



VICTIM PROTECTION IN THE CRIMINAL LEGAL SYSTEM: A RIGHTS-BASED JUSTICE APPROACH

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Abstract

The Indonesian criminal law system has historically been more oriented towards punishing perpetrators of crimes, so that the position of victims in the judicial process is often marginalized and their rights are not adequately fulfilled. The colonial legacy paradigm that positions the state as the injured party renders victims merely witnesses or pieces of evidence, rather than legal subjects with a direct interest in their recovery. This article aims to critically examine how victim protection can be realized through a rights-based justice approach within the framework of Indonesian criminal law, particularly following the enactment of Law Number 1 of 2023 concerning the Criminal Code. This study uses a normative juridical method with a legislative and conceptual approach, supported by secondary data in the form of laws and regulations, court decisions, and recent academic literature. The results of the study indicate that although legal instruments such as the right to restitution, compensation, rehabilitation, and physical and psychological protection have been regulated, their implementation still faces structural, cultural, and procedural obstacles, so that victims have not fully received proper redress. A rights-based justice approach offers a reorientation of the criminal justice paradigm from one centered on the state and perpetrators to one that positions victims as legal subjects with rights to participation, information, protection, and redress. This article recommends institutional strengthening, regulatory harmonization, and internalization of human rights-based restorative justice principles as strategic steps to achieve just and sustainable victim protection.

Keywords: *victim protection; criminal law; rights-based justice; restitution; restorative justice.*

Introduction

Crime always leaves two entities facing each other directly: the perpetrator and the victim. However, the architecture of modern criminal law, including that in Indonesia, has been built from the outset on the assumption that criminal acts constitute violations of the interests of the state and public order, not merely violations of the individual harmed.¹ This assumption gave rise to a construction of criminal procedural law that positions the state, through law enforcement officials, as the party with full authority to process cases, while the victim is reduced to a reporting witness whose statement is merely one piece of evidence.

This situation gives rise to what is known in victimology literature as the marginalization of victims within the criminal justice system. Victims lose control over the legal process, are excluded from key decisions such as dismissals or

¹Romli Atmasasmita, *Reformasi Hukum Pidana dalam Perspektif Restorative Justice* (Bandung: CV Mandar Maju, 2021), hlm. 21.

criminal settlements, and often lack adequate information regarding the progress of their own cases. Ironically, in many cases, victims experience additional suffering due to the hostile legal process, a phenomenon known as revictimization or secondary victimization.² The Dutch colonial legacy of the Criminal Code, which has been in effect for nearly a century in Indonesia, does contain several provisions addressing victims' interests, such as specific requirements for compensation in conditional sentences. However, these provisions are sporadic and not based on a coherent rights framework. Victim protection only received more serious attention after the enactment of several sectoral laws, including the Witness and Victim Protection Law³, and most recently, the Sexual Violence Crimes Act⁴.

The enactment of Law Number 1 of 2023 concerning the new Criminal Code represents a significant milestone in the renewal of the national criminal law paradigm. This law explicitly adopts three objectives of sentencing: perpetrator rehabilitation, community protection, and victim rehabilitation, a significant shift from a retributive paradigm to a more balanced one.⁵ However, as shown by various recent studies, normative provisions alone do not automatically guarantee the realization of substantive victim protection without being supported by institutional changes and the culture of law enforcement.⁶

The fundamental issue addressed in this article is the extent to which the Indonesian criminal law framework, both in terms of norms and practice, adequately accommodates victims' rights, and how a rights-based justice approach can be used as an analytical framework to evaluate and strengthen such protection. The rights-based justice approach, rooted in the international human rights movement, emphasizes that every individual affected by a legal event, including victims of crime, has a set of inherent rights that must be fulfilled by the state as the duty bearer.

In contrast to the needs-based approach, which views victim assistance as a form of compassion or state policy, the rights-based approach emphasizes that victim reparation is a legal obligation that can be enforced. This shift in perspective

²Kurniawati, dkk., "Perlindungan Hukum terhadap Korban Tindak Pidana dalam Perspektif Viktimologi," *Jurnal Demokrasi* 3, no. 1 (2022), hlm. 61.

³Indonesia, Undang-Undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi dan Korban sebagaimana diubah dengan Undang-Undang Nomor 31 Tahun 2014.

⁴Indonesia, Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual.

⁵Lilik Mulyadi, *Pembaharuan Hukum Pidana dalam KUHP Nasional: Perspektif Keadilan Restoratif dan Perlindungan Korban* (Jakarta: Sinar Grafika, 2023), hlm. 33.

⁶Pratiwi, "Reformasi Restorative Justice untuk Perlindungan Korban di Indonesia," *Mimbar Hukum* 32, no. 3 (2021), hlm. 503.

has broad implications for policy design, budget allocation, and state accountability mechanisms when victims' rights are not met. The urgency of this study is increasingly apparent considering that data collected by the Witness and Victim Protection Agency shows that the number of requests for protection and restitution continues to increase from year to year, but the level of fulfillment is still far from adequate due to budget limitations, limited human resources, and weak coordination between law enforcement agencies.⁷ This phenomenon demonstrates a wide gap between progressive legal norms and the reality of implementation on the ground.

Several previous studies have addressed the issue of victim protection from various perspectives. Wahid examines victim protection within the general framework of the criminal justice system and highlights the weakness of state compensation mechanisms.⁸ Atmasasmita emphasized the importance of criminal law reform through a restorative justice approach as a way to restore the relationship between perpetrators, victims, and society.⁹ Meanwhile, studies of sexual violence cases show that the fulfillment of victims' rights is still hampered by the lack of harmony in implementing regulations under the law.¹⁰

Other research specifically highlights the problematic nature of restitution rights. A study of judges' decisions in human trafficking cases found that restitution claims are still very low due to victims' ignorance of their rights and the complexity of the filing procedures.¹¹ Another study at the Kuala Kapuas District Court also confirmed that the restitution policy faces serious practical challenges in its implementation at the district court level.¹²

On the other hand, studies focusing on the new Criminal Code began to emerge as the law came into effect. Mulyadi, for example, reconceptualized victim protection in the new national Criminal Code and emphasized the need to

⁷Lembaga Perlindungan Saksi dan Korban, Laporan Tahunan LPSK Tahun 2022 (Jakarta: LPSK, 2023), hlm. 11.

