

HUMAN RIGHTS AND LEGAL PROTECTION FOR VICTIMS OF RAPE IN INDONESIA'S LEGAL FRAMEWORK

Siti Syahida Nurani

Fakultas Hukum, Universitas Muhammadiyah Surakarta, e-mail: Syahidanurani05@gmail.com

Abstract

The issue of Human Rights (HAM) is becoming an increasingly important agenda, the international community continues to urge all member states of the United Nations to take various steps and actions, including making laws to eliminate discrimination and violence against women. Indonesia's policy to ratify the global law mentioned above, is suspected by the rampant problems of violence faced by almost every nation and country on this earth. The research methodology used is library research which is carried out by searching, taking an inventory and studying laws and regulations, doctrines, and other secondary data, which are related to the focus of the problem. in the legal framework Indonesia has provided guarantees for human rights (both women and men) as stated in the second amendment of the 1945 Constitution of Article 28 A-J and Law No. 39 of 1999 on Human Rights. UU no. 7 of 1984 concerning the Elimination of Discrimination Against Women or the Ratification of the Women's Convention, which states that the state will make maximum efforts to eliminate all forms of discrimination against women, including violence against women, in particular sexual violence is regulated in the Child Protection Law and the Criminal Code, while other forms of protection for victims of sexual crimes.

Keywords: Human Right, Protection, Rape, Indonesia.

Abstrak

Isu Hak Asasi Manusia (HAM) menjadi agenda yang semakin penting, masyarakat internasional terus mendesak semua negara anggota PBB untuk mengambil berbagai langkah dan tindakan, termasuk membuat undang-undang untuk menghapus diskriminasi dan kekerasan terhadap perempuan. Kebijakan Indonesia untuk meratifikasi hukum global tersebut di atas, ditengarai dengan maraknya permasalahan kekerasan yang dihadapi oleh hampir setiap bangsa dan negara di muka bumi ini. Metodologi penelitian yang digunakan adalah penelitian kepustakaan yang dilakukan dengan mencari, menginventarisasi dan mempelajari peraturan perundang-undangan, doktrin, dan data sekunder lainnya, yang berkaitan dengan fokus masalah. dalam kerangka hukum Indonesia telah memberikan jaminan terhadap hak asasi manusia (baik perempuan maupun laki-laki) sebagaimana tertuang dalam amandemen kedua UUD 1945 Pasal 28 A-J dan Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia. UU No. 7 Tahun 1984 tentang Penghapusan Diskriminasi Terhadap Perempuan atau Ratifikasi Konvensi Perempuan, yang menyatakan bahwa negara akan berupaya semaksimal mungkin untuk menghapuskan segala bentuk diskriminasi terhadap perempuan, termasuk kekerasan terhadap perempuan, khususnya kekerasan seksual yang diatur dalam Anak UU Perlindungan dan KUHP, sedangkan bentuk-bentuk perlindungan lain bagi korban kejahatan seksual

Kata Kunci: Hak Asasi Manusia, Perlindungan, Pemerkosaan, Indonesia.

PRELIMINARY

The issue of Human Rights (HAM) is becoming an increasingly important agenda, the international community continues to urge all member states of the United Nations to take various steps and actions, including making laws to eliminate discrimination and violence against women. Indonesia has ratified CEDAW and issued Law NO. 7 of 1974 Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women. At the national level, two important documents that can be used in the study of women's rights have been published, namely Law No. 39 of 1999 concerning Women's Human Rights (Article 45 and Article 51), in December 2000 a presidential instruction was issued to mainstream gender into all aspects of life. national development process¹.

Indonesia's policy to ratify the global law mentioned above, is suspected by the rampant problems of violence faced by almost every nation and country on this earth. Various discussions, seminars, lectures and scientific meetings were held to find solutions that were deemed appropriate regarding the crimes that were happening and were troubling the community. In the daily social sphere, the problem of violence is associated with criminal cases which tend to be increasingly violent and brutal. Theft, looting and rape are accompanied by violence in addition to murder in various sadistic forms, adding to the list of conversations about violence².

At the end of the 20th century, sexual violence against women was recognized globally as a violation of human rights. Until now, Indonesia still tends to reject the existence of sexual violence against women. The main reason is that victims of sexual violence rarely want to appear, so that victims of rape, for example, cannot be proven as stipulated in Article 285 of the Criminal Code. The current Criminal Code does not provide protection for women as victims of sexual violence, especially victims of rape. This fact has raised concerns for the UN Special Rapporteur on Anti-Violence against women who came to Indonesia in November 1998, to collect direct information on various acts of violence against Indonesian women in various conflict areas, including recommending that Indonesia abandon its 'culture of denial' towards various conflicts. violence experienced by Indonesian women.

Patriarchy or masculinity views men as always in a dominant position over women in every rape case. Patriarchal culture not only makes him look weak when women are vis a vis men, but the strong dominant position of men makes women always in a state of oppression. This oppression got a strong foothold in the patriarchal culture and was later established in the legal system. This conclusion is in line with the Berberick Study (2010) which then quotes Viren Swami, that in a patriarchal society, the rights and roles of inferior women are largely determined by the power of superior men. The tendency of the attitude of patriarchal society greatly determines the relationship between the patriarchal regime and the ideal concept of beauty³.

Indonesia as a country affected by the Patriarchal tradition⁴, It's no stranger to rape. Since independence, for example, we have known the tragedy of mass rape. Ahead of the Reformation, cases of mass rape occurred against ethnic Chinese women. Monika Swasti Winarmita wrote that the rape of Chinese women was caused by the racism politics introduced

¹ *Kelompok Kerja Convention Wacht Hak Hak Asasi Perempuan: Instrumen Hukum Untuk Mewujudkan Keadilan Gender* (Jakarta: Pustaka Obor Indonesia, 2012).

² Abdul Wahid and Muhammad Irfan, *Perlindungan Korban Kekerasan Seksual; Advokasi Atas Hak Asasi Perempuan* (Jakarta: Refika Aditama, 2001).

³ Stephanie Nicholl Berberick, 'The Objectification of Women in Mass Media: Female Self-Image in Misogynist Culture', *The New York Sociologist*, 5 (2010), 2.

