International Journal of Psychosocial Rehabilitation, Vol. 24, Issue 02, 2020
ISSN: 1475-7192

Legal Protection to Victims of Criminal Acts in Efforts to Realize Restorative Justice

Adensi Timomor*

Abstract--- *One party that really needs protection in a crime is a victim of crime. The important role of the victim is to be given attention and protection because the victim is the most disadvantaged party in the occurrence of a crime, so that services and protection must be given to him/her. The Indonesian criminal justice system basically provides legal protection for victims of criminal acts but is still very minimal compared to the protection of the rights of the suspect or defendant. Various laws and regulations specifically in the field of criminal acts have provided regulations regarding the protection of the rights of victims of crime. Protection and assistance for victims of crime is an urgent and important thing to immediately implement. This research was conducted with a conceptual approach and a legal approach. This research is a type of normative research using data sources, namely literature and documents which are primary legal materials. The results of the study indicate that the regulation of legal protection against victims of criminal acts has been regulated in the Criminal Code but is still very minimal and has also been regulated in a number of special laws but still regulates in a concise and abstract manner and has not explicitly and specifically placed victims of crime as part of the criminal justice system.*

Keywords--- *Protection, Law, Crime.*

I. INTRODUCTION

Paragraph IV of the Preamble to the 1945 Constitution of the Republic of Indonesia affirms that the objectives of the State of Indonesia is to protect the whole people of Indonesia and the entire homeland of Indonesia and in order to advance general prosperity, to develop the nation's intellectual life, and to contribute to the implementation of a world order. This objective implies that the Republic of Indonesia is a proponent of legal state and welfare state. The firmness of Republic of Indonesia as a legal state can be seen in the provisions of Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), states that "the State of Indonesia shall be a state based on the Rule of Law" and Article 28G of the 1945 Constitution, which fundamentally asserts the protection of human rights.

Every human being has been born free and endowed fundamental rights and obligations, and the state and the exercise of power of state must not diminish the significance and values of freedom and human rights, so the protection for citizens is enforced by providing institutions that can provide justice in the form of an independent and impartial tribunal, and this has become one of the manifestations of Indonesia as a legal state.

The provisions regarding to the protection of victim of crime in the Criminal Procedure Code are more dominantly providing the procedure of compensation that can be classified into 4 (four) types of victims' rights, as follow:

Adensi Timomor, Law Science Study Program, Faculty of Social Sciences, Universitas Negeri Manado, Tondano City, North Sulawesi Province, Indonesia. E-mail: adensi.timomor@gmail.com*

DOI: 10.37200/IJPR/V24I2/PR200550
Received: 27 Dec 2019 | Revised: 11 Jan 2020 | Accepted: 22 Jan 2020

1) The right of controlling the actions of investigators and public prosecutors, namely the right to file an objection to the act of stopping the investigation and / or prosecution in capacity as an interested third-party as stipulated in Article 109 and Article 140 paragraph (2) of the Criminal Procedure Code;
2) The right of victim on his status as a witness, as regulated in Article 168 of the Criminal Procedure Code;
3) The right of the family of victim in the case of the death victim, to allow or not for the actions of the police to disinter the dead body for the purpose of an autopsy. This right is regulated in Articles 134 to 136 of the Criminal Procedure Code;
4) The right to demand compensation for the damages suffered as a result of criminal acts in capacity as a damaged party as stipulated in Article 98 to Article 101 of the Criminal Procedure Code.

The weaknesses of the provisions in Criminal Procedure Code towards the victims in the perspective of Barda Nawawi Arief, as follow:

a. No legal endeavor can be taken by the victim if he/she is not satisfied with a court decision. This is different from the suspect, who can make legal endeavor, appeals, cassations or judicial review. The victims, represented by prosecutors as public prosecutors can only accept the decision.
b. The protection of victim of crime is only regulated in Chapter XII (Article 98 to 101) of the Criminal Procedure Code, which allows the combination of compensation demand with criminal case.
c. Article 99 of the Criminal Procedure Code affirms that compensation that can be decided by the Judge is only the costs spent by the damaged party, while other damages can only be sued through a civil court which takes the long processes and begins the procedure of a new event.
d. Judges can decide special conditions that convicted person, within a certain time, which is shorter than his/her probationary period, must compensate all or part of the damages spent by the criminal acts or in other words, the rights of victims of criminal acts are only applied if the Judges pass a sentence with conditions, while in the case of crime that create severe damage or violent crime, the probation is difficult to pass.
e. Payment charged to the offender in the form of compensation is limited only to material values.

The weaknesses as mentioned above indicate that the existence and legal standing of victim of a criminal act in the criminal justice system do not benefit the victim. This is due to the fundamental problem that the victim is only considered as a witness (person reporting or victim). The victim is not involved as an integral part of the system like defendant, police and prosecutor.

II. LITERATURE REVIEW

1. Legal Protection

Budiyanto also argued that the theory of rule of law in general, was divided into two types, which are the theory of formal and material of rule of law, as explained below:[1]

1. Formal Theory of Rule of Law, pioneered by Immanuel Kant. The theory generates the state to be passive in the sense that the duty of state is only to preserve order and security, or the state is only a "night watchman", and it cannot interfere in social and economic affairs.