⁸Abdul Wahid, *Perlindungan Korban dalam Sistem Peradilan Pidana Indonesia* (Bandung: Refika Aditama, 2021), hlm. 45.

⁹Romli Atmasasmita, *Reformasi Hukum Pidana dalam Perspektif Restorative Justice* (Bandung: CV Mandar Maju, 2021), hlm. 40.

¹⁰R. Paradias dan E. Sopyonyono, "Perlindungan Hukum Terhadap Korban Pelecehan Seksual," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022), hlm. 63.

¹¹Rizmanda Nurfitria dan Diana Lukita Sari, "Minimnya Pengajuan Restitusi Dalam Putusan Hakim Tindak Pidana Perdagangan Orang," *Indonesian Journal of Social Sciences* 5, no. 2 (2023), hlm. 90.

¹²Indah Permatasari, dkk., "Restitusi dan Perlindungan Hak Korban Tindak Pidana: Kebijakan, Tantangan dan Praktiknya di Pengadilan Negeri Kuala Kapuas," *Syntax Literate: Jurnal Ilmiah Indonesia* 10, no. 3 (2025), hlm. 42.

strengthen restitution and rehabilitation mechanisms as an integral part of the criminal justice system.¹³ A study of the implementation of Article 132 of the new Criminal Code by the prosecutor's office also shows that the restorative approach is starting to be applied, but still requires more detailed technical guidelines so as not to cause disparities in implementation.¹⁴ Although the existing literature has extensively addressed issues related to the implementation of victim protection in specific sectors, such as sexual violence, human trafficking, and domestic violence, studies specifically using a rights-based justice analytical framework to evaluate the entire Indonesian criminal law system following the reform of the Criminal Code remain relatively limited. This article seeks to fill this gap by offering a more comprehensive and cross-sectoral analysis.

Based on the description above, the problem formulation proposed in this article is, first, how the position and rights of victims are regulated in the current Indonesian criminal law system, and second, how a rights-based justice approach can be used as a paradigm to strengthen victim protection in the Indonesian criminal law system in the future. The purpose of this study is to map the normative arrangements regarding the rights of victims of crime in various Indonesian laws and regulations, identify gaps between norms and implementation, and formulate a conceptual proposal regarding the application of a rights-based justice approach as a framework for reforming victim protection policies.

The theoretical benefit of this research is to enrich the discourse in criminal law and victimology in Indonesia regarding the position of victims in the criminal justice system. The practical benefit is to provide input for legislators, law enforcement officials, and related institutions in formulating policies that are more oriented towards fulfilling victims' rights. This article is structured in several sections. After the introduction, the research methods are presented, explaining the approach and analytical techniques used. The results and discussion sections are divided into two subsections: the status and rights of victims in the Indonesian criminal law system, and the rights-based justice approach as a paradigm for strengthening victim protection. The article concludes with a conclusion summarizing the main findings and policy recommendations.

¹³Lilik Mulyadi, "Rekonseptualisasi Perlindungan Korban dalam KUHP Nasional Baru," *Jurnal Ilmu Hukum* 9, no. 2 (2023), hlm. 124.

¹⁴Nahfa Khoivina Humario, dkk., "Dampak Pemberlakuan Pasal 132 Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana Terhadap Implementasi Restorative Justice oleh Kejaksaan," *Desiderata Law Review* 1, no. 2 (2024), hlm. 58.

The discourse on the position of victims in the criminal justice system is not a new one in criminal law. Since the development of victimology as a separate branch of science in the mid-twentieth century, scholars have highlighted how the modern criminal justice system tends to neglect the interests of victims in order to maintain objectivity and legal certainty for perpetrators. Victimology has subsequently developed not only as a study of victim characteristics and patterns of victimization, but also as a normative study of how the state should treat victims throughout the law enforcement process.¹⁵ This development of thinking aligns with developments in international human rights law, which increasingly emphasizes that victims of crime have fundamental rights that must be respected by the state, regardless of the state's ability to apprehend and punish the perpetrator. This principle has significantly influenced the formation of victim protection policies in various countries, including Indonesia, although its adoption has been gradual and not always consistent across criminal law sectors.

In Indonesia, awareness of the importance of victim protection is growing as cases of sexual violence, human trafficking, and domestic violence receive widespread attention from civil society and the media. This public pressure has also prompted lawmakers to formulate various legal instruments that are more protective of victims, although their implementation remains problematic, as will be further discussed in this article. In addition to social and political factors, academic factors have also contributed to greater attention to victim protection issues. A growing body of legal research specifically addresses victims' rights, both in the context of sexual violence, domestic violence, human trafficking, and corruption, which impact collective losses in society. This growing body of literature provides crucial capital for developing a more comprehensive analytical framework for victim protection.

As a conceptual note, it is important to distinguish between the terms victim protection in the narrow and broad sense. In the narrow sense, victim protection is often understood only as physical protection against threats that victims may receive due to their testimony, as reflected in the nomenclature of the Witness and Victim Protection Agency. In the broad sense, victim protection encompasses all rights inherent to victims, from the right to information, the right to participation, the right to rehabilitation, to the right to restitution and compensation. This article uses this broad meaning as the basis for its analysis.

¹⁵ Lukings, M. K., Habibi Lashkari, A., & Hakimian, P. (2026). Understanding Criminology and Victimology. In *Understanding Cybercrime Victim Services: Challenges, Risks, Strategies, and Trends* (pp. 1-40). Cham: Springer Nature Switzerland. https://doi.org/10.1007/978-3-032-13273-4_1

It is also important to emphasize this article's scholarly position within the broader debate regarding the relationship between restorative justice and rights-based justice. Some view these two concepts as distinct paradigms, with restorative justice placing greater emphasis on restoring social relations between perpetrators, victims, and the community, while rights-based justice places greater emphasis on fulfilling the state's legal obligations to individuals. This article argues that these two paradigms are actually complementary, with rights-based justice serving as a normative framework to ensure that restorative justice processes do not sacrifice victims' fundamental rights for the sake of achieving a false sense of reconciliation.