⁴ Billi Sarwono, 'Gender Bias in a Patriarchal Society; A Media Analysis on Virginity and Reproductive Health', *Jurnal Wacana*, 14.1 (2012), 44.

by the New Order to ethnic Chinese who were considered responsible for the monetary crisis in mid-1998. Next Monika writes:

The mass media reports initially stated that the economic crisis, unemployment and hunger directed the masses' anger towards the 3% of the population of Chinese descent who control 70% of the nation's economy. As a consequence, the general public emotionally distanced themselves from the event and justified it as a specific ethnic problem arising from prolonged economic disadvantage. The violence towards the ethnic Chinese Indonesians was further justified as a result of their perceived role in the corrupt, nepotistic and collusive Suharto government which favoured them economically.

Post-Reformation, which is marked by the disclosure of information on reports about rape, looks worrying. In the Komnas HAM record sheet in 2016, as many as 5,002 cases (31%) occurred in the community, in 2015 and 2014 the highest violence was sexual violence (61%), the type of sexual violence in the community, the highest was rape (1,657 cases).) then sexual abuse (1,064 cases), sexual harassment (268 cases), sexual violence (130 cases), running away girls (49 cases) and attempted rape (60 cases)⁶.

The National Commission Against Violence against Women (Komnas Perempuan) reported that rape was the most widely reported form of sexual violence. As many as 34% of the nine media reported cases of rape in the period January to June 2015. The coverage became more widespread after Yuyun (YY) tragically raped and killed by 14 men in Bengkulu. The case against YY received a response from President Joko Widodo. Directly, Jokowi ratified PERPU No. 1 of 2016 concerning additional punishment, namely castration of perpetrators of sexual crimes.

There are many possibilities that influence the increasing number of violence against women, such as increasing reports due to increased knowledge of women about their rights, higher understanding of law enforcement on violence against women or the ineffectiveness of the law in providing protection to women as victims of violence. Saskia E Wieringa, Expert on Gender and Sexuality Studies from the University of Amsterdam, said that violence against women in Indonesia has entered a difficult situation. The occurrence of gender-based violence tends to be experienced by women more often because of the construction of community thinking that favors men more than women. Violence experienced can be in the form of physical, sexual or psychological suffering, men often use violence as control and to maintain their power.

The perspective on the issue of violence against women so far in society is also different, the stigma of society is more likely to blame women for the violence they experience, this makes it more difficult for women's position to get their rights to truth, justice and recovery. blaming himself is a disgrace to himself, to his family and community group where he lives and has a social life, thereby doubling the suffering of women⁷.

That is why the problem of violence against women can not only be solved through policies and laws and regulations, but also changes in society's perspective on women is the starting point to change the mindset that is already deeply entrenched in Indonesian society. And how law enforcers solve rape cases that are faced with them, so that the legal decisions they take can be a legal breakthrough that provides legal protection for women victims of rapes.

⁵ Monika Swasni Winarmita, 'Commemoration and Its Limitations: The Mass Rapes Of Chinese Indonesian Women', in *Agenda Tahunan Konferensi Persatuan Pelajar Asian Di Melbourne* (Melbourne, 1998).

⁶ komnasperempuan.go.id, 'No Title', 2017 <m> [accessed 4 March 1BC].

⁷ A. Reni Widyastuti, 'Peran Hukum Dalam Memberikan Perlindungan Terhadap Perempuan Dari Tindak Kekerasan Di Era Globalisasi', *Mimbar Hukum*, 21.2 (2012), 405.

⁸ Fatwa AM, *Hak Asasi Manusia, Pluralisme Agama, Dan Ketahanan Nasional, Dalam HAM Dan Pluralisme Agama Sebuah Bunga Rampai* (Surabaya: Pusat Kajian Strategi dan Kebijakan (PKSK), 1997).

Rape itself as regulated in article 285 of the Criminal Code, the standard value that can minimize the number of sexual crimes/rapes is through the threat of 12 years in prison, but in practice it is rarely carried out and applied. The non-compliance with the provision of sanctions with existing articles results in no deterrent effect. The pattern of punishment for the perpetrators of rape as a process of handling the crime of rape shows a tendency of punishment that is far from the maximum limit stated in the Criminal Code⁹. Niken Savitri expressed her opinion that for an act of rape a perpetrator should also be charged with molestation if it can be proven through *visum et repertum* that there was an injury to the victim's reproductive organs, so that they can be prosecuted together with a criminal act. However, in practice this is very rarely done by prosecutors and judges in prosecuting the perpetrators of the crime of rape, so that the crime of rape is still a crime that violates decency and does not include protection for the violence experienced by the victim¹⁰.

Injustice to victims of sexual crimes in the structure, substance and culture that develops in Indonesia causes the weak position of women which makes women vulnerable to violence. In the view of Sulistyowati Irianto, who said that judges mostly only confirmed the prosecutor's indictment and the articles in the legislation, many judges in handling cases and choosing the law to be used in resolving cases really depended on the "law choice" used by the prosecutor. It is not surprising that Trisno Rahardjo said "the implementation of criminal justice based on the Criminal Procedure Code is still not running smoothly and there are still many weaknesses. Due Process Model is still far from expectations, even the accuser approach still dominates¹¹.

In the case of rape, this impartial legal style will make it difficult for women to find justice because the judge does not try to dig up 'texts' outside the legislation, because in this case (the legal tradition of Civil Law applied in Indonesia) the judge is limited to being the speaker of the law. Invite. Anna Triningasih said that in Civil Law the prevailing norms are abstract, not concrete. In the formulation of the norm, it contains general clauses or principles of *generaux*. This is intended so that its use (i.e. judges) can decide or resolve concrete cases based on the applicable rules¹².

According to Widodo Dwi Putro, the opinion that a judge's job is only to be spokesperson for the law is the influence of the theory of separation of powers proposed by Montesquie. *Trias Politica* in the description of Montesquieu (1689-1755) requires judges to be separated from the roles of executive and legislative authorities. He further quotes Montesquieu¹³:

L'Esprit des lois: les juges de la nation ne sont que la bouche qui prononce les paroles de la lois; des entres inanimés qui n'en peuvent modere ni la force ni la rigueur (the judges are only mouths uttering the words of the law; they are inanimate beings who cannot undermine the force and violence of the law).