[1]Budiyanto. *2000. Dasar-dasar Ilmu Tata* Negara. *Erlangga: Jakarta. Hlm. 50.*

DOI: 10.37200/IJPR/V24I2/PR200550
Received: 27 Dec 2019 | Revised: 11 Jan 2020 | Accepted: 22 Jan 2020

2. Welfare State Theory of Rule of Law, pioneered by Kranenburg. This theory argues that besides having the duty of establishing public order, the state is also responsible for establishing and realizing the welfare of its people. This theory is widely practiced in developing countries, such as Indonesia.

Another notion comes from M. Kusnardi and Harmaily Ibrahim that the legal state is a state that stands based on law that guarantees justice to its citizens.[2]

Based on the opinion above, the legal state is defined as every act of the ruler and his people that must be based on law and at the same time include the objective to guarantee the fundamental rights of the people. Sudargo Gautama identifies 3 (three) characteristics or elements of a legal state, namely:[3]

1. Restriction on state power to individuals, meaning that the state cannot act arbitrarily. State actions are limited by law, individuals have rights toward the state or people have rights toward the authorities.

2. Principle of Legality. Every state action must be based on the existing law, which must also be obeyed by the government or its apparatus.

3. The Separation of Power, so that human rights are truly protected through the institution that made laws and regulations, and the trial and execution must be separated from one another, not in one hand.

Jurist in Southeast Asia and the Pacific as noted in the book "The Dynamics Aspects of the rule of law in the Modern Age", stated the rule of law requirements as follows:[4]

a) Constitutional protection, which means that beside constitution guarantee the individual rights, it must also determine judicial procedural obtain protection for guaranteed rights;

b) Independent and impartial tribunal;

c) Freedom of Expression;

d) Free elections;

e) Freedom of Association and the Function of the Opposition;

f) Civic education (citizenship).

Descriptions of the legal state indicate that there is a close relationship between the rule of law and the protection of the fundamental rights of citizens.

The Concepts Of Victims In The Indonesian Criminal Law System

Victim or korban in Indonesian Dictionary means a person who suffers an accident because of their own actions (lust) or others. I.S. Susanto categorized victim into narrow and broader senses. Victim in narrow sense is a victim of crime while in the broader sense includes victims in various fields such as victims of pollution, victims of abuse and so forth.[5]

Victim is a person who suffered harm, including physical and mental injury or financial losses as a result of a criminal act or as a cause of the occurrence of criminal acts. Victim is defined as a person who has suffered

[2] *M. Kusnardi dan Harmaily Ibrahim. 1988. Pengantar Hukum Tata Negara Indonesia,Universitas Indonesia Press : Jakarta. Hlm.153*
[3] *Dalam Setiono. 2004. Ruleof Law (Supremasi Hukum). Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret: Surakarta. Hlm. 61*
[4] *Setiono. 2004. Ibid. Hlm. 62*
[5] *I.S. Susanto. 2001. Korporasi sebagai Subjek Hukum Pidana. prints.uns.ac.id/926/1/Korporasi_Sebagai_Subyek_Tindak_Pidana.*

DOI: 10.37200/IJPR/V24I2/PR200550
Received: 27 Dec 2019 | Revised: 11 Jan 2020 | Accepted: 22 Jan 2020

harm due to a criminal act and his sense of justice is directly disrupted as a result of his experience as a target of a criminal act.[6]

Stanciu[7] argued that victim, in a broad sense, is he who suffers as the consequences of injustice. Thus, the two characteristic traits inherent in the victim are suffering and injustice. Victims can not only be seen as a result of illegal acts because actually they can also cause injustice, then cause victims. Definition was also limited in the narrow sense as stipulated in positive law.

Mardjono Reksodiputro also defined victims in 4 (four) types, as follow:[8]

1. Victims of conventional crimes, such as murder, rape, persecution, and theft.

2. Victims of non-conventional crimes such as terrorism, piracy, illegal drug trafficking, organized crime and computer-oriented crime.

3. Victims of abuse of economic power unlawfully (illegal abuses of economic power), such as violations of labor law, consumer fraud, violations of environmental regulations, marketing and trade fraud by transnational corporations, violations of foreign exchange regulations, violations of regulations tax and so on.

4. Victims of abuse of public power unlawfully (illegal abuses of public power), such as violations of human rights, abuse of authority by means of the authorities, including unlawful arrests and detention and so forth.

Article 1, Point 6 of Law Number 13 of 2006 concerning Protection of Witnesses and Victims emphasizes, “protection means any form of actions to fulfill the rights and assistance to provide a sense of safety to Witnesses and or / Victims which are the obligations Witness and Victim Protection Agency or other agencies as stipulated in this law.” Thus, the definition of Victim Protection can be seen from 2 (two) following notions:[9]

1. It is interpreted as legal protection not to become a victim of crime (it means the protection of Human Rights/HAM or one's legal interests).

2. It is defined as protection to obtain legal assurance / compensation for the suffering / loss of victims (identical to compensation to the victims). The form of compensation can be reputation recovery, and recovery of inner balance by forgiveness, giving indemnity such as restitution, compensation, collateral / compensation for social welfare and so on.

