

## Crime Victims in Indonesia's Criminal Justice System Based on The Criminal Procedure Law (KUHP)

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**Abstract.** *The purpose of this study is to examine how crime victims are treated by Indonesia's criminal justice system. This scientific study was written utilizing the normative legal research method, which employs a statutory approach (act approach). The study's findings demonstrate that Indonesia's criminal justice system, which is based on the Criminal Code (KUHP), places an undue emphasis on offenders and minimal emphasis on victims. The absence of provisions in the Criminal Procedure Code that address the existence of victims of crime is one indication of this. As a result, the crime victim in this instance serves simply as a witness to establish the defendant's guilt in a court of law. In actuality, victims of crimes as much as criminals face the issue of justice and respect for human rights.*

**Keywords:** *Victims of crime, Criminal Justice System, Criminal Code/ KUHP*

**Abstrak.** Tujuan dari penelitian ini adalah untuk mengkaji bagaimana korban kejahatan diperlakukan oleh sistem peradilan pidana Indonesia. Kajian ilmiah ini ditulis dengan menggunakan metode penelitian hukum normatif yang menggunakan pendekatan perundang-undangan (act approach). Temuan penelitian ini menunjukkan bahwa sistem peradilan pidana Indonesia, yang didasarkan pada Kitab Undang-Undang Hukum Pidana (KUHP), memberikan penekanan yang tidak semestinya pada pelaku dan penekanan yang minimal pada korban. Ketiadaan ketentuan dalam KUHP yang mengatur keberadaan korban tindak pidana merupakan salah satu indikasinya. Akibatnya, korban kejahatan dalam hal ini hanya sebagai saksi untuk membuktikan kesalahan terdakwa di pengadilan. Pada kenyataannya, korban kejahatan maupun penjahat menghadapi masalah keadilan dan penghormatan terhadap hak asasi manusia.

**Kata Kunci:** Korban Tindak Pidana, Sistem Peradilan Pidana, KUHP/KUHAP

## **Introduction**

Criminal law ought to be able to balance the needs of society and the state in a way that respects both victims' and offenders' human rights. This is not totally accurate, though, as the issue arises because of a number of issues, including the fact that Law No. 8 of 1981's position on the Criminal Procedure Code (KUHAP) does not offer victims of crime appropriate or good protection. The fundamental flaw in the criminal law's intended enforcement is the disregard for the rights of crime victims during the conduct of criminal cases and the repercussions that victims of crime must bear. This is evident in the Criminal Code, where there are very few articles that mention victims and those that do not put much emphasis on the reality of victims of criminal activities. seen through the many labels applied to victims. The protection afforded by the law to criminals is not as great for victims of crime, who are essentially the people that suffer from a crime the most. As a result, it appears that the situation of the victims of crime is disregarded after the guilty parties have been given criminal punishments by the court. In actuality, victims of crimes are also affected by the issue of justice and respect for human rights, in addition to criminals.

According to Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states, "All citizens have the same status before law and government and are obliged to uphold that law and government without exception." In this case, committed to the principle that every citizen must be treated fairly and equally before the law, also in the sense of whether he is a suspect or victim of a crime, humanity as the cornerstone of the state's philosophy of Pancasila animates all legal existence in Indonesia, starting from the 1945 Constitution of the Republic of Indonesia. to the laws and regulations below. The criminal justice system is the product of Indonesian legislation, especially the Criminal Procedure Code (KUHAP), which forms the basis of the administration of the criminal justice system and has not really included what is implied in the 1945 Constitution of the Republic of Indonesia. The classic is that the criminal justice system as the basis for solving criminal cases does not recognize the existence of victims of criminal acts as seekers of justice. A victim of a criminal act will suffer again as a result of the legal system itself because victims of criminal acts cannot be actively involved, as is the case in the procedure, and cannot directly submit criminal cases to court themselves but must go through designated agencies (police and prosecutors) (M. Marzuki, 2017, p. 1). The definition of a crime victim is not only a person who suffers a loss as a result of a crime, because the victim of a crime is related to the existence of a crime and the crime itself is increasingly developing and varied. In addition, thoughts and discussions about victims of crime are increasingly developing following the development of crime, even the discussion is expanding to political, social, and economic issues and even to human rights issues, as stated by (Sahetapy, 1987).

The interests of victims of criminal acts have been represented by state institutions, such as the police and prosecutors as investigators and public prosecutors; however, the relationship between victims of crime and the police and prosecutors is merely symbolic, while the relationship between the accused and the legal adviser is, in theory, unadulterated in the legal relationship between the service user and the service provider.