Thus, the use of a rights-based justice approach in this article is not intended to replace the concept of restorative justice that has been adopted in the reform of national criminal law, but rather to strengthen and provide a clearer direction for the implementation of restorative justice, especially so that the interests of victims are not reduced to mere formal requirements for the termination of prosecution, but truly become the substantive goals to be achieved. It should also be noted that the issue of victim protection has broad cross-cutting dimensions, encompassing not only substantive and formal criminal law but also state administrative law related to the governance of protection institutions, budgetary law related to state funding for victim recovery, and psychology and social work related to victim trauma recovery.¹⁶ This article focuses its analysis on the criminal law dimension, but also includes these cross-cutting dimensions as long as they are relevant to the discussion of victims' rights.

It is important to note that attention to victims' rights does not mean neglecting the rights of perpetrators, which are also guaranteed by the constitution and criminal procedure law, such as the presumption of innocence and the right to a fair trial. The rights-based justice approach offered in this article emphasizes the importance of balancing the fulfillment of victims' rights with respect for the rights of perpetrators. Therefore, strengthening the victim's position is not intended to create a biased justice system or ignore established basic principles of criminal procedure. This balance is important to emphasize from the outset, given concerns among some legal practitioners that excessively strengthening the victim's position could potentially shift the criminal justice system toward a more civil-law system, where case resolution depends solely on the will of the parties without considering the broader public interest in criminal law enforcement. This article argues that these concerns can be addressed by formulating clear

¹⁶ Omojo, O. A., & Anyanabia, A. (2025). Victimology, crime victimization and victims of crime (rehabilitation and support programmes). *FUOYE Journal of Criminology and Security Studies*, 4(2). <https://fjcss.fuoye.edu.ng/index.php/fjcss/article/view/182>

boundaries regarding the types of crimes that can be resolved through a restorative approach based on victim consent, thereby maintaining a balance between the interests of the victim and the public. By considering all the background, urgency, and conceptual limitations above, this article is expected to contribute both at the academic and policy levels regarding how the Indonesian criminal law system should treat victims of crime as legal subjects who have rights, not just objects who receive the mercy of the state.

Methods

This research uses a normative legal research method (doctrinal legal research) which focuses on the analysis of positive legal norms, legal principles, and doctrines related to the protection of victims of criminal acts.¹⁷ The selection of this method is based on the nature of the problem being studied, namely the gap between normative regulations and the real needs of victims, which requires an in-depth examination of legal texts and consistency between laws and regulations. The approaches used include a statute approach, which examines various relevant laws and regulations such as the new Criminal Code, the Criminal Procedure Code, the Witness and Victim Protection Law, and the Sexual Violence Crime Law; a conceptual approach, which explores the concept of rights-based justice in the human rights and victimology literature; and a limited case approach to illustrate the application of norms in judicial practice.

The legal materials used consist of primary legal materials in the form of laws and regulations governing the rights of victims of criminal acts, secondary legal materials in the form of books, scientific journals, and relevant and up-to-date previous research results, and tertiary legal materials in the form of legal dictionaries and encyclopedias to clarify technical terms.¹⁸ Legal material searches were conducted through national scientific journal databases, official documents of state institutions such as the Witness and Victim Protection Agency, and official government publications. The data analysis technique used was qualitative analysis with descriptive-analytical and prescriptive methods. Descriptive-analytical analysis was used to describe the provisions on victims' rights as contained in various laws and regulations, while prescriptive analysis was used to formulate a conceptual proposal regarding strengthening victim protection

¹⁷Indonesia, Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana, Lembaran Negara Republik Indonesia Tahun 1981 Nomor 76.

¹⁸ Wulandari, P. (2026). Normative Legal Research Methodology from the Experts' Perspective: A Comparative Analysis of Concepts and Approaches. *Archipel: Journal of Indonesian Interdisciplinary Studies*, 1(6), 12-25. <https://doi.org/10.65739/archipel.v1i6.34>

through a rights-based justice approach. The collected data was then systematized by theme, critically analyzed by comparing prevailing norms with the principles of rights-based justice, and presented narratively to answer the research problem formulation.

The secondary legal materials search was conducted selectively, prioritizing literature published within the last five years to ensure that the analysis reflects the latest legal developments, particularly following the enactment of the new Criminal Code and the Sexual Violence Crimes Law. The use of this up-to-date literature is crucial given that significant regulatory changes in recent years have the potential to render older studies less relevant to explaining the current legal landscape. To maintain the validity of the analysis, source triangulation was also conducted by comparing findings from various types of legal materials, namely normative provisions in laws and regulations, empirical data published by state institutions such as the Witness and Victim Protection Agency, and academic research findings discussing the implementation of these provisions in the field. This triangulation aims to ensure that the conclusions drawn are not based solely on normative analysis but also take into account the reality of the implementation of victim protection policies.

This study has certain limitations that need to be frankly stated. As a normative juridical study, the analysis presented focuses primarily on the study of norms and secondary literature, thus not involving the direct collection of primary data from victims of crime or law enforcement officers. This limitation is fully acknowledged, and therefore, the findings regarding implementation gaps in this article are derived from a synthesis of previous empirical studies published by other researchers. Nevertheless, the synthesis of previous empirical research still provides a fairly representative picture of the conditions of the implementation of victim protection in various regions and various types of crimes, considering that the studies referred to cover a fairly diverse range of regions and types of cases, ranging from cases of sexual violence in the university environment, human trafficking cases decided in various district courts, to cases of domestic violence regulated in the new Criminal Code.

This research's timeframe focuses on legal developments over the past five years, from 2021 to mid-2026, considering that this period encompasses important milestones in national criminal law reform, including the enactment of the Sexual Violence Crimes Law in 2022 and the entry into force of the new Criminal Code. This timeframe limitation is intended to ensure that the resulting analysis truly

reflects the current legal context, not a legal context that has changed or been replaced by newer provisions.

Discussion

The Position and Rights of Victims in the Indonesian Criminal Law System

The position of victims in the Indonesian criminal law system cannot be separated from the history of the formation of criminal procedural law which is based on the 1981 Criminal Procedure Code.¹⁹ Within this framework, victims essentially have only two formal channels for engaging in the legal process: as a reporter or complainant, and as a witness in court. While the victim's right to file a claim for compensation is possible through the consolidation of the compensation claim with the criminal case, this provision is rarely used in practice due to the victim's limited legal knowledge and the complexity of the administrative procedures involved.