The victim protection is aimed at providing a sense of safety to the victims, especially in presenting their testimony in every criminal justice process, encourage and motivate the victims to be not afraid in the criminal justice process, restore victims' confidence living in a society; and fulfill a sense of justice, not only to victims and his families, but also to the society.[10]

[6]*Sujoko. 2008. Implementasi Tuntutan Ganti Kerugian Dalam Pasal 98 KUHAP Terhadap Tindak Pidana Pemerkosaan di Wilayah Hukum Semarang. Universitas Diponegoro : Semarang. p. 1*

[7]*V.V. Stanciu dalam ibid. Hlm. 29*

[8]*Mardjono Reksodiputro. 2007. Kriminologi dan Sistem Peradilan Pidana (Kumpulan Karangan, Buku Kedua), Pusat Pelayanan Keadilan dan Pengabdian Hukum (d/h Lembaga Kriminologi) Universitas Indonesia : Jakarta. Hlm. 85-86*

[9]*Theodora Shah Putri. 2008. Upaya perlindungan Korban Kejahatan melalui Lembaga Restitusi dan Kompensasi. Fakultas Hukum Indonesia MaPPI-fHUI. Hlm. www.pemantauperadilan.com , akses tanggal 22 Februari 2013*

[10] *Pasal 4 UU No. 13 Tahun 2006 Tentang Perlindungan Saksi dan Korban*

DOI: 10.37200/IJPR/V24I2/PR200550
Received: 27 Dec 2019 | Revised: 11 Jan 2020 | Accepted: 22 Jan 2020

Restorative Justice

Restorative justice model is influenced by abolitionist theory that considers the criminal punishment system contains many structural defects, so there needs to be a change from the system. This was as stated by Brants and Silvis that the criminal justice system had more failure rather than success.

The course of the current punishment development, in the restorative justice model by not eliminating the retributive justice model, is called the balanced perspective punishment. It is the balance between the interests of the offender, victims and society. It does not put the offender as solely an object, but as a whole legal subject who has the rights and obligations as an individual, as a guilty person, as a member of the society and as a citizen.[11]

Restorative justice is a concept of thinking that responds to the development of the criminal justice system by focusing on the need to engage victims and the society who are marginalized by the mechanism that works in the current criminal justice system.[12]

Muladi argues that from the perspective of restorative justice, case positions must be changed, not in the interests of order anymore, but in the interests of victims and their material and psychological recovery. The point is how to prevent the offender of being imprisoned, but remained holding him accountable.[13]

Van Ness states that restorative justice is a theory of justice that prioritizes restoration of damages due to criminal behavior, in which the complete restoration is through an inclusive and cooperative process. Viewed from the aspect of resolution of various conflicts, an important element of the definition of restorative justice by some experts is to prioritize reconciliation or efforts to restore rather than to retaliate between the offender, victims and the society.[14]

According to Van Ness (in Galaway & Hudson 1996:17), "Restorative justice theory offers a conceptual framework that may reconcile apparently inconsistent criminal justice norms and standards. These inconsistencies may simply reflect a paradigm shift from a legalistic understanding of crime to a model that recognizes the injuries to victims and communities as well. Bagir Manan states that restorative justice contains principles, such as building joint participation of the offenders, victims, and community groups to resolve an event or criminal act. By making offenders, victims, and the community as "stakeholders" to work together and try to find a solution immediately, is considered fair to all parties (win-win solutions) ".[15]

From this definition, the certain condition is required to make restorative justice as the basic value to be used in responding to a criminal case. In this case, a balance of attention is required between the interest of the victims and offenders, and also taking into account the impact of the resolution of criminal cases in the community.

The restorative justice aims to encourage the creation of a fair trial, in which both parties participate. The victim feels that his/her suffering is being noticed and the agreed compensation is balanced with the suffering

[11]*Muladi. 2004. Lembaga Pidana Bersyarat. P.T. Alumni : Bandung. Hlm. 65*
[12]*Eva Achjani Zulfa. 2010. Pergeseran Paradigma Pemidanaan. Lubuk Agung : Bandung. P.65*
[13]*Muladi. Keadilan restoratif. Tanggal 21 April 2005 http://www.suarakarya-online.com/news.html=199963>, di akses pada tanggal 21 Februari 2013*
[14]*Ibid.*
[15]*Lies Sulistiani. 2010. Perlindungan Saksi dan Korban di Indonesia. Press Release No.02/LPSK/PR/II/2010. Lembaga Perlindungan Saksi Republik Indonesia: Jakarta. Hlm. 4*

DOI: 10.37200/IJPR/V24I2/PR200550
Received: 27 Dec 2019 | Revised: 11 Jan 2020 | Accepted: 22 Jan 2020

and loss he/she received. The main goal of restorative justice is to empower victims and to encourage the offender to pay attention to restoration.

Restorative justice prioritizes the fulfillment of victim's material, emotional and social needs. The success of restorative justice is measured by the amount of the losses the offender has recovered, not by the severity of the sentence imposed by the judge. Primarily, the offender can be possibly kept away from the criminal proceedings and from prison. However, as Kent Roach said, restorative justice does not only provide an alternative for prosecution and imprisonment, but also demands the responsibility of the offender. In restorative justice, criminal acts are interpreted as the acts against law and state, and the offender deals with victims and their communities, not the government.

The process of resolving the case in restorative justice no longer uses conventional methods that have been used in the criminal justice system, which only focused on finding out who were right and wrong, and seeking what appropriate punishments for those who are guilty, whereas the resolution of the case through restorative justice is no longer about those two things. What restorative justice seeks is a restoration of the offenders so that they no longer commit crime. The restoration is also directed at victims as the disadvantaged party, and the relationship between victims, offender and the community so that theirlives can return back to normal.