The police and prosecutors act to carry out the duties of the state as representatives of victims of crime and/or the community, while legal advisors act on the direct power of attorney from the defendant, who acts on behalf of the defendant himself. In short, the victim in this justice system is simply utilized for the profit of the authorities in order to enforce the law, so that in essence, the victim and other parties involved in the implementation of criminal justice do not execute the law perfectly.

The importance of victims of crime getting attention is based on the idea that the victim is the party who is harmed in the event of a crime, so attention and service should be given in order to provide protection for the victim's interests. In addition, victims often have a very important role in the occurrence of a crime, so obtaining a broad and in-depth understanding of victims of crime will make it easier to find efforts to overcome crime, which will ultimately lead to justice and decrease the quantity or quality of crime (Setiono & Njoto, 2022). The question of the interests of the victim has gotten less attention for a long time, but the object of attention is still more focused on how to punish the perpetrator of a crime, and this is still related to the mere phenomenon of retaliation. Therefore, according to the author, it is necessary to clarify the position of victims of crime in the criminal justice system in Indonesia, bearing in mind that the function of victims in the criminal justice system cannot yet be activated in the process of resolving criminal cases in Indonesia.

## **Methodology**

The research method employed in authoring this scientific work is normative legal research, employing a statutory approach (act approach). The legal method (statute approach) is done by analyzing all the laws and regulations that are linked to the legal issue being dealt with (Rahayu et al., 2020; Marzuki, 2017).

## **Result and Discussion**

### **Overview of the System Criminal Justice and Crime Victims**

The Criminal Justice System, which is a translation of the Criminal *Justice System*, can be interpreted as a system in society to deal with crime so that it is still within the limits of community tolerance. This description is only one of the objectives of the criminal justice system that exists universally, so the scope of the criminal justice system's duties can indeed be said to be broad, namely (Mansur & Gultom, 2007):

1. Prevent people from becoming victims of crime;
2. Resolving crimes that occur so that people are satisfied that justice has been upheld and the perpetrators of crimes have been punished
3. Trying so that those who have committed the crime do not repeat their actions again.

As a system, the criminal justice system has administrative components, including the police, the prosecutor's office, the courts, and correctional institutions, which are all interrelated, and it is hoped that there will be an integrated collaboration. If there is a weakness in one of the component work systems, it will affect other components in the integrated system (Ali, 2021). The criminal justice system can be seen from various perspectives, including those of police, prosecutors, judges, suspects/defendants and victims of crime. Among these

perspectives, the perspective of victims of crime will bring clarity as well as complement other perspectives that are used as references in the current administration of criminal justice. Criminal justice thus far has prioritized the preservation of the interests of the perpetrators of crimes (offender centered), driven by the notion that the criminal justice system is designed to try suspects and not to serve the interests of victims of crime, with the following reasons: crime being a breach of public interest (public law), then the reaction to crime becomes a governmental monopoly as public or community representation. This idea dominates the practice of criminal justice, and as a result, persons whose rights are infringed and who suffer the repercussions of crime are neglected by the criminal justice system.

Looking at the criminal justice system, what is needed for the enforcement of a crime is an integrated system that displays the process of links between agencies or authorities in addressing each criminal case. Apart from that, the principle of accessible and affordable service for victims is also essential in every judicial process that focuses on the victim's perspective and demands the victim to be or be placed at the center of the justice system. As a subject, victims have the right to be heard for their remarks, to get information on continuing legal efforts, to examine the sense of justice they seek to gain, and to restore their position for their deprivation of rights and the losses they have experienced.

According to Mardjono Reksodiputro, there are four definitions of victims, namely (Sahetapy, 1987):

1. Victims of conventional crimes such as murder, rape, assault, and theft.
2. Victims of unconventional crimes such as terrorism, piracy, illegal narcotics trade, organized crime, and computer crime;
3. Victims of unlawful abuse of economic power (*illegal abuses of economic power*) such as violations of labor regulations, consumer fraud, violations of environmental regulations, fraud in the field of marketing and trade by companies, trans-national, violation of foreign exchange regulations, violation of tax regulations and so on.
4. Victims of unlawful abuse of public power (*illegal abuses of public power*) such as violations of human rights, abuse of authority by authorities, including arrest and detention that violate the law, and so on.