An important development occurred with the enactment of the Witness and Victim Protection Law, which for the first time provides a specific legal umbrella for the physical, psychological and procedural protection of victims and witnesses of criminal acts.²⁰ This law establishes the Witness and Victim Protection Agency as an independent institution authorized to provide protection, including the granting of new identities, relocation, assistance, and facilitation of compensation and restitution. However, as the agency's annual report indicates, limited institutional capacity means that not all requests for protection can be optimally fulfilled.²¹

More progressive regulations then came through the Sexual Violence Crimes Law, which explicitly and in detail regulates the rights of victims of sexual violence, including the right to treatment, the right to protection, and the right to recovery.²² This law also introduces stronger restitution mechanisms, including mandatory restitution payments by perpetrators and a state-provided victim assistance fund for those unable to pay. However, research shows that the effectiveness of these provisions is hampered by incomplete implementing regulations and a lack of

¹⁹ Pangaribuan, A. (2025). Authority, Rights, and Reform: Legislative Struggles over Indonesia's Criminal Procedure Code (1979–1981). *Asian Journal of Comparative Law*, 1-20. doi:10.1017/asjcl.2025.10004

²⁰ Yunara, E., & Kemas, T. (2024). The role of victimology in the protection of crime victims in Indonesian criminal justice system. *Mahadi: Indonesia Journal of Law*, 3(01), 63-78. <https://doi.org/10.32734/mah.v3i01.15379>

²¹ Lembaga Perlindungan Saksi dan Korban, Laporan Tahunan LPSK Tahun 2022 (Jakarta: LPSK, 2023), hlm. 18.

²² Indonesia, Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual, Pasal 68.

harmonization with regional regulations and institutional policies at the local level.

The most significant reform momentum occurred with the ratification of Law Number 1 of 2023 concerning the Criminal Code, which philosophically adopted the objective of punishment that is no longer solely retributive, but also includes restoring balance, peace, and a sense of justice in society, including the interests of victims.²³ The provisions regarding sentencing guidelines in the new Criminal Code require judges to consider the suffering of the victim and/or the victim's family as a factor in sentencing, a step forward compared to previous regulations that tended to focus solely on mitigating or aggravating factors for the perpetrator.

The provisions of Article 132 of the new Criminal Code regarding the resolution of cases outside the formal judicial process, known as the restorative justice approach, also open up wider space for victim participation in determining the resolution of cases, particularly for certain minor crimes.²⁴ A study of the implementation of this article by the prosecutor's office shows that this mechanism has the potential to strengthen the victim's position because the victim's consent is an absolute requirement for terminating prosecution based on restorative justice.²⁵ However, the absence of uniform technical guidelines poses the risk of disparity in implementation between regions and law enforcement agencies.

In addition to the instruments mentioned above, the Indonesian criminal law system also recognizes the right of victims to state compensation, which is compensation provided by the state to victims of certain crimes, particularly serious human rights violations, when the perpetrator is unable to fulfill their obligations. This compensation arrangement, although normatively available, is rarely implemented in practice due to the complex application mechanism and the limited state budget allocated for this purpose.²⁶ The right to psychological and social rehabilitation is also an important part of the victim protection framework, particularly for victims of sexual violence and human trafficking. Several studies have shown that psychological recovery is as important as material recovery, as the

²³ Hariyanto, H., & Shalihah, F. (2023). The purpose of crimination against perpetrators and victims in the perspective of restorative justice. *Corruptio*, 4(1), 1-12. <https://doi.org/10.25041/corruptio.v4i1.2922>

²⁴Indonesia, Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, Lembaran Negara Republik Indonesia Tahun 2023 Nomor 1, Pasal 132.

²⁵ Suherman, A., Negara, D. S., & Nainggolan, S. D. P. (2024). Antinomy between Case Discontinuation and Restoration of Victim Rights in Restorative Justice Arrangements in Indonesia. *Pakistan Journal of Life & Social Sciences*, 22(2). <https://doi.org/10.57239/PJLSS-2024-22.2.001352>

²⁶ Suwanda, D., & Suwanda, S. (2026). Self-blocking in defense procurement: a case study of budgetary coordination failure in Indonesia's satellite acquisition project. *Journal of Public Procurement*, 26(2), 235-258. <https://doi.org/10.1108/JOPP-12-2025-0156>

trauma experienced by victims can have long-term impacts on their social and economic lives.²⁷ Unfortunately, psychological rehabilitation services integrated with the criminal justice process are still limited, especially in areas outside of large cities, resulting in unequal access for victims to these services.

Studies on revictimization confirm that criminal justice processes that are insensitive to the victim's psychological well-being can actually worsen their condition. Revictimization can occur through repeated traumatic interrogations, a lack of confidentiality, and the lack of empathy of law enforcement officers in handling victim reports.²⁸ This phenomenon shows that victim protection cannot be reduced solely to the aspect of fulfilling the right to restitution and material compensation, but must also include a humane procedural dimension.

From an institutional perspective, coordination between the Witness and Victim Protection Agency, the police, the prosecutor's office, and the courts remains a challenge. The lack of an integrated information system means victims often have to repeat the same statements at every stage of the legal process, from investigation to prosecution to trial. This situation contradicts the principle of victim protection, which should minimize additional burdens on victims during the legal process. Another identified problem is the lack of legal literacy among victims regarding their rights. Many victims are unaware of their right to apply for restitution, receive free legal assistance, or obtain identity protection. This lack of awareness leads to the underutilization of normatively available rights, as found in a study of the low rate of restitution applications in human trafficking cases. In terms of regulatory harmonization, overlapping provisions were also found between the new Criminal Code, the Sexual Violence Crimes Law, and the Witness and Victim Protection Law, particularly regarding the procedures for filing for restitution and compensation. The absence of implementing regulations that comprehensively integrate these three laws creates confusion for both victims and law enforcement officials in determining the appropriate procedures.²⁹

Another relevant specific issue is victim protection in the context of gender-based crimes, including domestic violence. The updated criminal penalties for perpetrators of domestic violence in the new Criminal Code indicate strengthened

²⁷Y. N. Simbolon, G. S. Nurhanayanti, dan D. C. Angesti, "Perlindungan Hukum Hak Korban Tindak Pidana Kekerasan Seksual di Perguruan Tinggi," *Jatijajar Law Review* 1, no. 2 (2022), hlm. 25.