The character of the law which is masculine and does not provide justice to women victims of rape can be seen in the Sum Kuning case. Sum Kuning or Sumaridjem was a victim of rape on September 21, 1970. It is suspected that the rapists were four long-haired men in a car. What's interesting is that, because of the difficulty in finding the perpetrators, the police then named a young man named Trimo as a suspect, but Trimo denied it because he didn't know Sum. The public was then shocked by the confession of Budidono, one of the suspects who is also a car broker. Budidono testified that the other three perpetrators were the children of an official. But the sad thing is, Sumarijdem was even threatened with imprisonment and was given

⁹ Abdul Wahab Khalaf, *Ilmu Ushul Al-Fiqih* (Jakarta: Majelis Dakwah Islam, 1997).

¹⁰ Niken Savitri, *HAM Perempuan, Kritik Teori Hukum Feminis Terhadap KUHP* (PT.Reflika Aditama, 2008).

¹¹ Trisno Rahardjo, *Mediasi Pidana Dalam Sistem Peradilan Pidana* (Yogyakarta: Mata Padi Pesindo, 2011).

¹² Anna Triningasih, 'Pengadilan Sebagai Lembaga Penegakan Hukum (Perspektif Civil Law Dan Common Law)', *Jurnal Konstitusi*, 12.1 (2015), 139.

¹³ Widodo, 'Tinjauan Kritis-Filosofis Terhadap Paradigma Positivisme Hukum' (Universitas Indonesia, 2011).

an indictment by the Prosecutor for providing false information and broadcasting false news. Although the prosecutor's charge was ultimately rejected by the judge, the Sum Kuning case clearly sets a bad precedent for law enforcement in the rape case¹⁴.

If you look at Lawrence Friedman's Legal System Theory, that the Legal System consists of a legal structure, namely institutions created by the legal system. Legal substance (Legal Substance) in the form of norms created by the legal system, legal culture (Legal Culture) are ideas, attitudes and expectations as well as legal opinions¹⁵. So it is clear in this case, the State failed to protect rape victims, or in a more macro perspective, the State failed to provide protection to women.

Based on the frame of mind above, the question is how to implement human rights and legal protection for victims of the crime of rape in the legal framework in Indonesia?.

RESEARCH METHODS

The research methodology used is library research which is carried out by searching, taking an inventory and studying laws and regulations, doctrines, and other secondary data, which are related to the focus of the problem. The regulations referred to in this study include various rules containing rape offenses, regulations relating to the protection of women or conventions related to women, to then be analyzed using qualitative analysis methods, where in this stage the researcher will try to obtain a comprehensive picture of what is covered in a subject matter under study. The result is obtained in the form of knowledge at the surface level about various conceptual domains or categories.

DISCUSSION

THE LAW OF RAPE IN THE INDONESIAN LEGAL FRAMEWORK

Rape is normatively contained in Article 285 of the Criminal Code which reads "Anyone who by force or by threat of forcing a woman who is not his wife to have sex with him, because of rape, can be punished with imprisonment for a maximum of twelve years". The normative understanding in this paper, according to the author, is not helpful in explaining complex problems. Therefore, in addition to interpreting rape normatively, the author also interprets rape as a symbol of the victory of the masculine represented by men against the feminine in this case is women¹⁶.

For the second wave of feminism, they think that rape is the result of a patriarchal structure of society. This school is a critique of the concept of rape in the previous era which considered rape as an internal factor and an external factor that did not touch the term patriarchal society at all.

Patriarchal society has a dualistic analysis that divides society into two classes, namely the masculine class which has dominance, hegemony and power over other classes, namely the feminist class which has the opposite fate.

LAW ENFORCEMENT OF THE CRIME OF RAPE IN THE INDONESIAN LEGAL FRAMEWORK

Law enforcement is an attempt to bring ideas of justice, certainty and social benefits into reality. So law enforcement is essentially a process of realizing ideas. . Dellyana, Shant said that law enforcement is an effort to realize legal ideas and concepts that are expected by the people

¹⁴ Petrik Matanasi, 'Isteri Pemerkosaan Sum Kuning', *Tirto.Id*, 2017 <<https://tirto.id/misteri-pemerkosaan-sum-kuning-cAa9>>.

¹⁵ Hendro Muhaimin, 'Penguatan, Sinkronisasi, Harmonisasi, Integrasi Pelembagaan Dan Pembudayaan Pancasila Dalam Rangka Memperkokoh Kedaulatan Bangsa', in *Kongres Pancasila VI* (Ambon: Pusat Studi Pancasila Universitas Gadjah Mada: Yogyakarta, 2014), p. 288.

¹⁶ *Hukum Dan Hak Asasi Manusia Sebuah Bunga Rampai* (Yogyakarta: PUSHAM UII, 2015).

to become a reality. Law enforcement is a process that involves many things. The factors that influence law enforcement are:

1. Tensions of Legal Certainty and Justice

The practice of administering law in the field is sometimes a conflict between certainty and justice, this is because the conception of justice is an abstract formulation, while legal certainty is a procedure that has been determined normatively. In fact, a policy or action that is fully based on the law is something that can be justified as long as the policy or action does not conflict with the law. So in essence the implementation of the GUKAN only includes law enforcement, but also peace maintenance, because the implementation of the law is really a process of harmonization between the values of the rules and real behavior patterns that aim to achieve peace¹⁷.

2. Law Enforcer Personality

The mentality or personality of law enforcement officers plays an important role, if the regulations are good, but the quality of the officers is not good, there is a problem, therefore one of the keys to success in law enforcement is the mentality and personality of the officers¹⁸

3. Factors supporting facilities and facilities;

This factor includes software and hardware, one of the software is education. The education received by the police today tends to be practical, conventional matters, including knowledge of computers in special crimes which have so far been given authority to the prosecutor, this is because technically the police are considered not capable and not ready even though they are also aware of it. The tasks that must be carried out by the police are so broad and many¹⁹.