The definition of a victim from a narrow point of view is that it is only limited to a victim of crime, namely as a person who has suffered losses 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 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) (Atmasasmita, 1996)). According to Law Number 27 of 2004 concerning the Truth and Reconciliation Commission, what is meant by victims are “individuals or groups of people who experience suffering, whether physical, mental, or emotional, economic loss, or neglect, reduction, or deprivation of their rights. Basically, as a result of gross human rights violations, including the victims or their heirs.” Meanwhile, according to Article 1 Number 2 of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, a victim is someone who experiences physical, mental, and/or economic suffering as a result of a crime.

## **Position of Crime Victims in the Indonesian Criminal Justice System based on the Criminal Procedure Code**

The current criminal justice system is too focused on perpetrators and pays little attention to victims. What often happens is that the victim's involvement in the criminal justice system only adds to the trauma and increases their feelings of helplessness and frustration because they are not given adequate protection and legal remedies. The criminal justice system today is too "*offender centered*". Thus, requiring us to improve the position of victims in this system so that what they get is not only symbolic satisfaction (Budiman & Adhyaksa, 2015).

Victims of crime are basically the parties who suffer the most in a crime because they do not get as much protection as provided by law for the perpetrators of crime. As a result, when the perpetrators of crimes have been sentenced to criminal sanctions by the court, the condition of the victims of crime seems to be ignored. In fact, the problem of justice and respect for human rights applies not only to perpetrators of crimes but also to victims of crimes. In every handling of criminal cases, law enforcement officials (police, prosecutors) are often faced with the obligation to protect two conflicting interests, namely the interests of the victim, which must be protected to restore their suffering because they have become victims of crime (mentally, physically, and materially). and the interests of the accused/suspect even if he is guilty, but he is still a human being who has human rights that cannot be violated (Hasibuan et al., 2022).

In the settlement of criminal cases, the law often places too much emphasis on the rights of suspects or defendants, while the rights of victims are ignored. As stated by Andi Hamzah, in discussing criminal procedural laws, especially those related to human rights, there is a tendency to examine matters relating to the rights of suspects without paying attention to the rights of the victims (Hamzah, 1986, p. 66)

Almost all of the principles of criminal procedural law adhered to by the Criminal Procedure Code prioritize the rights of suspects. There are at least ten principles adopted by the Criminal Procedure Code with the aim of protecting the rights of citizens in a fair legal process (Suradi, 2019), namely:

1. Equal treatment before the law without any discrimination;
2. Presumption of innocence;
3. Violation of the rights of individual citizens (namely in the case 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 prosecution against him;
5. A suspect and a defendant are entitled to the assistance of legal counsel;
6. A defendant has the right to appear before the court;
7. There is a trial that is free and carried out quickly and simply;
8. Courts must be open to the public;
9. Suspects and defendants are entitled to compensation (compensation) and rehabilitation; as well as,
10. It is the duty of the court to control the implementation of its decisions.

Seeing the ten principles above, normatively, the Criminal Procedure Code only pays attention to the rights of the perpetrators of crimes, without giving space to victims to fight for their rights. If we record the rights of victims in the Criminal Procedure Code, then there are only four aspects, namely (Setiono & Njoto, 2022):

1. The right to exercise control over the actions of investigators and public prosecutors, namely the right to submit objections to actions to terminate investigations and/or prosecutions in their capacity as interested third parties. This is regulated in Article 109 and Article 140 paragraph (2) of the Criminal Procedure Code;
2. The rights of the victim in his position as a witness, as found in Article 168 of the Criminal Procedure Code;
3. The right for the victim's family in the event the victim dies, to allow or not on the actions of the police to perform a post-mortem or dig a grave for an autopsy. Such rights are regulated in Articles 134 to 136 of the Criminal Procedure Code;
4. The right to demand compensation for losses suffered as a result of criminal acts in their capacity as the aggrieved party. Can be found in Article 98 to Article 101 of the Criminal Procedure Code.

Articles 98-101 of the Criminal Procedure Code are articles relating to the victim's right to claim compensation. The mechanism adopted is the amalgamation of cases involving claims for compensation in criminal cases. Merging compensation cases is a typical event that is contained in the contents of the provisions of the Criminal Procedure Code. The basis for combining compensation cases in criminal cases can be mentioned as follows (M. Marzuki, 2017):

1. It is a law enforcement practice based on the creation of the Criminal Procedure Code itself for proceedings (criminal and civil) for the judiciary in Indonesia. The Criminal Procedure Code provides for a legal procedure for a victim (or victims) of a crime, to claim civil compensation against the defendant at the same time as an ongoing criminal case examination;
2. The combination of examinations and decisions on claims for compensation in criminal cases at the same time is in accordance with the principle of balance referred to by the Criminal Procedure Code.