²⁸Priambada, "Reviktifikasi dalam Sistem Peradilan Pidana," *Jurnal Kajian Viktimologi* 2, no. 1 (2023), hlm. 27.

²⁹Lilik Mulyadi, "Rekonseptualisasi Perlindungan Korban dalam KUHP Nasional Baru," *Jurnal Ilmu Hukum* 9, no. 2 (2023), hlm. 127.

sanctions, but victim recovery, particularly for victims who are economically dependent on the perpetrator, still requires more comprehensive provisions to prevent victims from being reluctant to report the crimes they have experienced.³⁰ The study of criminal policies on gender-based crimes in the new Criminal Code also confirms that the evaluation of articles on sexual violence and psychological violence requires further adjustments to align with comprehensive victim protection principles, including recognition of forms of psychological violence that have so far received less attention in law enforcement practices.³¹

When compared with developments in criminal law in several other countries, the position of victims in the Indonesian criminal justice system is not significantly different from the global trend, which has also seen a shift from a retributive approach to a more restorative approach oriented toward victim recovery. However, the speed and consistency of implementation in Indonesia still lag behind several jurisdictions that have already established an integrated justice system that addresses perpetrators and victim recovery through a single, solid institutional framework.³²

Quantitative data on restitution and compensation applications also reinforce the picture of this implementation gap. Various studies examining court decisions in human trafficking cases indicate that the proportion of decisions granting restitution requests is relatively small compared to the total number of cases decided, an indication that restitution mechanisms have not yet become common practice among law enforcement officials or actively demanded by victims. A similar phenomenon is also found in sexual violence cases, where the right to restitution is often not raised by the public prosecutor in their indictment, even though the provisions of the Sexual Violence Crime Law explicitly require it. This condition indicates a gap between normative obligations and daily prosecution practices, one of the causes of which is the lack of integration of victim rights considerations into standard operating procedures for prosecution.

³⁰Heri Siswan, Budi Sastra Panjaitan, dan Arifuddin Muda Harahap, "Pembaruan Aturan Pemidanaan terhadap Pelaku Kekerasan dalam Rumah Tangga pada KUHP Baru," *Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora* 4, no. 3 (2025), hlm. 24.

³¹Ahmad Senang, Budi Sastra Panjaitan, dan Arifuddin Muda Harahap, "Kebijakan Kriminal terhadap Tindak Pidana Berbasis Gender dalam KUHP Baru: Evaluasi Pasal tentang Kekerasan Seksual dan Kekerasan Psikis," *Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora* 4, no. 3 (2025), hlm. 17.

³²Siregar, S. A. (2025). The Transformation Of The Victimology Paradigm In The Indonesian Criminal Justice System: Strengthening Victim Protection Through Restorative Justice And Human Rights-Based Justice Approaches. *Jurnal Ilmiah METADATA*, 7(3), 296-311. <https://doi.org/10.47652/metadata.v7i3.928>

Another identified issue is the limited access of victims to legal aid, particularly for victims from economically disadvantaged groups and those residing in rural or remote areas. The lack of adequate legal assistance makes it difficult for victims to prepare accurate restitution requests, including calculating the material and immaterial losses they have suffered. Consequently, the restitution requests submitted are often disproportionate to the actual losses suffered by the victims.³³

From an institutional perspective, it's also important to note that the Witness and Victim Protection Agency is not the only institution playing a role in victim protection. The role of women's and children's service units within the police force, hospital-based integrated service centers, and civil society legal aid institutions also play a vital role in the victim protection ecosystem in Indonesia. However, the lack of uniform minimum service standards across these institutions results in significant variation in the quality of services received by victims depending on the region and the institution in charge.

This lack of uniformity in service standards becomes even more problematic when linked to the principle of equal treatment, which should be a key characteristic of a just legal system. Victims residing in large cities with access to adequate legal aid institutions tend to have a greater opportunity to obtain their rights fulfilled than victims in areas with minimal legal service infrastructure, a disparity that contradicts the spirit of victim protection, which should apply equally to all citizens.

Another relevant aspect to consider is how the Indonesian criminal justice system addresses the interests of victims in crimes with collective impacts, such as corruption and environmental crimes, where the resulting harm is social in nature and it is difficult to identify specific individual victims. In this context, the concept of victim needs to be expanded to encompass collective harm to society, so that reparation mechanisms focus not only on the individuals directly harmed but also on redressing broader social harms.

In corruption cases, for example, the mechanism for recovering state losses through compensation and confiscation of assets resulting from crime is essentially a form of reparation for collective victims, namely the wider community harmed by the misuse of state funds. However, this mechanism is often understood merely as an additional instrument for punishing perpetrators, without explicitly linking it to the victims' rights framework. Consequently, its conceptual potential as an

³³Kamaluddin, dkk., "Pelaksanaan Restitusi bagi Korban Tindak Pidana," *Jurnal Hukum dan Keadilan* 6, no. 2 (2023), hlm. 35.

instrument for collective victim protection has not been widely explored in law enforcement policy or practice.

Similar issues arise in the context of criminal acts involving corporations, where victims can include consumers, workers, or surrounding communities impacted by unlawful corporate operations. Indonesia's current criminal law framework has not yet fully developed adequate mechanisms to ensure redress for these victims, particularly when the losses are widespread and involve multiple parties with varying degrees of harm.

From a rights-based justice perspective, expanding the definition of victim to encompass collective and indirect victims is a crucial step in ensuring the criminal justice system is truly responsive to the diverse forms of harm that can arise from criminal acts. Without this broadening of meaning, the victim protection framework risks being effective only for individual victims of conventional crimes, while victims of more complex and systemic crimes remain outside the reach of adequate legal protection.

The protection of child victims is a particular concern given the particular vulnerability of children as victims of crime. Provisions regarding the protection of child victims are scattered throughout various laws and regulations, including specific provisions in the juvenile criminal justice system that regulate social worker support and child-friendly investigations. However, challenges remain when children play dual roles, as both perpetrators and victims simultaneously, as is often the case in cases of domestic violence and student brawls that result in criminal acts.³⁴

Victims with disabilities also face similar vulnerabilities, often facing communication and physical accessibility barriers during police and court hearings. The lack of inclusive hearing facilities, such as sign language interpreters or disability-friendly examination rooms, makes victims with disabilities vulnerable to additional difficulties in providing comprehensive testimony, which in turn can impact the quality of evidence presented and the fulfillment of their rights as victims.