4. Community Factors:

Law enforcement basically comes from the community. His role as law enforcement aims to achieve peace in society. Every citizen or group has more or less legal awareness, the problem that arises is the level of legal compliance, namely high, moderate or lack of legal compliance. There is a degree of community compliance with the law which is one indicator of the functioning of the law concerned²⁰.

5. Cultural factors:

In the concept of everyday culture, people so often talk about culture. Culture has a very big function for human beings and society that organizes so that human beings can understand how they should act, do and determine their attitudes when they relate to others. Thus culture is a basic line of behavior that sets rules about what is to be done and what is forbidden²¹.

Law enforcement that has been running so far seems to be still oriented in the form of procedural justice which places great emphasis on the aspects of regularity and the mere application of formal law. With such a working mechanism, if it is associated with the flow of formalism pioneered by Christopher Columbus Langdell, the main points of thought are as follows²²:

Formal law can achieve the same goals as substantive law, law is made by the state so that law contains an imperative meaning, law is a rational and scientific product of science,

17 H. Mugtafirin, 'Teori Sistem Hukum Barat, Sistem Hukum Adat, Sistem Hukum Islam Sebagai Sistem Hukum Nasional', *Jurnal Dinamika Hukum*, 11 (2011).

18 Soetandyo Wignjosoebroto, *Transplantasi Hukum Ke Negara-Negara Yang Tengah Berkembang, Khususnya Indonesia, Dalam Hukum: Paradigma, Metode Dan Masalah* (Jakarta: Elsam dan Huma, 2002).

19 Soetandyo Wignjosoebroto, *Hukum Dalam Masyarakat, Perkembangan Dan Masalah* (Malang: Banyu Media Publishing, 2008).

20 L.M. Gandi Lopian, *Disiplin Hukum Yang Mewujudkan Keadilan Gender* (Pustaka Obor Indonesia, 2012).

21 Soerjono Soekanto, *Faktor-Faktor Penegakan Hukum* (Jakarta: Rajawali Press, 2016).

22 Munir Fuady, *Filsafat Dan Teori Hukum Postmoderen* (Bandung: Citra Adytia Bhakti, 2005).

which is arranged logically, coherently and systematically. So that this way of working has a judicial model that is formed by a juridical justice model, with the following characteristics: Has a fixed structure and is closed to the entry of other fields of science²³.

This model developed under the umbrella of the legal positivism paradigm which requires the entire judicial process to be carried out in a strict and closed manner under the control of laws and regulations governing the structure and implementation procedures, the administration of justice must use a strict syllogism, meaning that it has been patterned in determining the rule of law (articles relating to law enforcement). objective reality) as a major premise (which is general), objective events (real cases) as a minor premise (which is determined and appointed by the rule of law as a conclusion or conclusion), placing the position of the Act as something fundamental (visible in the process of making BAP investigators, prosecutors' demands/indictments as well as in the determination and execution of court decisions must always strive to realize the contents of the law, the execution of court decisions must always be sought to realize the contents of the law²⁴.

Following this view, the law will give birth to a type of justice that is commonly called procedural justice²⁵. Therefore, it is not surprising that many of the outputs from the operation of the criminal justice system have disappointed justice seekers and society in general. This can be seen from the empirical data from the Kompas Daily poll showing that 72.7% of the people have not received fair treatment, as many as 45.3% consider that the judge's decision is based on money considerations, as many as 30.5% of respondents assess it because of political considerations and only 9.3% respondents who still believe the Indonesian court's decision is based on legal considerations²⁶.

Sulistyowati Irianto "that more judges only confirm between the prosecutor's indictment and article by article in the legislation, many judges in handling cases and choose the law that will be used in resolving cases depends on the" choice of law "used by the prosecutor²⁷. The results of RD Aditya's research show "Positive law in Indonesia cannot accommodate the interests of a pluralistic society because positive law does not pay attention to the sociological aspects of the local community. That our country favors one form of the existing legal system between civil law and common law, but in reality empirically the tendency of the Indonesian legal system is civil law. The rigidity of civil law has the impact of opportunities for irregularities, especially imprisonment in the law²⁸. While the research results of Mr. Sopanto Sopanto concluded that "In the implementation of law enforcement, there are still technical juridical problems, especially the problem of proof, besides that, what bases the thinking of law enforcement officers is still normative juridical / dogma (juridical method in the narrow sense)²⁹.

The above phenomenon is a picture of law enforcement lacking or even unable to resolve the actual core of the problem, judges are very dominated by positivistic legalistic views, so that they continue to give birth to a legalistic mindset, which is only tasked with voicing laws issued by the legislature without having the courage to act. give soul to the rules it faces³⁰.

²³ Moerti Hadi Soeroso, *Kekerasan Dalam Rumah Tangga Dalam Perspektif Yuridis Viktimologis* (Sinar Grafika, 2011).

²⁴ Wahid and Irfan.

²⁵ Achmad Ali, *Menguak Teori Hukum (Legal Theori) Dan Teori Peradilan (Judicialprudence)* (Kencana Prenada Media Group, 2009).

²⁶ Shinta Dewi Risnawati, 'Hermenutika Hukum: Upaya Menangkap Makna Keadilan Dalam Teks (Sebuah Tawaran Alternatif Dan Solutif', *Jurnal Ilmiah Hukum Dan Dinamika Masyarakat*, 7.1 (2009), 35–36.

²⁷ Sulistyowati Irianto, *Perempuan Dan Hukum: Menuju Hukum Yang Berperspektif Kesetaraan Dan Keadilan* (Jakarta: yayasan Obor Indonesia, 2006).

²⁸ RD Aditya, 'Mencari Konsep Wajah Sistem Hukum Nasional; Studi Tentang Polemik Dan Tantangan Penegakkan Hukum Progresif Dalam Sistem Hukum Indonesia', 9.1 (2017).

²⁹ Sopanto Sopanto, 'No Title', *Mimbar Social And Developoment*, 21.3 (2004).

³⁰ Marie Nicole Westmarland, *Rape and Human Rights: A Feminist Perspective* (University of York Department of Social Policy and Social Work, 2005).