The purpose of the merger of lawsuits for damages is: *first*, so that the lawsuit case is examined and decided at the same time as the criminal case concerned. *Second*, *mergers* are conducted in accordance with the principles of speed, simplicity, and low cost. *Third*, people, including victims, can get compensation as soon as possible without having to go through the usual civil case procedures, which can take a long time (Sari, 2016)

However, in order to be able to apply for a merger of cases for compensation, the following conditions must be considered:

1. It must be in the form of and constitute a loss suffered by another person including the victim (victim witness) as a direct result of the crime committed by the defendant
2. The amount of compensation that can be requested is limited to the amount of material loss suffered by other people, including the victim;

3. Whereas the target legal subject of the parties is the defendant;
4. The claim for compensation that is combined with the criminal case can only be submitted no later than before the public prosecutor submits a criminal charge (*requisitor*);
5. In the event that the Public Prosecutor is not present, the charges shall be submitted no later than before the Judge renders a decision.
6. The criminal case caused harm to other people. Losses for other people including losses to the victim; Claims for damages that are combined with the criminal case do not need to be filed through the Registrar of the District Court, but can be filed directly in court hearings through the panel of judges/judges;
7. Claims for compensation under Article 98 paragraph (1) of the Criminal Procedure Code are, must be as a result of losses arising from the actions of the defendant and not regarding other losses.

If we look attentively at the rights of victims set out in the Criminal Procedure Code, it can be seen that the provisions for the rights of victims are quite low compared to the arrangements on the rights of offenders of criminal activities (suspects/defendants/convicts). More legal protection is legislated for perpetrators of illegal acts, as evidenced in the different articles stated above, compared to the interests of victims who endure suffering from the activities of perpetrators of criminal acts.

The existence and legal position of victims of criminal acts in the criminal justice system are not profitable for victims of criminal acts, because they collide with the fundamental problem, namely that the victim is only a witness (reporter or victim). Victims are not part of the elements involved in the criminal justice system, not like the accused, police, prosecutors, and judges. This results in victims of criminal acts not having legal remedies if they object to a court decision, for example, an appeal or cassation, if the court decision is seen as unfair or detrimental to them (Mansur & Gultom, 2007). Victims of these crimes "can" be present in the criminal justice process with two different qualities. First, the victim is present as a witness. The function of the victim here is to provide testimony in the framework of disclosing crimes that are currently under examination, both at the stages of investigation, and prosecution and at the stage of examination in court hearings. Second, the victim is present as the aggrieved party.

The function of the victim, in this case, the victim's function is to file a claim for compensation against the perpetrator of the crime that has resulted in his loss or suffering (Purwanto, 2023). The description above shows that the problem of the interests of victims of criminal acts is still being challenged from the point of view of the criminal justice mechanism because of lawmakers (legislative policies) (Kuncoro et al., 2020)

So far, arrangements for protecting victims, especially in the Indonesian criminal justice system, have not shown a clear pattern. According to Barda Nawawi Arief, in the positive criminal law currently, in effect, the protection of victims is more of an "abstract protection" or "indirect protection". This means that the various formulations of criminal acts in laws and regulations so far have essentially provided protection in *the abstract directly* against the legal interests and human rights of victims. It is said so because a criminal act according to positive law is not seen as an act of attacking or violating the legal interests of a person (the victim)

personally and concretely, but is only seen as a violation of "norms or legal order" in the *abstract*". As a result, the protection of victims is not directly related to them specifically but only in *the abstract* (P. M. Marzuki & Sh, 2020, pp. 77–79). In other words, the system of sanctions and criminal responsibility is not focused on direct and concrete victim protection, but only indirect and abstract victim protection. So, the responsibility of the perpetrator is not directly and concretely responsible for the loss or suffering of the victim but is more focused on personal or individual responsibility.

Basically, there are two models of victim empowerment in the criminal justice system, namely: *first*, the procedural rights model. In short, this model emphasizes that it is possible for the victim to play an active role in the criminal justice process, such as by assisting the public prosecutor, being involved at every level of case examination, having his opinion heard if the convict is released on parole, and so on. *Second*, service models (*the services model*) emphasize the provision of compensation in the form of compensation, restitution, and efforts to improve the condition of victims who experience trauma, fear, and distress due to crime (Arief, 2001). The victim empowerment model that is well suited to be applied in Indonesia is the service model because, in the absence of the victim's right to interfere in the criminal justice system, the judicial process becomes the monopoly of the legal apparatus.