III. METHODOLOGY

1) Research Approach

2) This study employed conceptual and legal approach based on the theories of civil and criminal law and the theories on law and regulations, both civil law and the laws.

3) Types of Research

4) This study was conducted by searching the documents to find out the concepts, theories, doctrines, and law and regulation and international law and regulations relating to the return of state assets in handling the corruption so that this type of research is normative legal research (doctrinal).

5) Data Sources

6) This study is a normative legal research (doctrinal). Therefore, the data sources used was secondary data consisted of primary, secondary and tertiary legal materials.

IV. RESULT AND DISCUSSION

The positive law substance referred to the Draft Law of the 2008 Criminal Code and Draft Law of 2009 Criminal Procedure Code.

Additional punishment in the Criminal Code Draft, Elucidation of Article 67 paragraph (1) is interpreted as "compensation payments" which can be imposed by the judge only if "clearly stated in the formulation of a criminal act". The provisions in Article 54 of the Criminal Procedure Code draft affirm that punishment aims at resolving conflicts created by criminal acts, restoring balance, and bringing a sense of peace in society ". The provisions of Article 55 paragraph (1) stipulate the Sentencing Guidelines that must be considered by the judge, including the effect of criminal acts on victims or families of victims; forgiveness from victims and / or their families ". The elucidation of the provisions in paragraph (1) contains sentencing guidelines which greatly assist the judges in considering the measures and heavy or light the sentence to be imposed. By considering the details

DOI: 10.37200/IJPR/V24I2/PR200550
Received: 27 Dec 2019 | Revised: 11 Jan 2020 | Accepted: 22 Jan 2020

of the guidelines, it is expected that the criminal sentences are proportional and can be understood by both the public and the convicted person. The details in this provision are not limited, meaning the judge can add other considerations other than those listed in paragraph (1).

The provisions of Article 71c, d and g stipulate that "By continuing to consider Article 54 and Article 55, imprisonment as far as possible is not imposed, if the following conditions are found: (1) The victim's loss and suffering are not too large; (2) The suspect has paid compensation to the victim; (3) The victim of a criminal act encourages the occurrence of the crime". Elucidation of Article 71 confirms that the provisions in article 71 are intended to assist the judge in determining the measure of sentences to impose.

Article 54 and 55 provide guidelines so that judges can proportionally and effectively impose a sentence and the provisions of Article 71 as a provision of punishment for judges in the event that they will not impose imprisonment in the conditions described in Article 71. The formulation of the provisions of Article 77 is not operational because there is no "provision of a type of criminal that can be imposed by a judge" after he has not sentenced the offender to prison. Such provisions are also not stated in the elucidation. The provisions of Article 65 paragraph (1) under the paragraph "criminal type" other than imprisonment are also listed as principal crimes, namely; supervision, fines and social work. The problem is if the provisions of Article 71 are fulfilled, what type of criminal can be imposed by the judge, so the measures of punishment to impose are effective and proportional.

The compensation to victims of criminal acts has been applied by other countries, especially those that adhere to the Anglo Saxon legal system. New Zealand is one of the countries that recognize compensation for victims and the provisions of compensation has been ratified as one of the types of criminal acts in its laws and regulations. This is based on their perception that in terms of suffering and material loss of the victim as a result of a criminal act committed by another person, it is appropriate for the offender of the criminal act (the other person) to provide compensation. Another example is in Japan. The way of thinking and culture of Japanese people toward the law do not depart from universal ideology, but relied on particular ideas, because in this way, Japan can reduce crime to the lowest degree in the whole world. Law enforcement practices in Japan prioritize agreements or deliberations compared to resolutions through mere litigation.

The following is a description of the regulation of protection of victims of crime in several laws and regulations in Indonesia.

1. Indonesian Criminal Code (KUHP)

The provisions in Indonesian Criminal Code implicitly provide protection to victims of crime. This is written in Article 14c paragraph (1) of the Criminal Code, determines that:

"By the order referred to in Article 14a, the judge may, except in case of sentence to fine, in addition to the general condition, that the sentenced person shall not commit a punishable act, fix a special condition that the sentenced person shall, within a fixed period of time shorter than the probation period, compensate wholly or partly for damages caused by the punishable act"

Peering to the provision above, it can be said that the Criminal Code introduces abstract or indirect protection that is, the imposition of sentences by judges to stipulate general conditions and special conditions in

DOI: 10.37200/IJPR/V24I2/PR200550
Received: 27 Dec 2019 | Revised: 11 Jan 2020 | Accepted: 22 Jan 2020

the form of compensation to victims, but as abstract or indirect protection, the application is facultative or dependent on assessment of judges, and not imperative.

2. Criminal Procedure Code (KUHAP)

Indemnity is the right of a person to demand fulfillment of his claim for compensation in the form of an amount of money because of his arrest, detention, prosecution or trial without any reason based on law or because of a mistake as regards the person or the law applied in accordance with ways as regulated by this law. (Article 1 point 22 of the Criminal Procedure Code). Furthermore, in Article 1 point 23, the rehabilitation is defined as the right of a person to have his rights restored to their capacity, status, dignity and integrity ceded at the level of inquiry, prosecution or trial because of his arrest, detention, prosecution or trial without any reason based on law or because of a mistake regarding the person or the law applied in accordance with ways as regulated by this law.

