criminal justice system is only organized to prosecute the perpetrators of criminal acts, which results in minimal rights for victims in the criminal justice system.

A victim is a person or group of people who have suffered financial, emotional, physical or mental losses, or violations of their basic rights as a result of unlawful acts [6]. For these losses, victims of criminal acts should be able to claim their rights such as obtaining assistance, restitution and compensation services, obtaining services for their heirs, regaining their property rights, refusing to be a witness if this will endanger them, getting protection from threats; getting information about the problems they face, getting the right to continue their work, getting proper services before the trial, during the trial and after the trial, victims are entitled to get legal counsel assistance and use legal remedies (rechtsmiddelen) [7]. Based on these facts, this study aims to examine the regulation of the rights of victims of crime in the justice system in Indonesia, and analyze the forms of obstruction in the enforcement of regulations on the rights of victims of crime in the justice system in Indonesia.

### Research Method

This study uses a library research method with a normative research approach by examining regulations related to the concept of victim protection because it wants to build a new theory based on document searches, interviews and observations and the author's objectivity to the performance of law enforcement officials in providing the rights of victims of crime [8]. Using secondary data in the form of literature and official documents on victim protection, such as books related to this research, scientific papers and journals related to this research and information quoted from the internet. The data analysis method used is qualitative analysis, which describes the regulations and obstacles in the enforcement of victims' rights in the criminal justice system in Indonesia [9].

## Discussion

### 1. Regulation of the Rights of Victims of Crime in the Indonesian Justice System

Criminal justice system is derived from the words, "system" and "criminal justice". A system can be defined as a series of interrelated elements to achieve a certain goal [10]. The ultimate goal of the Criminal Justice System is to achieve justice for the community. Etymologically, a system can be defined as a collection of parts or components (sub-systems) that are interconnected in an orderly manner and constitute a whole. Meanwhile, criminal justice is a mechanism for examining criminal cases that aims to convict or acquit a person from charges of committing a criminal offense [11].

According to Lawrence M. Friedman, the legal system is a system that includes substance, structure, and legal culture [12]. Thus, the legal system is a study of legal material concerning legislation (legal products), structure, and legal culture. Here the author further describes each of these legal sub-systems as follows:

#### 1. Legal Substance

Legal substance is the essence of the content contained in the legislation. The substance includes all legal rules, both written and unwritten, such as material law (substantive law), formal law (procedural law), and customary law. The legal substance component has basically been accommodated by the birth of Law Number 13 of 2006 as amended by Law Number 31 of 2014 concerning Witness and Victim Protection and Law Number 8 of 1981 concerning the Criminal Procedure Code. However, the substance of the law still lacks attention to the position of victims in the criminal justice system and does not clearly and practically describe how the mechanism for applying for compensation by victims.

#### 2. Legal Structure

Legal structure is the level or arrangement of law, law implementation, judiciary, legal institutions (institutions), and law makers. As for institutions or legal institutions related to the protection of victims of criminal acts already exist such as the Witness and Victim Protection Agency (LPSK), the Indonesian National Police, the Attorney General's Office and the Supreme Court. However, according to the author, these law enforcement officials do not accommodate the rights of victims such as informing what they are entitled to, how to apply for restitution and compensation and other legal remedies that can be taken by victims.

#### 3. Legal Culture

Legal culture is a description of attitudes and behaviors towards the law, as well as the overall factors that determine how the legal system gets an appropriate place and can be accepted by citizens in the framework of community culture [13]. The legal culture that exists in the community related to the rights of victims of crime is that the community (victims of crime) do not know that victims can apply for restitution to the perpetrator or to the State.

Law according to Satjipto Rahardjo is not only for certainty, but also for happiness and welfare [14]. Where happiness and welfare in the concept of progressive law will only be achieved if the rights and position of victims of criminal acts are the same as the perpetrators of criminal acts in undergoing the judicial process. If this is applied, the author believes that a sense of justice will truly be felt by victims.