Elderly victims also require special attention, given their different physical and psychological conditions compared to those of adult victims in general. Protracted and repeated examinations can be particularly burdensome for elderly victims, requiring adjustments to examination procedures to account for these

³⁴Uke Rahayuningsih, A. N. Hikmah, dan S. Nurcahyati, "Pendekatan Restorative Justice dalam Perlindungan Hukum Anak sebagai Pelaku Tindak Pidana: Menyeimbangkan Keadilan dan Pembinaan," *Amandemen: Jurnal Ilmu Pertahanan, Politik dan Hukum Indonesia* 2 (2025), hlm. 82.

circumstances, such as limiting the duration of examinations or using video recordings as evidence to reduce the frequency of repeated examinations.

Regional budgeting also impacts the quality of victim protection at the local level. Some local governments have established integrated service units for women and children victims of violence, supported by adequate regional budgets, while others remain heavily dependent on limited central government funding. This disparity in fiscal capacity between regions, in turn, creates disparities in the quality of victim protection services, contradicting the spirit of protection, which should apply equally throughout Indonesia.³⁵

Universities and research institutions also play a significant role in driving the advancement of victim protection policies, both through academic research that identifies implementation issues and through community service programs that provide direct legal literacy to potential victims, such as migrant workers, domestic workers, and other vulnerable groups. Synergy between academia and law enforcement agencies in formulating evidence-based policies is a crucial element that has not yet been fully optimized.

Another equally important dimension is the relationship between the mass media and victim protection. Careless media reporting, for example by revealing the identity of victims of sexual violence or depicting excessive details of the incident, has the potential to lead to further victimization through social stigmatization. Although journalistic ethics guidelines govern the coverage of sexual violence cases and cases involving children, enforcement of these guidelines still relies on the awareness of individual journalists and media institutions, without sufficiently firm sanction mechanisms within the criminal law framework itself.

The issue of unequal power relations between victims and perpetrators, particularly in cases of domestic violence and sexual violence perpetrated by figures in positions of authority over the victim, such as superiors at work or educators in educational settings, also complicates the fulfillment of victims' rights. Unequal power relations often lead victims to be reluctant to report due to concerns about the social and economic consequences they will have to bear, a condition that demands a more proactive protection mechanism from the state, not solely dependent on the victim's initiative to report.

³⁵ Indra, M., Saragih, G. M., Ismandianto, I., & Muthia, A. A. (2026). Asymmetric Regional Development as a Framework for Achieving Spatial and Regional Justice in Indonesia. *Jambura Law Review*, 1(1). [DOI erroneously duplicated from Siregar (2025); correct DOI to be verified by the author before production]

Mapping of these various issues confirms that the gap in the implementation of victim protection in Indonesia is multidimensional, encompassing the normative dimension in the form of overlapping and gaps in regulations, the institutional dimension in the form of limited capacity and coordination, the cultural dimension in the form of the perspective of law enforcement officers who are still oriented towards perpetrators, and the social dimension in the form of low legal literacy and accessibility of services for victims from vulnerable groups and remote areas.

Overall, mapping the status and rights of victims within the Indonesian criminal justice system demonstrates significant normative progress, particularly following the reform of the Criminal Code and the introduction of more protective sectoral laws. However, implementation gaps stemming from institutional limitations, minimal regulatory harmonization, and low legal literacy among victims remain structural challenges that must be addressed to ensure that victims' rights do not remain merely provisions on paper.

B. Rights-Based Justice Approach as a Paradigm for Strengthening Victim Protection

The rights-based justice approach is a conceptual framework that places human rights as the primary foundation in designing, implementing, and evaluating legal policies, including policies to protect victims of crime. Unlike the needs-based approach, which views assistance to victims as a form of state policy or compassion, the rights-based approach asserts that fulfilling victims' rights is a legal obligation binding the state, as duty bearer, to the victims, as rights holders. In this context, victims of crime are no longer viewed as passive objects receiving assistance at the behest of law enforcement officials, but rather as legal subjects with the right to demand that their needs be met through clear and accountable legal mechanisms. This shift in perspective has significant consequences, both in the formulation of norms, state budgeting, and accountability mechanisms when the state fails to fulfill its obligations.³⁶

There are at least four core elements that characterize a rights-based justice approach in the context of victim protection. First, the principle of participation, namely the victim's right to be meaningfully involved in every stage of the legal process that affects their interests, including in decision-making regarding case resolution through a restorative approach. Second, the principle of accountability, namely the existence of a clear mechanism to hold the state and law enforcement

³⁶Abdul Wahid, *Perlindungan Korban dalam Sistem Peradilan Pidana Indonesia* (Bandung: Refika Aditama, 2021), hlm. 70.

officials accountable if the victim's rights are not met. Third, the principle of non-discrimination, which emphasizes that victim protection must be provided without distinction of social background, economic background, gender, or type of crime experienced. Fourth, the principle of empowerment, which is the state's effort to ensure victims have legal literacy and adequate access to information regarding their rights, enabling them to independently demand their rights, rather than relying solely on the initiative of law enforcement officials.

The principle of participation can be implemented through strengthening the restorative justice mechanisms stipulated in the new Criminal Code. Article 132, which requires the victim's consent as a condition for terminating prosecution based on restorative justice, is a concrete form of recognition of the victim's right to participate.³⁷ However, to ensure that this principle is not merely a formality, it is necessary to ensure that the victim's consent is given freely, without coercion, and based on adequate information regarding the consequences of the restorative agreement.

Strengthening the principle of participation also requires the development of uniform technical guidelines for prosecutors and police in implementing restorative justice, so as not to cause disparities in implementation between regions.³⁸ These guidelines should include minimum standards regarding how the victim's consent is obtained, how the interests of victims in unequal power relations with the perpetrator are protected, and how the implementation of restorative agreements is monitored.