Article 98 paragraph (1) of the Criminal Procedure Code affirms that "If an act which becomes the basis of a charge in the examination of a criminal case by a court of first instance causes harm to another person, the judge/chairman of the court session at the request of said person can decide to combine the case of the 'compensation demand with the criminal case."

The indemnity in the case combination of compensation demand is not compensation claims due to the arrest, detention, prosecution or trial without any reason based on law, however, it is a claim for compensation caused by the crime itself, claim for compensation in a criminal act to a defendant, and compensation claims submitted to the defendant are combined, examined and decided along with his examinations and verdict.

The provisions in the Criminal Procedure Code put victim in a capacity as the witness and victim so that a victim of a criminal act, who also testify, he has the right to request the compensation. The compensation can only be requested if he combines the compensation claim with the criminal case. According to the writer, the provisions in the Criminal Procedure Code put the witness only in the position of a witness so that the compensation that can be requested is by him as a witness.

3. Law Number 26 of 2000 concerning the Court of Human Rights and Government Regulation Number 2 of 2002 on Procedures for Protecting Victims and Witnesses in Serious Human Rights Violations

The legal basis of human rights court is Law Number 26 of 2000 concerning the Human Rights Court, but the procedural law in the Human Rights Court still uses the mechanism of Criminal Procedure Code (KUHAP), so the status of victim in procedure remains the same as stipulated in the Criminal Procedure Code.

Government Regulation Number 2 of 2002 on Procedures for Protecting Victims and Witnesses in Serious Human Rights Violations provides protection from the phases of interrogation, investigation, prosecution and examination in a court session. The protection as referred to in this regulation covers physical and mental protection. The victim and the Witness were not charged any fees for the protection given. Prominent protection in this regulation is the protection of confidentiality for the identity of Victim or Witness and the mechanism for giving information in court session without meeting the suspect.

Government Regulation Number 2 of 2002 also specifically gives attention to victims by regulating the compensation, restitution and rehabilitation. Henceforth, the mechanism for providing compensation, restitution and rehabilitation for victims of human rights violations is regulated in Government Regulation Number 3 of

DOI: 10.37200/IJPR/V24I2/PR200550
Received: 27 Dec 2019 | Revised: 11 Jan 2020 | Accepted: 22 Jan 2020

2002 on Compensation, Restitution and Rehabilitation for Victims of Serious Human Rights Violations. Therefore, it can be said that Government Regulation Number 2 of 2002, which regulates the protection of Witnesses and victims, is a product of law that cannot be used optimally, due to the position of this Regulations is under the Law so that legally, Government Regulations cannot be used to fulfill the rights of witnesses and victims when dealing with the Law. In this case, the provisions in KUHAP are different from the Government Regulation.

4. Law Number 23 Year 2004 (Elimination of Violence in Household)

Violence in household is often regarded as a personal problem which is not important and urgent to be addressed. In his decision, the judge tends to give too light sentence. It makes the decision is felt very unfair to the victim. Such law enforcement is not equipped with adequate facilities for victims.

At the level of law and regulation, even though the Criminal Code has stipulated the violence in household is a crime, but it is not followed by a relevant system of evidence, moreover the absence of regulations regarding witness protection. This causes many victims are reluctant to tell what they have experienced, especially when they are asked to become witnesses. This condition was the reason behind the making and enactment of Law Number 23 of 2004 concerning Elimination of Violence in Household.

The Law of Elimination of Violence in Household is different from the Criminal Code (KUHP), because this law recognizes violence committed other than physical violence with clear indicators, such as psychic violence, sexual violence and economic violence as depicted in the articles of negligence of household in this law.

This law also contains a reporting mechanism based on the needs and interests of victims, including obligation of state and society to protect the victims, instruction to issue protection of victim, limitation of temporary movement of perpetrator, legal aid by advocates or other victim’s companion, protection of witnesses and proof procedure that do not trouble the victim in which the victim's testimony can be used without having to be accompanied by other witnesses.

The law contains 2 (two) chapters relating to the legal protection provided by the State in violence of household cases, focused on the protection of victims. The protection is provided by various parties, including family, the police, district attorney office, a court, advocates, social institutions, or another party either temporarily or based on ruling of a court. In the article 13d is also stated that the government and the regional government can provide protection for counterpart, witness, family and friend of the victim.

The protection referred to in this Law is a temporary protection. This temporary protection is provided by the police before the protection instruction is issued by a court. In addition, in Article 18 is explained that the police shall be obliged to furnish information to the victim regarding to the right of the victim to obtain service and companionship.

The contradictory point of this Law is that there is only one witness allowed in the court proceding, namely a victim witness supported by the visum et repertum. A witness can be presented to court if there is one additional instrument of proof.