Progressive law places itself as a force of "liberation", namely freeing itself from legalistic-positivistic types, ways of thinking, principles and legal theories. In other words, law enforcement that is carried out with determination, empathy, dedication, commitment to the suffering of the nation and accompanied by the courage to find other ways than what is usually done. This can be achieved by reformulating Article 56, Article 98, and Article 143 paragraphs (2) and (3) of the Criminal Procedure Code so that the rights of victims can be fulfilled as well as the rights of perpetrators. Some regulations governing victim protection in Indonesia are as follows:

1. Article 98 paragraph (1) of KUHAP
2. Article 5 paragraph (1) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection.
3. Article 19 paragraph (1) of Government Regulation No. 7/2018 on Providing Compensation, Restitution, and Assistance to Witnesses and Victims
4. Article 1 of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2022 concerning Procedures for Settling Applications and Providing Restitution and Compensation to Victims of Crime.
5. Article 66 paragraph (1) of Law Number 1 Year 2023 on the Criminal Code (KUHP)

## 2. Forms of Obstruction in Regulatory Enforcement of the Rights of Victims of Crime in the Indonesian Criminal Justice System

Law enforcement that is carried out properly and effectively is one measure of the success of a country in an effort to raise the dignity of its people in the field of law, especially in providing legal protection to victims of criminal acts. This also means that there is a guarantee of legal certainty for the people, so that people feel safe and protected their rights in living their lives. Conversely, law enforcement that does not run properly is an indicator that the State concerned has not been fully able to provide legal protection to its citizens <sup>[15]</sup>.

Various systematic studies of law enforcement and justice, theoretically state that the effectiveness of law enforcement will only be fulfilled if the 5 (five) pillars of law can run well, including: legal instruments, law enforcement officials, equipment, society and bureaucracy <sup>[16]</sup>. Law enforcement is basically the gap between normative law (*das sollen*) and sociological law (*das sein*) or the gap between the legal behavior of society that should be with the actual legal behavior of society.

The government has established the Witness and Victim Protection Agency (LPSK), as stipulated in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection. LPSK is tasked and authorized to provide protection and other rights to witnesses and/or victims. In addition, LPSK is responsible for handling the provision of protection and assistance to witnesses and victims. Based on the data in the LPSK Performance Report in 2023, the number of restitution payments in 2023 was 5,570 protected persons (victims who applied for restitution). Of this number, the fulfillment of restitution was mostly given to victims of Money Laundering Crimes (4,362), Sexual Violence Crimes (591), Human Trafficking Crimes (433) and Serious Maltreatment (101). This is certainly not comparable to the number of criminal cases decided by the Supreme Court in

2023 of 144,368 criminal cases. One of the obstacles faced by LPSK is that there are only 2 (two) LPSK representative offices throughout Indonesia, namely Medan and Yogyakarta <sup>[17]</sup>.

Based on the description above, the author can conclude that the forms of obstruction or obstacles in the enforcement of victims' rights regulation in the criminal justice system in Indonesia are as follows:

- a. The old Criminal Code and the National Criminal Code only regulate the formulation and punishment of criminal offense for the perpetrator. The applicable Criminal Code based on Law Number 1 of 1946 concerning Criminal Law Regulations has not established the type of restitution penalty, or compensation. The Criminal Code only regulates the formulation of criminal offense, responsibility and punishment.
- b. The Criminal Procedure Code (KUHAP) prioritizes the rights of the suspect/defendant, rather than the victim as seen in Article 17 to Article 19, Article 21 paragraph (2) and paragraph (3), Article 30 to Article 34, Article 50 to Article 68, Article 95 paragraph (1), Article 95 paragraph (7), Article 244 and Article 263 paragraph (1) of KUHAP.
- c. The Criminal Procedure Code does not provide an opportunity for victims to take legal action against court decisions.
- d. Crime victims only act as passive reporters and witnesses as stipulated in Article 72, Article 80, Article 81, Article 98, Article 99, Article 108, Article 109, Article 140 paragraph (2), Articles 134 to 136, Article 160, and Article 168. 5). Fifth, law enforcement officials tend to focus on proving the guilt of the suspect/defendant. And,
- e. Existing laws and regulations mostly regulate the rights of prisoners such as Parole, Remission and so on.

The above obstacles can actually be broken through if Law Enforcement Officials use Progressive Legal Theory. According to Satjipto Rahardjo, progressive law enforcement is carrying out the law not only according to the black and white words of the regulations (according to the letter), but according to the spirit and deeper meaning (to very meaning) of the law or law. In other words, law enforcement that is carried out with determination, empathy, dedication, commitment to the suffering of victims and accompanied by the courage of law enforcement officials to find other ways than what is usually done <sup>[18]</sup>. The weaknesses of the regulation of the rights of victims of criminal acts in the criminal justice system in Indonesia today principally lie in the weaknesses of substance, structure and legal culture so that the process of law enforcement of victims' rights does not run as it should be in accordance with the mandate of the legislation, although no matter how minimal the regulations regulate if the gap between theory and practice is eliminated, it can be proven that these weaknesses can be minimized and even eliminated. Victims' rights as stipulated in the law can be obtained if the victim submits a written request to LPSK. If the victim wants their rights to be fulfilled then the victim must be pro-active in contacting law enforcement officials. This is different from the rights of the suspect/defendant, which are directly obtained without the need for submission,

such as the right to be accompanied by legal counsel. In addition, victims also cannot file a legal appeal against the decision made by the Panel of Judges. Furthermore, existing regulations do not require law enforcement officials to facilitate the restoration of victims' rights and also do not outline how the mechanism for assessing or calculating victims' losses, although there are laws and regulations governing criminal payment of compensation, but they can only be applied starting January 2, 2026. All of this adds up to obstruction in the enforcement of victims' rights in the criminal justice system in Indonesia.