Abraham Amos said that one of the important factors that became the main obstacle to the system of implementing and enforcing the law, lies in the quality of accountability for the performance of the bureaucracy and the integration of morals and mentality of the legal apparatus (police, prosecutors, judges and lawyers). -Invitation, in addition to infrastructure and facilities supporting basic needs that are contributors to the welfare of the legal apparatus in a material sense³¹.

Meanwhile, Mahfud MD said that law enforcement in the form of the formation of laws in the legislation program, capacity and competence as well as a commitment to partisanship and scientific honesty from politicians are determinative to the fate of the judicial reform agenda in Indonesia. The reforms in 1988, which demanded a process of democratizing the mindset of public officials, were in fact still at an elementary level. Included in the field of law enforcement. The practice of law enforcement, if you are honest, has not been touched by this spirit of reform.

The essence of guaranteeing the protection of a person's rights actually lies in the adjudication stage, which is summarized in the provisions of the Criminal Procedure Code (KUHAP) as a grand procedure to obtain the truth that realizes the three objectives of law, namely certainty, justice and legal benefits, so that the will of the state in order to realize good governance and especially clean government and protect the interests of the state and the people from various reprehensible acts, as well as meet the sense of justice in accordance with the public's view of rape justice, for it requires legal manners that integrate the logic of science, morality and religion as guidelines in accordance with the soul the Indonesian nation³².

In this case, Musda Mulia stated that it is very necessary to build a fair legal system (fair trial) so that anyone who becomes a victim of violence will have their right to a fair trial. On the other hand, whoever perpetrates violence against women will be treated equally before the law (equality before of the law). Isn't social justice the main goal of Pancasila, our foundation in the life of the nation and state?.

The Indonesian criminal justice system adheres to the accusator system, namely the proof of criminal cases leading to scientific evidence, as well as the suspect as a party to the examination of criminal acts, and the judicial system is also affected by the Due Process model, namely a fair and proper legal process and recognition of the rights of the suspect/defendant. However, the implementation of criminal justice based on the Criminal Procedure Code is still not running smoothly and there are still many weaknesses. The Due Process Model is still far from expectations, even the accusator approach still dominates³³. This Due Process model emphasizes all fact finding from a case obtained through formal procedures that have been established by law. The concept of the due process model highly upholds the rule of law, in criminal cases no one is and places themselves above the law³⁴. The criminal case investigation process based on the Due process is a form of administrative bureaucracy, which in Indonesia is expected to be realized through rules and is known as the Criminal Procedure Law (KUHAP).

Bernard L Tanya said "Ethical issues that are inherent in the trial process as a forum for determining the truth, there are two, namely, fairness and human morality³⁵. Dalam bidang hukum, fairness analog dengan due process of law atau proses hukum yang adil. Tobias dan Peterson interpretation due process law as constitutional guaraty. *'that s no person wild be deprived of life , liberty or property for reasosn that are arbitrary proteec the citizen against arbitraryaction of the goverment'*" further emphasized by both of them that the minimum

³¹ Abraham Amos, *Katastropi Hukum & Quo Vadis Sistem Politik Peradilan Indonesia* (Jakarta: Raja Grafindo Persada, 2007).

³² Mariana Amiruddin, 'Perkosaan Bukan Tentang Seks Tapi Kekuasaan', *Jurnal Perempuan*, 71.

³³ Rahardjo.

³⁴ Rahardjo.

³⁵ Bernard L Tanya, *Penegakkan Hukum Dalam Terang Etika* (Yogyakarta: Genta Publishing, 2011).

elements in the due process of law are 'hearing, counsel, defense, evidence and a fair and impartial court'³⁶.

Bernard slightly expands on the due process of law proposed by Tobias and Peterson, fairness in his discussion is seen from an ethical perspective, among others; normative ethics, teleological ethics, utilitarian ethics of action, and utilitarian ethics. In Bernard's view what is meant by normative ethics is that procedural law procedures must be followed and obeyed, the rights of the accused must be guaranteed, the law of proof must be carried out in a disciplined manner and judges must be completely free in making decisions.

Teleological ethics is a fair trial process, in addition to functioning to ensure justice for victims, for the community, and for perpetrators, which is no less important; courts don't shed innocent blood³⁷. Utilitarian ethics of action is to act fairly in the trial, not only beneficial for the perpetrators, victims and the community but also for the apparatus (prosecutors, judges and lawyers). Because the judicial process is nothing less than a process of examining his dignity as a human being, as well as a "chosen person" who carries out the noble duties and obligations of upholding truth and justice. his duty is at stake during the judicial process³⁸.

The presence of ethical and moral law enforcers will produce progressive laws, this is of course necessary so that the law is *de jure* and *de facto* responsible so that it can fulfill gender-based justice. This responsive effort, according to Nonet and Selznick "must be open to challenges, encourage participation and always be alert to problems that arise due to the emergence of new interests in society"³⁹. Lapian said "The process of finding responsive legal materials is carried out, among others, by harmonization, the integrity of the law is determined by its principles, namely justice, certainty and expediency or according to purpose (*doelmatigheid* or *zwekmaessgkeit*). The tension between these three principles is also resolved by harmonization. Harmonization steps are also needed if there are more than one conflicting objectives to find a responsive law⁴⁰. Eman Suparman said judges are not bound by the law, in other words, judges are encouraged to dig a sense of substantive justice in society rather than being bound by the provisions of the law (procedural justice)⁴¹.

Based on the above view, it can be said that in establishing the ideal criminal justice system, it is to accommodate fairness and moral values in the due process of law as the basis for ethical actions of law enforcement officials. In this context, the judicial system is responsive, namely when the judge arouses his conscience and cares about the suffering of the victim and his family both in terms of the physical consequences of the crime of rape as well as psychologically the victim and her family feel ashamed and humiliated and are faced with the stigma of society that tends to blame the victim and her family. Responding to what is the will of the state, understanding gender inequality in the culture of society, understanding what, why and how the perpetrators commit the crime of rape, understanding what, why, and how the condition of rape victims is, so that they have thorough considerations both from the juridical, sociological and philosophical aspects as the basis for giving a decision so that it fulfills the purpose of the law, namely aspects of certainty, justice and expediency in its decision.