5. Law Number 3 of 1997 concerning Juvenile Courts and Law Number 23 of 2002 concerning Child Protection

DOI: 10.37200/IJPR/V24I2/PR200550
Received: 27 Dec 2019 | Revised: 11 Jan 2020 | Accepted: 22 Jan 2020

Article 1 number 1 of Law Number 23 of 2002 states that A child is someone who has not reached the age of 18 (eighteen), including fetus in womb. Furthermore, it was explained that Child Protection is all activities designed to guarantee and protect children and their rights so that they may live, grow, develop and participate optimally in society in accordance with the dignity to which they are entitled as human beings, and so that they may be protected against violence and discrimination

Every child is entitled to have liberty in accordance with law. The arrest, detention or criminal prosecution of a child may only be undertaken in accordance with the provisions of the existing laws, and shall only be used as a last resort. Every child whose liberty has been taken away shall be entitled to receive humane treatment and be housed separately from adults, receive legal aid or other effective assistance at every stage of the legal process, and defend himself/herself or be given a fair trial in an objective and neutral children's court and in open sessions.

The children who find themselves in conflict with the law or who are the victims of criminal acts are afforded special protection, including ensuring humane treatment for children in accordance with the dignity and their rights, The early assignment of counselors to help children, the provision of special infrastructure and facilities, ensuring the imposition of appropriate sanctions in accordance with the best interests of the child, Continuous monitoring and recording of the development of a child who finds himself against the law, the provision of guarantees concerning the protection of the relationship between a child and his parents or family, ensuring that the child's identity is not released in the mass media and preventing the labeling of the child, rehabilitation efforts of both institution and outside institution, providing physical, mental and social safety guarantees to victims and expert witnesses, ensuring access to information regarding the development of the legal process.

Protection is also provided for every child in conflict with the law at every level of examination. This is regulated in Law Number 3 of 1997 concerning Juvenile Courts. Article 42 paragraph (1) of the Juvenile Court Law explains that during the investigation, investigators must examine suspects (in this case the Children) in a friendly environment. Furthermore, in paragraph (3) is explained that the process of investigating a case of child must be kept confidential.

6. Law No. 13 of 2006 concerning the Protection of Witnesses and Victims.

Article 1 number 2 of Law Number 13 of 2006 concerning Witness and Victim Protection states that the victim is a person who experiences physical, mental, and / or economic losses caused by a criminal act. The provisions of Article 5 of this Law determine the existence of a victim having the rights in the form of:

a. the right to obtain protection of their personal, family and property safety, against any threat which is related to the testimony which they will give, are giving, or have given;

b. the right to participate in selecting and determining the form of protection and security assistance;

c. the right to give information without any pressure;

d. the right to obtain a translator;

e. the right to be free from any misleading questions;

f. the right to be informed about the development of court proceedings;

DOI: 10.37200/IJPR/V24I2/PR200550
Received: 27 Dec 2019 | Revised: 11 Jan 2020 | Accepted: 22 Jan 2020

g. the right to be informed about court's verdict;

h. the right to be informed about the release of the offender;

i. the right to obtain a new identity;

j. the right to obtain relocation;

k. the right to obtain reimbursement for transport expenses as necessary;

l. the right to obtain legal advice; and/or

m. the right to obtain living expenses temporarily until the protection is terminated;

n. Victims of serious human rights violations, aside from the points above, are also entitled to obtain medical and psycho-social rehabilitation services.

The provisions of victim protection in this Law shows that the legislators wanted to propose polarization of thought with the starting point of making criminal law as a means of social defense in the sense of protecting the society from criminal acts by repairing or rehabilitating the offenders without reducing the balance of individual interests in society.

7. Law No. 8 of 1999 concerning Consumer Protection

Law Number 8 of 1999 concerning Consumer Protection Article (19) states that:

(a) Entrepreneurs are obligated to give compensation for the damage, taint and/or losses the consumers suffer as a result of using or consuming the goods and/or services produced or traded by the entrepreneurs.

(b) Compensation as untended by Section (1) above can be in the form of refund or goods and/or services of the same type or has equal value, or in the form of health care and/or insurance coverage in accord with the prevailing law.

(c) Compensation shall be given within the period of 7 (seven) days after the date of transaction.

(c) Compensation as intended by Section (1) and Section (2) above shall not exclude the possibility of a criminal charge based on further evidence of the existence of a fault.

(e) The provisions as intended by Section (1) and Section (2) above shall not be valid if the entrepreneurs can prove that the consumer is at fault.

Basically, the provision of compensation without excluding the possibility of criminal charges as referred above reflects an effort to protect victims without being offender-oriented as generally followed by Indonesian positive law. However, if it is observed the provisions of Article 62 of Law Number 8 of 1999, the system for formulating criminal sanctions (strafsoort) is still offender-oriented and cannot be expected to protect victims as consumers so that efforts to protect victims in this Law it is still abstract. This can also be seen in Article 62 where in the case of the offender being imprisoned or fined, the victims or in this case are consumers receive nothing from the damages.

The application of Restorative Justice is also seen in several law enforcement policies, including:

1. Indonesian Supreme Court Circular Letter (SEMA) Number 6 of 1959 stated that child's court must be in a closed trial for public.

DOI: 10.37200/IJPR/V24I2/PR200550
Received: 27 Dec 2019 | Revised: 11 Jan 2020 | Accepted: 22 Jan 2020

2. Indonesian Supreme Court Circular Letter (SEMA) Number 6 of 1987, November 16, 1987 concerning the Rules of Conduct of Children.