Victims are not an integral part of the criminal justice process. In fact, attention to victims before the reform era was very small (at least). After the reform, laws emerged that regulate the rights and protection of victims (M. Marzuki, 2017). In addition, the legality of the protection of victims and witnesses has been stated in Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, which was followed up by Government Regulation Number 44 of 2008 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. But what is more important is the application and its implementation. To make it happen proportionally, professionally, and accountably, seriousness is required from the parties.

## **Conclusion**

The position of victims in the criminal justice system is not profitable for victims of criminal acts, because they collide with a fundamental problem, namely that victims of crime are placed as evidence giving information, namely only as witnesses (168 KUHAP), so that the possibility of obtaining freedom in fighting for their rights is very small. Victims are not part of the elements involved in the criminal justice system, unlike the accused, police, prosecutors, and judges. The arrangement of the rights of the victims contained in the Criminal Procedure Code can be regarded to be quite low compared to the arrangements respecting the rights of the offenders of criminal crimes. The right to claim compensation for losses suffered as a result of a crime in its capacity as the aggrieved party can be found in Articles 98 to 101 of the Criminal Procedure Code, but the combination of claims for compensation only provides an opportunity for material losses, while for recovery immaterial losses still have to be filed separately through civil lawsuits which in practice are not simple.



## References

- Ali, Z. (2021). *Metode penelitian hukum*. Sinar Grafika.
- Arief, B. N. (2001). *Masalah penegakan hukum dan kebijakan penanggulangan kejahatan*. Citra Aditya Bakti.
- Atmasasmita, R. (1996). *Sistem Peradilan Pidana: Perspektif Eksistensialisme dan Abolisionisme*. Eresco.
- Budiman, H., & Adhyaksa, G. (2015). Implementasi Penerapan Undang-Undang Nomor 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban (Sudi Di Polres Kuningan). *UNIFIKASI: Jurnal Ilmu Hukum*, 2(1).
- Hamzah, A. (1986). Perlindungan Hak-Hak Asasi Manusia dalam Kitab Undang-Undang Hukum Acara Pidana. In *(No Title)*.
- Hasibuan, S., Pramono, B., Abra, E. H., & Fadrijani, L. (2022). Analisis Yuridis Terhadap Perlindungan Hukum Bagi Saksi Dalam Tindak Pidana Menurut Undang-Undang Nomor 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban. *Jurnal Ilmiah Hukum*, 1(1), 44–55.
- Kuncoro, S., Hindiyani, N., Wijaya, L. A., Cahyati, G. D., & Njoto, H. (2020). Tinjauan Peradilan Perlindungan Hukum Terhadap Korban Dalam Perspektif Uu No. 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban. *Transparansi Hukum*, 3(2).
- Mansur, D. M. A., & Gultom, E. (2007). *Urgensi perlindungan korban kejahatan: antara norma dan realita*. Divisi Buku Perguruan Tinggi, RajaGrafindo Persada.
- Marzuki, M. (2017). *Penelitian Hukum: Edisi Revisi*. Prenada Media.
- Marzuki, P. M., & Sh, M. S. (2020). *Teori Hukum*. Prenada Media.
- Purwanto, M. B. (2023). Professional Growth And Staff Development (How To Encourage Employees To Pursue Professional Development). *International Journal of Technology and Education Research*, 1(01), 153–165. <https://doi.org/10.99075/ijeter/issue/view/11.v1i01.260>
- Rahayu, D. P., SH, M., & Ke, S. (2020). Metode Penelitian Hukum. *Yogyakarta: Thafa Media*.
- Sahetapy, J. E. (1987). *Viktimologi: sebuah bunga rampai*. Pustaka Sinar Harapan.
- Sari, S. L. (2016). Eksistensi Hukum Korban Tindak Pidana Dalam Sistem Peradilan Pidana Di Indonesia. *JURNAL INOVASI*, 149.
- Setiono, E., & Njoto, H. (2022). Judicial Review Of Legal Protection Against Victims In The Perspective Of Law No. 13 Of 2006 Concerning Protection Of Witnesses And Victims. *Dinamika Hukum & Masyarakat*, 5(1).
- Suradi, S. (2019). *Perlindungan Hukum Terhadap Saksi Pelapor Dalam Tindak Pidana Korupsi Dikaitkan Dengan Undang-Undang Nomor 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban*.