Arif Gosita said that in the concept of legal protection for victims of crime, there are also several legal principles that require attention. This is because in the context of criminal law, in fact the legal principle must color both material criminal law, formal criminal law, and

³⁶ Tanya.

³⁷ Imam Syaukani and A. Ahsin Thohari, *Dasar-Dasar Politik Hukum* (Jakarta: Raja Grafindo Persada, 2007).

³⁸ Tanya.

³⁹ Lapian.

⁴⁰ Lapian.

⁴¹ Eman Suparman, 'Penegakkan Hukum Dengan Pendekatan Progresif' (Surakarta: program Doktor Ilmu Hukum Universitas Muhammadiyah Surakarta, 2018), p. 23.

criminal law enforcement. Dikdik M. Arief Mansur-Elisatris Gultom said the principles in question are as follows⁴²:

1. The principle of benefit This means that victim protection is not only aimed at achieving benefits (both material and spiritual) for victims of crime, but also for the benefit of society at large, especially in efforts to reduce the number of criminal acts and create public order.
2. The principle of justice This means that the application of the principle of justice in an effort to protect victims of crime is not absolute because this is also limited by a sense of justice which must also be given to perpetrators of crimes.
3. The principle of balance Because the purpose of law is to provide certainty in the protection of human interests, as well as to restore the balance of the disturbed social order to its original state (*restitutio in integrum*), the principle of balance has an important place in efforts to restore the rights of victims.
4. The principle of legal certainty This principle can provide a strong legal basis for law enforcement officers when carrying out their duties in an effort to provide legal protection to victims of crime.

Meanwhile, according to Romli Atasasmita, theoretically, the form of protection for victims of crime can be provided in various ways, depending on the suffering/loss suffered by the victim. Based on positive criminal law, the victim can claim damages or compensation against the convict⁴³. The arrangement of compensation in Indonesian positive law is regulated in the Criminal Code (KUHP). Implicitly, the provisions of Article 14c paragraph (1) of the Criminal Code have provided protection for victims of crime. The article reads “ *In the order referred to in Article 14a, except in the event that a fine is imposed, together with the general condition that the person convicted will not commit a crime, the judge may make a special condition that the person convicted will compensate for the losses incurred due to the crime. that, all or part of it, which will be determined on that order as well, which is less than that probationary period.*”

According to the provisions of Article 14c paragraph (1), as well as Articles 14a and b of the Criminal Code, the judge can impose a sentence by setting special conditions for the convict with the intention of compensating for the loss caused to the victim. In the Law of Criminal Procedure (KUHAP) Chapter III on the Consolidation of Compensation Cases, Article 98s/d101, where the victim can file a lawsuit about the crime he has suffered as well as the losses he suffered. In the dimension of the criminal justice system, the interests of victims in the criminal case settlement process has two aspects, namely⁴⁴:

a. Positive Aspects

KUHAP, through pretrial institutions, provides protection to victims by exercising control if the investigation or prosecution of the case is stopped. : First, the victim is present in court during the examination of criminal cases as a “victim witness” in order to testify about what he himself saw and experienced (Article 1 point 26 of the Criminal Procedure Code).

Second, the victim is present at the court hearing in the examination of a criminal case as a "victim witness" who can file a combined claim for compensation in the form of a sum of money for the losses and suffering he experienced as a result of the defendant's actions. Therefore, the victim's witness, in his capacity, gave a passive statement. The presence of a "victim's witness" in front of the court fulfills statutory obligations, provides information regarding events that he has seen, heard and experienced himself.

⁴² Muhammad Didik, Arief Mansur, and Elisatris Gultom, *Urgensi Perlindungan Korban Kejahatan-Antara Norma Dan Realita* (Jakarta: Raja Grafindo Persada, 2007).

⁴³ Romli Atasasmita, *Kapita Selekta Hukum Pidana Dan Kriminologi* (Bandung: Mandar Maju, 1995).

⁴⁴ Lilik Mulyadi, *Kapita Selekta Hukum Pidana Kriminologi Dan Viktimologi* (Jakarta: Djambatan, 2004).

b. Negative Aspect

As explained above, the interests of victims in the process of resolving cases in the criminal justice system have positive aspects. However, the reality has a negative aspect. By still referring to the optics of the Criminal Procedure Code, victim protection was found to be limited, relatively imperfect and inadequate. Concretely, the victim has not received proportional attention⁴⁵. Or more protection is indirect protection.⁴⁶

In the dimension of the criminal justice system, the interests of victims in the process of resolving criminal cases have advantages and disadvantages. The advantage is that the victim can appear in court as a victim witness in his capacity as a passive giver of information by giving testimony about what he has seen and experienced himself (Article 1 point 26 of the Criminal Procedure Code). However, his capacity as a witness can also be an active witness when filing a joint claim for compensation in the form of a sum of money for the losses and suffering he experienced as a result of the defendant's actions. The weakness of the legal protection aspect in the Criminal Law Provisions Outside the Criminal Code and the Criminal Procedure Code is only oriented to the type of protection that is implicit and abstract. Protection is not imperative, real, and direct. The laws in question are as follows⁴⁷:

1. Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women
2. Law No. 39/1999 on Human Rights
3. Law Number 26 Year 2000 concerning Human Rights Court
4. Law Number 13 of 2006 concerning the Protection of Witnesses and Victims

In line with Sahetapi who has the view that by still referring to the optics of the Criminal Procedure Code, victim protection is in fact limited, relatively imperfect and inadequate. Concretely, the victim has not received proportional attention⁴⁸. More protection is indirect protection⁴⁹. Similarly, Andi Hamzah, who stated "In the settlement of criminal cases, the law puts too much emphasis on the rights of the suspect or defendant, while the rights of the victim are ignored⁵⁰.

Inadequate regulation and protection of the rights of victims of criminal acts shows how the position of victims of criminal acts and their interests are very weak and systematically neglected. This clearly shows the government's political attitude in treating its citizens who are victims of criminal acts is very administrative, only focusing on prohibited acts or criminal acts (offence-crime) and criminal offenders (offender criminal), such discriminatory attention clearly negates the spirit of justice contained in the state constitution⁵¹.