The principle of accountability can be strengthened through the development of independent oversight mechanisms for the implementation of victims' rights, including the right to restitution and compensation. Data showing low rates of restitution claims in certain cases indicates that the state has not fully fulfilled its active obligation to ensure that victims are aware of and able to access these rights. A rights-based approach requires that the state not only provide norms but also proactively facilitate their fulfillment, including through free legal assistance and simplified administrative procedures.

The concept of state accountability within a rights-based approach also includes the obligation to provide alternative remedies when the perpetrator is unable to fulfill restitution obligations. The victim assistance fund mechanism

³⁷ Nasir, N., & Thalib, H. (2026). Restorative Justice at the Investigation Stage: A Normative Review of Its Conceptualization in the New Criminal Procedure Code. *Journal of Judicial Review*, 28(1), 241-278. <https://doi.org/10.37253/jjr.v28i1.12085>

³⁸ Omowon, A., & Kunlere, A. S. (2024). Restorative justice practices: Bridging the gap between offenders and victims effectively. *World Journal of Advanced Research and Reviews*, 24(3), 2768-2785. <https://doi.org/10.30574/wjarr.2024.24.3.3978>

stipulated in the Sexual Violence Crimes Law is a good example that can be replicated for other types of crimes, so that the fulfillment of victims' rights does not depend solely on the perpetrator's economic capacity. The principle of non-discrimination requires special attention to vulnerable victim groups, including women, children, people with disabilities, and victims from economically disadvantaged groups. Studies on the protection of children as both perpetrators and victims in the justice system demonstrate the importance of an approach that balances the interests of victim development and recovery, particularly in cases involving children as both perpetrators and victims.

In the context of gender-based violence, the principle of non-discrimination also demands broader recognition of forms of psychological violence, which have received less legal attention than physical violence. An evaluation of the articles in the new Criminal Code governing gender-based violence demonstrates the need to refine the definition and elements of the offense so that victims of psychological violence receive equal protection and redress compared to victims of physical violence.³⁹

The principle of empowerment is a crucial element that has received the least attention in victim protection policies in Indonesia. The low level of legal literacy among victims regarding the right to restitution, as found in various studies, indicates that the state has not adequately implemented its education and information dissemination functions.⁴⁰ However, within the framework of rights-based justice, empowering victims through access to information is a prerequisite for achieving meaningful participation and accountability.

Strengthening the principle of empowerment can be achieved through the development of integrated information services for victims of crime, whether through digital applications, integrated service centers within the police and prosecutors' offices, or collaboration with civil society organizations with extensive networks extending to the community level. These services should include information on the rights to restitution, compensation, rehabilitation, and identity protection, as well as procedures for applying for each of these rights in a simple and accessible manner for the general public.

In addition to strengthening the four principles mentioned above, implementing a rights-based justice approach also requires comprehensive

³⁹ Hester, M., Williamson, E., Eisenstadt, N., Abrahams, H., Aghtae, N., Bates, L., ... & Mulvihill, N. (2025). What is justice? Perspectives of victims-survivors of gender-based violence. *Violence against women*, 31(2), 570-597. <https://doi.org/10.1177/10778012231214772>

regulatory harmonization. Overlapping regulations between the new Criminal Code, the Witness and Victim Protection Law, and the Sexual Violence Crimes Law need to be resolved through implementing regulations that explicitly address procedural integration, particularly regarding restitution and compensation claims, to avoid confusion among victims due to differing mechanisms across laws. Institutional strengthening is also a crucial prerequisite for implementing a rights-based justice approach. The Witness and Victim Protection Agency needs to be strengthened in terms of authority, budget, and human resources to enable it to reach more victims in various regions, including remote areas that have previously lacked access to protection services.⁴¹ This strengthening should be accompanied by the development of an integrated information system across law enforcement agencies so that victims do not have to repeat the same information at every stage of the legal process.

The rights-based justice approach offered in this article also aligns with the principles contained in various international human rights instruments, which emphasize that states have a positive obligation to ensure reparation for crime victims, not only through formal judicial processes but also through more expeditious and cost-effective non-judicial mechanisms. This principle is relevant in the Indonesian context, given victims' limited access to formal justice processes, particularly for victims from marginalized communities.

Within this framework, the restorative justice mechanism introduced in the new Criminal Code can serve as a bridge between legal certainty and victim recovery, as long as its implementation truly takes victims' interests into account and is not merely used as an instrument to reduce the caseload of law enforcement agencies. The risk of instrumentalizing restorative justice solely for bureaucratic efficiency requires vigilance, as this could sacrifice the substance of victim protection, which should be the primary goal of this approach.

To prevent these risks, indicators of the success of restorative justice implementation are needed, measured not only by the number of cases resolved out of court but also by the level of victim satisfaction with the process and outcomes of restorative agreements. Such measurements are crucial to ensure that the policy's success is assessed not solely from the perspective of administrative efficiency but also from the substantive perspective of victim recovery.

The implementation of a rights-based justice approach also requires changes in the education and training of law enforcement officers, from the police and

⁴¹ Hidayat, W. A. (2023). The role of Witness and Victim Protection Agency for Imekko Tribe in criminal justice system in Sorong. *Law and Justice*, 8(2), 176-191. <https://doi.org/10.23917/laj.v8i2.2363>

prosecutors to judges. The education and training curriculum, which has previously focused on the technical legal aspects of proving and imposing criminal sanctions, needs to be enriched with material on victims' rights, victim psychology, and communication skills sensitive to victims' psychological conditions, so that interactions between law enforcement officers and victims do not lead to re-victimization. In addition to law enforcement officer education, strengthening the role of civil society organizations and victim advocates is also a crucial element in realizing a rights-based justice approach. Trained victim advocates can help victims understand their rights, accompany them through the legal process, and serve as a communication bridge between victims and law enforcement officials, thereby reducing the psychological burden victims must bear independently.

Funding is also a crucial factor that cannot be ignored in implementing a rights-based justice approach. Without adequate budgetary support, various normatively regulated victim protection mechanisms, such as victim assistance funds, psychological rehabilitation services, and free legal assistance, will not be able to operate optimally. Therefore, the state budget commitment to victim protection needs to be increased gradually and sustainably, in line with the increasing complexity of cases handled by relevant institutions.⁴² The implementation of a rights-based justice approach also requires broadening the definition of victims, as previously described, by incorporating collective victims of corruption and corporate crime into a legally recognized rights framework. This can be achieved through the development of class action mechanisms in the criminal context, which allow for collective restitution without requiring each injured individual to file a separate restitution application.