The weakness of the legal structure related to the rights of victims of crime in the criminal justice system, from the side of the Investigator that the Investigator did not inform the victim of the right to apply for restitution. Efforts made by the Investigator were limited to bringing together the perpetrator and the victim of the crime in an effort to Restorative Justice. In addition, the Investigator also said that the victim was never accompanied by a Legal Counsel because according to the Criminal Procedure Code, the suspect must be accompanied.

Then from the side of the Public Prosecutor, there are provisions in Article 30C letters c and d of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia which states that the Prosecutor has the duty and authority to participate and be active in handling criminal cases involving witnesses and victims as well as the process of rehabilitation, restitution and compensation as well as conducting penal mediation, confiscating execution for payment of fines and substitute punishment and restitution. However, based on the author's observation, these provisions have not been implemented by the Public Prosecutor.

The weakness of legal culture is also evident because in general, victims do not know the exact losses for which restitution can be requested. Victims also do not know the mechanism that can be taken if the perpetrator of the crime is unable or unwilling to pay the compensation requested by the victim. In addition, victims also do not know the period of time for restitution payment from the perpetrator of the crime to him since the judge's decision that requires the perpetrator to pay restitution to the victim is legally binding<sup>[19]</sup>.

The victim's ignorance of his/her right to obtain protection makes the victim allow his/her interests to be violated without submitting a request for the fulfillment of the victim's rights. The legal communication that has been built between victims and law enforcement officials has formed a behavior that tends to marginalize the existence of victims in the law enforcement process<sup>[20]</sup>. In practice, child victims or their parents do not know how to obtain restitution while law enforcement officials also do not provide assistance to obtain it<sup>[21]</sup>.

Law enforcement must be carried out with determination, empathy, dedication, commitment to the suffering of the nation and accompanied by the courage to find other ways than what is usually done. Several provisions contained in Article 56, Article 98, and Article 143 paragraphs (2) and (3) of the Criminal Procedure Code need to be reformulated so that the rights of victims can be fulfilled as well as the rights of perpetrators. Comprehensive legal reform is needed related to the existing legal system, namely the Law on Witness and Victim Protection needs to be amended by

the House of Representatives (DPR) by adding provisions in the form of restitution and compensation applicable to all victims of criminal acts, Law Enforcement Officials are obliged to inform and facilitate the victim's right to apply for restitution, and the Attorney General immediately forms a Victim Loss Assessment Team in each Prosecutor's Office. In addition, it is necessary to synchronize data between the Prosecutor's Office and the Ministry of Law and Human Rights regarding convicts who do not pay restitution, are not entitled to parole.

The House of Representatives and the President need to immediately amend and ratify the Criminal Procedure Bill which stipulates that victims are assisted by Legal Counsel appointed by the State, victim restitution must be included in the Minutes of Examination, Indictment, Prosecution Letter and Court Decision and if it is not included it results in a Verdict Null and void and for State Officials who do not implement it are required to attend a Code of Ethics Hearing.

### Conclusion

Regulations governing victim protection in Indonesia are contained in Article 98 paragraph (1) of the Criminal Procedure Code, Article 5 paragraph (1) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection, Article 19 paragraph (1) of Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, Article 1 of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2022 concerning Procedures for Settling Applications and Providing Restitution and Compensation to Victims of Crime, and Article 66 paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code.

Forms of obstruction in the enforcement of victims' rights regulations include: The old and National Criminal Code only regulate the formulation and punishment of criminal offense for the perpetrator. The old Criminal Code only regulates the formulation of criminal offenses, responsibility and criminal penalties and has not yet determined the type of criminal restitution, or compensation. The Criminal Procedure Code prioritizes the rights of the defendant, rather than the victim, and does not provide opportunities for victims to take legal remedies against court decisions. Crime victims only act as passive reporters and witnesses and law enforcement officials tend to focus on proving the guilt of the suspect/defendant. In addition, existing laws and regulations regulate the rights of prisoners more than victims.

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