In connection with the above, Absori stated that the efforts made so far have not been maximized, on average only limited programs that are sectoral in nature and have not touched basic things related to child protection⁵². There is a need for law and policy reform, especially a law enforcement system that is gender-just. This change is expected to be able to bring an understanding of gender sensitivity for law enforcement officers to be responsive to the interests of women victims of violence (rape) they experience⁵³. The need for adequate legal protection

⁴⁵ J.E. Sahetapi, *Viktimologi Sebuah Bunga Rampai* (Jakarta: Pustaka Sinar Harapan, 1987).

⁴⁶ Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan Dan Pengembangan Hukum Pidana* (Bandung: Cipta Aditya Bakti, 1998).

⁴⁷ Mulyadi.

⁴⁸ Sahetapi.

⁴⁹ Arief.

⁵⁰ Andi Hamzah, *Perlindungan Hak-Hak Asasi Manusia Dalam Kitab Undang-Undang Hukum Acara Pidana* (Bandung: Bina Cipta, 1986).

⁵¹ Natangsa Surbakti, 'Mediasi Penal Sebagai Terobosan Alternatif Perlindungan Hak Korban Tindak Pidana', *Jurnal Ilmu Hukum Volume*, 14.1 (2011), 92.

⁵² Absori, 'Perlindungan Hak Anak Dan Implementasinya Di Indonesia Pada Era Otonomi Daerah', *Jurnal Jurisprudence*, 2.1 (2005), 87.

⁵³ Hamzah.

for crime victims is not only a national issue, but also an international issue, therefore this issue needs serious attention⁵⁴.

The importance of protection for crime victims was stated more broadly by Muladi, that crime victims need to be protected because⁵⁵:

Society is considered as a form of institutionalized belief system (system of institutionalized trust). This belief is integrated through the norms expressed in institutional structures, such as the police, prosecutors, courts, and so on. The occurrence of a crime against the victim will mean the destruction of the belief system, so that the regulation of criminal law and other penalties concerning the victim as a means of controlling the belief system.

There is an argument for social contract and social solidarity because the state can be said to monopolize all social reactions to crime and prohibit private actions. Therefore, if there are victims of crime, the state must pay attention to the needs of victims by improving services and regulating rights. Victim protection which is usually associated with one of the purposes of punishment, namely conflict resolution. By resolving conflicts caused by criminal acts, it will restore balance and bring a sense of peace in society.

CONCLUSION

Based on the results of the discussion, it can be concluded that in the legal framework Indonesia has provided guarantees for human rights (both women and men) as stated in the second amendment of the 1945 Constitution of Article 28 A-J and Law No. 39 of 1999 on Human Rights. UU no. 7 of 1984 concerning the Elimination of Discrimination Against Women or the Ratification of the Women's Convention, which states that the state will make maximum efforts to eliminate all forms of discrimination against women, including violence against women, in particular sexual violence is regulated in the Child Protection Law and the Criminal Code, while other forms of protection for victims of sexual crimes (rape) it is regulated in Article 14a and b, 14c paragraph (1), of the Criminal Code which states that judges can impose a crime by stipulating special conditions for the convict with the intention of compensating for the loss caused to the victim. The Criminal Procedure Code (KUHAP) Chapter III Concerning the Merger of Compensation Cases, Article 98s/d101, in which the victim can file a lawsuit regarding the crime he has experienced as well as the loss he has suffered. However, the implementation is experiencing obstacles because it is influenced by several factors, including:

- a. The provisions governing the protection of women are implicit, not direct and not explicit.
- b. These provisions are the result of transplanting other countries that have ideological values that are different from Indonesian culture.
- c. A very positivistic law enforcer who does not have the courage and ability to get out of rigid and rigid legal rules.
- d. A patriarchal dimension of culture

BIBLIOGRAPHY

- Absori, 'Perlindungan Hak Hak Anak Dan Implementasinya Di Indonesia Pada Era Otonomi Daerah', *Jurnal Jurisprudence*, 2.1 (2005), 87
- Aditya, RD, 'Mencari Konsep Wajah Sistem Hukum Nasional; Studi Tentang Polemik Dan Tantangan Penegakkan Hukum Progresif Dalam Sistem Hukum Indonesia', 9.1 (2017)
- Ali, Achmad, *Menguak Teori Hukum (Legal Theori) Dan Teori Peradilan (Judicialprudence)* (Kencana Prenada Media Group, 2009)
- AM, Fatwa, *Hak Asasi Manusia, Pluralisme Agama, Dan Ketahanan Nasional, Dalam HAM*

⁵⁴ Didik, Mansur, and Gultom.

⁵⁵ Muladi, 'La Jamaa, Perlindungan Korban Kekerasan Dalam Rumah Tangga Dalam Hukum Pidana Indonesia', *Jurnal Cita Hukum*, 2.2 (2014), 252.

Dan Pluralisme Agama Sebuah Bunga Rampai (Surabaya: Pusat Kajian Strategi dan Kebijakan (PKSK), 1997)

Amiruddin, Mariana, 'Perkosaan Bukan Tentang Seks Tapi Kekuasaan', *Jurnal Perempuan*, 71

Amos, Abraham, *Katastropi Hukum & Quo Vadis Sistem Politik Peradilan Indonesia* (Jakarta: Raja Grafindo Persada, 2007)

Arief, Barda Nawawi, *Beberapa Aspek Kebijakan Penegakan Dan Pengembangan Hukum Pidana* (Bandung: Cipta Aditya Bakti, 1998)

Atmasasmita, Romli, *Kapita Selekta Hukum Pidana Dan Kriminologi* (Bandung: Mandar Maju, 1995)

Berberick, Stephanie Nicholl, 'The Objectification of Women in Mass Media: Female Self-Image in Misogynist Culture', *The New York Sociologist*, 5 (2010), 2

Didik, Muhammad, Arief Mansur, and Elisatris Gultom, *Urgensi Perlindungan Korban Kejahatan-Antara Norma Dan Realita* (Jakarta: Raja Grafindo Persada, 2007)