3. Indonesian Attorney General Circular Letter SE 002 / j.a / 4/1989 concerning Prosecution of Children

4. Supreme Court Jurisprudence Number 1644 K / Pid / 1988 dated May 15, 1991, which in the ratio decidendi decision stated that if someone violates customary law then Kepala dan Pemuka Adat (traditional leaders) impose customary sanctions. The person concerned subsequently cannot be prosecuted again (for the second time) in the State Judiciary (District Court) trial with the same charges, which is violating the law, and imprisonment according to the provisions of the Criminal Code (Article 5 paragraph (3) sub b of Drt Law No. 1 of 1951) so that in such circumstances, delegation of case files and prosecutors' demands in the District Court must be declared unacceptable (niet ontvankelijk Verklaard).

5. Letter of the Junior Attorney General for General Crimes B-532 / E / 11/1995, 9 Nov 1995 concerning Technical Guidelines for the Prosecution of Children

6. Presidential Instruction Number 8 of 2002 concerning The Warranty of Legal Certainty for Debtor Who Has Completed Their Obligations or Legal Sanction against Debtor who Fails to Perform the Obligations As Stipulated in the Shareholder Settlement Agreement.

7. Memorandum of Understanding Number. 20 / PRS-2 / KEP / 2005, Directorate General of Social Rehabilitation (DitBinRehSos) of Ministry of Social Affairs and Directorate General of Correction (DitPas) of Ministry of Law and Human Rights of the Republic of Indonesia.

8. Circular Letter of the Chief Justice of Supreme Court of the Republic of Indonesia, MA / Kumdil / 31 / I / K / 2005 concerning the obligation of each District Court (PN) to hold a special courtroom & waiting room for children to be tried.

9. Appeal to the Chairperson of MARI to avoid detention of children and prioritize decisions of actions rather than prisons, 16 July 2007.

10. Chief of the Indonesian National Policy (KAPOLRI) Regulation Number 10/2007, 6 July 2007 concerning the Women's and Children's Services Unit (PPA), and number 3/2008 concerning the Establishment of the RPK and Procedures for Examining Witnesses / Victims of Criminal Acts

11. TR / 1124 / XI / 2006 from the Head of Criminal Investigation Unit (Kabareksrim) of Indonesian National Police, Nov. 16, 2006 and TR / 395 / VI / 2008 June 9, 2008, concerning the Implementation of Diversion and Restorative Justice in Handling Cases of Children Children as Offender and Fulfilling the Best Interest of Children in the Case of Good Children as Offender , Victim Or Witness

12. Joint Agreement of Ministry of Social Affairs of the Republic of Indonesia Number: 12 / PRS-2 / KPTS / 2009, Ministry of Law and Human Rights RI Number: M.HH.04.HM.03.02 Th 2009, Ministry of National Education RI Number 11 / XII / KB / 2009, Ministry of Religion RI Number: 06 / XII / 2009, and Republic of Indonesia National Police Number: B / 43 / XII / 2009 concerning Social Protection and Rehabilitation of Children Against Law, December 15, 2009.

13. Joint Decree of Chief Justice of the Indonesian Supreme Court, Indonesian Attorney General, Chief of Indonesian National Police, Minister of Law and Human Rights of the Republic of Indonesia, Indonesian

DOI: 10.37200/IJPR/V24I2/PR200550
Received: 27 Dec 2019 | Revised: 11 Jan 2020 | Accepted: 22 Jan 2020

Minister of Social Affairs, and Minister of Women Empowerment and Child Protection, Number: 166 / KMA / SKB / XII / 2009, NO .148 A / A / JA / 12/2009, NO. B / 45 / XII / 2009, NO.M.HH-08 HM.03.02 of 2009, NO. 10 / PRS-2 / KPTS / 2009, NO. 02 / Men.PP and PA / XII / 2009 dated December 22, 2009 concerning Handling Children in Conflict with the Law.

14. The Letter of Chief of Indonesian National Police (KAPOLRI) Number: B / 3022 / XII / 2009 / SDEOPS dated December 14, 2009 concerning Case Handling Through Alternative Dispute Resolution (ADR)

15. Regulation of the Chief of the Indonesian National Police Number 7 of 2008 concerning Basic Guidelines for Strategy and Implementation of Community Policing in the Implementation of Indonesian Police Duties.

16. Law Number 11 of 2012 concerning the Juvenile Justice System

17. Law Number 12 of 1995 concerning Corrections.

The above laws and regulations show that legal protection of victim of crime is part of the application of restorative justice system concept in criminal justice.

V. CONCLUSION

The legal protection for victims of crime has been regulated in a number of laws and regulations, but is still not optimal in supporting its implementation, especially with regard to mediation in deciding compensation for victims. This is because the laws and regulations that accommodate protection of victims of crime have been only concisely and abstractly regulated, and have not explicitly and specifically put victims of crime as part of the criminal justice system.