Furthermore, strengthening ongoing monitoring and evaluation mechanisms for the implementation of victim protection policies is also necessary. This monitoring should involve not only state institutions but also civil society organizations and academics, so that policy evaluations are objective and reflect the actual experiences of victims on the ground. The results of this monitoring can then serve as the basis for periodic policy refinements, ensuring that the victim protection framework continues to evolve in line with the dynamics of victims' needs and the challenges faced by law enforcement.

It is also important to encourage further empirical research to complement the normative analysis presented in this article. Field research involving direct interviews with victims, law enforcement officials, and victim advocates will

⁴² Bansal, A., & Matolia, M. (2025). Victim-Centric Governance in the Criminal Justice System: Policy and Practice Analysis with Special Reference to India. *Advances in Consumer Research*, 2(5).

provide a more in-depth picture of victims' experiences in accessing their rights, as well as the concrete obstacles they face in everyday practice, which may not be fully captured through document and literature analysis alone.

The use of information technology also has significant potential to support the implementation of a rights-based justice approach, particularly in strengthening the principles of empowerment and accountability. Developing a secure and confidential online reporting system can make it easier for victims, particularly victims of sexual and domestic violence, to report crimes without facing direct social stigma. Similarly, an online case tracking system can help victims monitor the progress of their cases without having to repeatedly visit the police or prosecutor's office, thereby reducing the logistical and psychological burden on victims.

However, the use of this technology requires serious attention to the protection of victims' personal data, given the highly sensitive nature of data regarding the identity and condition of victims of crime. Leakage of victim data, particularly in cases of sexual violence, can pose a risk of stigmatization and serious threats to safety. Therefore, any development of digital systems to support victim services must be accompanied by strict cybersecurity standards and clear accountability mechanisms in the event of data confidentiality breaches.

Implementing a rights-based justice approach also requires adjustments to the diverse regional budget context, as discussed previously. The central government needs to develop a fiscal incentive scheme for regional governments that successfully establish integrated victim service units with adequate service standards, while also providing technical assistance to regions with limited fiscal capacity to gradually reduce the gap in service quality between regions.

Cross-sector collaboration between government, universities, and civil society organizations also needs to be formalized through clear partnerships, such as law student internships at victim service institutions, collaborative research on the effectiveness of victim protection policies, and academic involvement in the development of technical guidelines for the implementation of restorative justice. Such partnerships can accelerate the policy learning process and ensure that formulated policies are truly based on evidence and field experience.

The unequal power relations as mentioned in the previous discussion also require a more assertive application of the principle of non-discrimination, particularly through the development of alternative reporting mechanisms that do not solely rely on the victim's initiative, for example through reporting obligations for third parties who know of the occurrence of criminal acts in unequal power

relations, accompanied by guarantees of protection for reporters from the risk of retaliation.

The role of the mass media in the victim protection ecosystem also needs to be integrated into a rights-based justice framework, given that careless reporting can lead to further victimization, which can have long-term impacts on victims' social lives. Strengthening cooperation between the Witness and Victim Protection Agency, the press council, and professional journalistic organizations can be one step to ensure that the principles of victim confidentiality and dignity are respected in all reporting related to criminal acts.

In closing, it should be emphasized that implementing a rights-based justice approach is not a short-term agenda that can be resolved through a single policy, but rather a long-term reform agenda that requires synergy between legislators, law enforcement officials, academics, and civil society. The success of this agenda will ultimately be reflected not only in the comprehensiveness of legal norms governing victims' rights, but also in the extent to which victims of crime actually experience meaningful recovery in their lives after experiencing the crime.

Ultimately, the implementation of a rights-based justice approach in the Indonesian criminal law system is not merely a normative discourse, but rather a legal development project that requires political commitment, adequate resource allocation, and a change in the culture of law enforcement, which has previously focused more on legal certainty for perpetrators than on restitution for victims. This paradigm reorientation aligns with the spirit of national criminal law reform, which no longer views punishment solely as an instrument of retribution but rather as a means to restore social balance, including restitution for victims whose rights have been violated.⁴³

Conclusion

Based on the description and analysis presented, it can be concluded that the Indonesian criminal law system has experienced significant normative progress in regulating the rights of victims of crime, particularly through the enactment of the Witness and Victim Protection Law, the Sexual Violence Crime Law, and the reform of the National Criminal Code. These three legal instruments have gradually shifted the paradigm of criminal law from one that was primarily focused on the perpetrator and the interests of the state to one that places greater emphasis on the recovery of victims. This study also emphasizes that the issue of victim

⁴³Lilik Mulyadi, *Pembaharuan Hukum Pidana dalam KUHP Nasional: Perspektif Keadilan Restoratif dan Perlindungan Korban* (Jakarta: Sinar Grafika, 2023), hlm. 95.

protection cannot be understood solely through a normative approach, but rather as a multidimensional issue involving institutional, cultural, social, and financial aspects. The comprehensiveness of legal norms, as reflected in the various laws discussed, is an important but insufficient prerequisite for achieving substantive victim protection without accompanying changes in these other dimensions.

However, this normative progress has not been fully matched by adequate implementation on the ground. Gaps between norms and practice persist in various aspects, ranging from low levels of restitution and compensation rights to victims' limited legal literacy regarding their rights, weak coordination between law enforcement agencies, and overlapping regulations between laws that create procedural confusion for both victims and law enforcement officials. A rights-based justice approach offers a relevant conceptual framework for addressing these gaps. By strengthening four key principles: participation, accountability, non-discrimination, and empowerment, this approach encourages a reorientation of victim protection policies from charitable to mandatory and legally accountable ones. Implementing this approach requires strong political commitment, institutional strengthening, regulatory harmonization, and a shift in law enforcement culture toward a more victim-centered recovery. Several recommendations can be made based on the results of this study. First, implementing regulations need to be developed that integrate restitution and compensation mechanisms between the Criminal Code, the Witness and Victim Protection Law, and the Sexual Violence Crimes Law to avoid procedural overlap. Second, uniform technical guidelines need to be developed for law enforcement officials in implementing restorative justice so that the principle of victim participation is truly meaningful and not merely a formality.

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