Fuady, Munir, *Filsafat Dan Teori Hukum Postmoderen* (Bandung: Citra Adytia Bhakti, 2005)

Hamzah, Andi, *Perlindungan Hak-Hak Asasi Manusia Dalam Kitab Undang-Undang Hukum Acara Pidana* (Bandung: Bina Cipta, 1986)

Hukum Dan Hak Asasi Manusia Sebuah Bunga Rampai (Yogyakarta: PUSHAM UII, 2015)

Irianto, Sulistyowati, *Perempuan Dan Hukum: Menuju Hukum Yang Berperspektif Kesetaraan Dan Keadilan* (Jakarta: yayasan Obor Indonesia, 2006)

Kelompok Kerja Convention Wacht Hak Hak Asasi Perempuan: Instrumen Hukum Untuk Mewujudkan Keadilan Gender (Jakarta: Pustaka Obor Indonesia, 2012)

Khalaf, Abdul Wahab, *Ilmu Ushul Al-Fiqih* (Jakarta: Majelis Dakwah Islam, 1997)

komnasperempuan.go.id, 'No Title', 2017 <m> [accessed 4 March 1BC]

Lapian, L.M. Gandi, *Disiplin Hukum Yang Mewujudkan Keadilan Gender* (Pustaka Obor Indonesia, 2012)

Matanasi, Petrik, 'Isteri Pemerksaan Sum Kuning', *Tirto.Id*, 2017 <<https://tirto.id/misteri-pemerksaan-sum-kuning-cAa9>>

Mugtafirin, H., 'Teori Sistem Hukum Barat, Sistem Hukum Adat, Sistem Hukum Islam Sebagai Sistem Hukum Nasional', *Jurnal Dinamika Hukum*, 11 (2011)

Muhaimin, Hendro, 'Penguatan, Sinkronisasi, Harmonisasi, Integrasi Pelembagaan Dan Pembudayaan Pancasila Dalam Rangka Memperkokoh Kedaulatan Bangsa', in *Kongres Pancasila VI* (Ambon: Pusat Studi Pancasila Universitas Gadjah Mada: Yogyakarta, 2014), p. 288

Muladi, 'La Jamaa, Perlindungan Korban Kekerasan Dalam Rumah Tangga Dalam Hukum Pidana Indonesia', *Jurnal Cita Hukum*, 2.2 (2014), 252

Mulyadi, Lilik, *Kapita Selekta Hukum Pidana Kriminologi Dan Viktimologi* (Jakarta: Djambatan, 2004)

Rahardjo, Trisno, *Mediasi Pidana Dalam Sistem Peradilan Pidana* (Yogyakarta: Mata Padi Pesindo, 2011)

Risnawati, Shinta Dewi, 'Hermetika Hukum: Upaya Menangkap Makna Keadilan Dalam Teks (Sebuah Tawaran Alternatif Dan Solutif', *Jurnal Ilmiah Hukum Dan Dinamika Masyarakat*, 7.1 (2009), 35-36

Sahetapi, J.E., *Viktimologi Sebuah Bunga Rampai* (Jakarta: Pustaka Sinar Harapan, 1987)

Sarwono, Billi, 'Gender Bias in a Patriarchal Society ; A Media Analysis on Virginity and Reproductive Health', *Jurnal Wacana*, 14.1 (2012), 44

Savitri, Niken, *HAM Perempuan, Kritik Teori Hukum Feminis Terhadap KUHP* (PT.Reflika Aditama, 2008)

Soekanto, Soerjono, *Faktor-Faktor Penegakan Hukum* (Jakarta: Rajawali Press, 2016)

Soeroso, Moerti Hadi, *Kekerasan Dalam Rumah Tangga Dalam Perspektif Yuridis*

Viktimologis (Sinar Grafika, 2011)

Sopanto, Sopanto, 'No Title', *Mimbar Social And Develpoment*, 21.3 (2004)

Suparman, Eman, 'Penegakkan Hukum Dengan Pendekatan Progresif' (Surakarta: program Doktor Ilmu Hukum Universitas Muhammadiyah Surakarta, 2018), p. 23

Surbakti, Natangsa, 'Mediasi Penal Sebagai Terobosan Alternatif Perlindungan Hak Korban Tindak Pidana', *Jurnal Ilmu Hukum Volume*, 14.1 (2011), 92

Syaukani, Imam, and A. Ahsin Thohari, *Dasar-Dasar Politik Hukum* (Jakarta: Raja Grafindo Persada, 2007)

Tanya, Bernard L, *Penegakkan Hukum Dalam Terang Etika* (Yogyakarta: Genta Publishing, 2011)

Triningsih, Anna, 'Pengadilan Sebagai Lembaga Penegakan Hukum (Perspektif Civil Law Dan Common Law)', *Jurnal Konstitusi*, 12.1 (2015), 139

Wahid, Abdul, and Muhammad Irfan, *Perlindungan Korban Kekerasan Seksual; Advokasi Atas Hak Asasi Perempuan* (Jakarta: Refika Aditama, 2001)

Westmarland, Marie Nicole, *Rape and Human Rights: A Feminist Perspective* (University of York Department of Social Policy and Social Work, 2005)

Widodo, 'Tinjauan Kritis-Filosofis Terhadap Paradigma Positivisme Hukum' (Universitas Indonesia, 2011)

Widyastuti, A. Reni, 'Peran Hukum Dalam Memberikan Perlindungan Terhadap Perempuan Dari Tindak Kekerasan Di Era Globalisasi', *Mimbar Hukum*, 21.2 (2012), 405

Wignjosebroto, Soetandyo, *Hukum Dalam Masyarakat, Perkembangan Dan Masalah* (Malang: Banyu Media Publishing, 2008)

———, *Transplantasi Hukum Ke Negara-Negara Yang Tengah Berkembang , Khususnya Indonesia, Dalam Hukum : Paradigma, Metode Dan Masalah* (Jakarta: Elsam dan Huma, 2002)

Winarmita, Monika Swasni, 'Commemoration and Its Limitations: The Mass Rapes Of Chinese Indonesian Women', in *Agenda Tahunan Konferensi Persatuan Pelajar Asian Di Melbourne* (Melbourne, 1998)