REFERENCES

[1] Ahmad Kamil. 2012. Mediasi Penal dalam Penanganan Tindak Pidana. *Mahkamah Agung Republik Indonesia: Jakarta.*
[2] Anshari Dimyati. 2013. Kebijakan Perlindungan Hukum Terhadap Saksi dan Korban. *Tesis. Universitas Diponegoro: Semarang.*
[3] Bambang Djoyo Supeno. 2011. Penerapan Hukum Bagi Koruptor Masih Timpang. http://www.suaramerdeka.com/v1/index.php/read/cetak/2013/04/24/222784/17/Penerapan-Hukuman-bagi-Koruptor-Masih-Timpang
[4] Bedi Setiawan Al Fahmi. 2009. Perlindungan Korban Tindak Pidana Perkosaan Dalam Proses Peradilan Pidana Perspektif Pembaharuan Hukum Acara Pidana Indonesia. Jurnal Hukum dan Pembangunan No. 1 Vol. 16 Januari 2009. *Badan Penerbit FH UI: Depok.*
[5] Budiyanto. 2000. Dasar-dasar Ilmu Tata Negara. *Erlangga: Jakarta*
[6] Dikdik M. Arief Mansurdan Elisatris Gultom. 2001. Urgensi Perlindungan Korban Kejahatan. *Alumni: Bandung.*
[7] Eva Achjani Zulfa. 2010. Pergeseran Paradigma Pemidanaan. *Lubuk Agung : Bandung*
[8] Ira Dwiati. 2007. Perlindungan Hukum Terhadap Korban Tindak Pidana Perkosaan Dalam Peradilan Pidana. Tesis. *Universitas Diponegoro: Semarang*
[9] Lies Sulistiani. 2010. Perlindungan Saksi dan Korban di Indonesia. Press Release No.02/LPSK/PR/II/2010. *Lembaga Perlindungan Saksi Republik Indonesia: Jakarta.*
[10] Mardjono Reksodiputro. 2007. Kriminologi dan Sistem Peradilan Pidana (Kumpulan Karangan, Buku Kedua), Pusat Pelayanan Keadilan dan Pengabdian Hukum (d/h Lembaga Kriminologi) Universitas Indonesia: Jakarta.
[11] Muhaddar dkk. 2010. Perlindungan Saksi dan Korban dalam Sistem Peradilan Pidana. *Putera Media Nusantara: Surabaya.*
[12] Muladi. 2004. Lembaga Pidana Bersyarat. *P.T. Alumni: Bandung.*
[13] Muladi. Keadilan restoratif.

DOI: 10.37200/IJPR/V24I2/PR200550
Received: 27 Dec 2019 | Revised: 11 Jan 2020 | Accepted: 22 Jan 2020

[14] Muladi. 2002. Kapita Selekta Sistem Peradilan Pidana, Badan Penerbit Universitas Diponegoro: Semarang. Hlm. 66 dan Muladi. 2002. *Hak Asasi Manusia, Politik Dan Sistem Peradilan Pidana, Badan Penerbit Universitas Diponegoro: Semarang.*
[15] Munir Fuady. 2009. Negara Hukum dan Demorasi. *Kencana Prenada Group: Jakarta.*
[16] M. Kusnardi dan Harmaily Ibrahim. 1988. *Pengantar Hukum Tata Negara Indonesia, Universitas Indonesia Press: Jakarta.*
[17] Philipus M. Hadjon. 1987. Perlindungan Hukum Bagi Rakyat di Indonesia; Sebuah Studi Tentang Prinsip-prinsipnya, Penerapannya oleh Pengadilan Dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara. Bina Ilmu: Surabaya
[18] Rena Yulia. 2011. Viktimologi: Perlindungan Hukum Terhadap Korban Kejahatan. hlm 164-165. Jurnal Intelek Volume 7 tanggal 3 Desember 2011. Pusat Penerbitan Universitas Teknologi MARA
[19] Roeslan Saleh. 1984. Segi Lain Hukum Pidana. *Ghalia Indonesia: Jakarta*
[20] Romli Atmasasmita. 2001. Masalah Santunan Terhadap Korban Tindak Pidana," Majalah Hukum Nasional Departemen Kehakiman.
[21] Setiono. 2004. Ruleof Law (Supremasi Hukum). Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret: Surakarta Setiono. 2004. Ruleof Law (Supremasi Hukum). Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret: Surakarta
[22] Sujoko. 2008. Implementasi Tuntutan Ganti Kerugian Dalam Pasal 98 KUHAP Terhadap Tindak Pidana Pemerkosaan di Wilayah Hukum Semarang. Universitas Diponegoro: Semarang
[23] Susanto. 2001. Korporasi sebagai Subjek Hukum Pidana.
[24] Surat Keputusan Bersama antara Ketua Mahkamah Agung RI, Jaksa Agung Republik Indonesia, Kepala Kepolisian Negara Republik Indonesia, Menteri Hukum Dan Ham Republik Indonesia, Menteri Sosial Republik Indonesia dan Menteri Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia.
[25] Tim UNODC (United Nations Office on Drugs and Crime) dalam Amir Syamsuddin. 2003. Menanti kehadiran Undang-undang Perlindungan Saksi dan Korban. *Artikel Jurnal Keadilan*, Volume 3 No. 2 tahun 2003.
[26] Sholehuddin. 2010. Sistem Sanksi Dalam Hukum Pidana. *Raja Grafindo: Jakarta*
[27] Theodora Shah Putri. 2008. Upaya perlindungan Korban Kejahatan melalui Lembaga Restitusi dan Kompensasi. *Fakultas Hukum Indonesia MaPPI-fHUI. Hlm. www.pemantauperadilan.com*

DOI: 10.37200/IJPR/V24I2/PR200550
Received: 27 Dec 2019 | Revised: 11 Jan 2020 | Accepted: 22 Jan 2020