

The Implementation of Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in Indonesia, A Comparative Study

By:

Fachri Bey

Lecture at University of Indonusa Esa Unggul, Jakarta.

ABSTRACT

Victimology believes that in criminal offenses, the victims are those who most suffered among all who took part in the offense. In existing criminal justice system, if there is a criminal offense, usually both the police, the prosecutor, and the judge pay attention only to the accused. What about the victim? Highly likely, nobody pays adequate attention to them. The victim must take care of them selves; they have to pay all treatment expenses, medical and all hospital cost including counseling charge and health rehabilitation. The victims who become as witnesses must come to investigation place on their own, while the accused are provided with special transportation. In the investigation place the accused is given as separate resting place while the victims and witnesses, sadly, must look after them anywhere else.

Key Words: Victim of Crime, Abuse of Power, Victimology

The needs of introducing and implementing victimology as a subject, which deeply concern with victim of criminal offense's matters began to be discussed in Indonesia in the early 1980's. This subject, later on well known as victimology, has been taught in Indonesia since 1982 in various universities all over Indonesia and also in police academy, police science academy and in the attorney / prosecutor and judges (both civil and military) training throughout Indonesia.

Following this initial development, victimology has been taught in any universities out of Jakarta area. Afterward, a series of seminars were conducted to enrich and develop the subject. In 1986, the lecturers of victimology have adopted some related regulation concerning protection to the victim of crime, such as UN Declaration.

Victimology believes that in criminal offenses, the victims are those who most suffered among all who took part in the offense. In existing criminal

justice system, if there is a criminal offense, usually both the police, the prosecutor, and the judge pay attention only to the accused. What about the victims? Highly likely, nobody pays adequate attention to them. The victims must take care of themselves. Instead, after the occurrence of criminal offenses such as rape, the victims must go to the hospital by themselves; they have to pay all treatment expenses, medical and all hospital cost including counseling charge and health rehabilitation. The victims who become as witnesses must come to investigation place on their own, while the accused are provided with special transportation. In the investigation place the accused is given a separate resting place while the victims and witnesses, sadly, must look after them anywhere else.

During the testimony, an investigator explores all the facts without considering the feelings of the victims. This is often a traumatic experience, which exacerbates the trauma caused by the criminal offenses encountered by the victim. The same things also occur when the prosecutor questions the witness in a court that bluntly treats the victim as if he/she is guilty in the criminal offense.

The definition of victims in UN 1985 Declaration regarding the Justice Basic Principles for the Victim of A Criminal Offenses and Abuse of Power is that *each person, both individually and collectively, has suffered from physical and mental damages in their property due to a criminal offense that has legal basis to be categorized as a criminal offense.*

The normative definition of a crime: *Offenses that are against a provision of the criminal law and are sanctioned with criminal law penalty.* While the social definition is: *Any act that damages other people and is given social sanction from the people.* The definition of violence itself is according to the statistical data issued by the police and includes nine types of crime such as robbery, holdup, hijacking, motor vehicle stealing, blackmailing, torture and rape.

Warnings from sociologist and criminologist alert us that economic gloom will cause increasing number of crime. In a preliminary survey, it seems that such an increase has been dramatic during the past four years and certainly the victims has also increased. Not included is the “dark figure” which is the crimes not reported by the victims or witnesses or unidentified by the official at all.

According to an opinion delivered by the United States National Crime Commission in 1965, the dark figure is very high compared to previous estimates.

In Indonesia criminal statistic there are six major crimes such as conventional crime which inflict victims e.g. crime against human body, including murder, crime against decency including adultery, rape, and gambling, theft, including burglary and robbery, narcotic, embezzlement, and criminal assault. These six crimes highly disturb the security and comfort of many people because they threaten their property, life and dignity.

Instead of crimes mentioned above, there is also unconventional crime e.g. crime against women and children, trafficking, prostitution, domestic violence, sodomy, incest, children pornography, kidnapping, forced migration, crime against environmental & ecological, white collar crime, crime in public services, racial riot, religious conflict, ethnic conflict, military crime, police crime, traffic violence and crime against consumer rights.

In terms of the existing objective conditions and the preliminary survey that the writer conducted, and observation of data provided by officials, there is a lack

of attention upon the victims of the crimes. The attention is focused on heavier punishment for the accused, with more attention being paid to the rights of the accused, and treatment of the accused in the correctional institutions. In several cases, such as in the survey that has been conducted, there is more attention to the role played by the victim in the occurrence of legal action, relationship between the victims and the accused of the crime, the nature of vulnerability of the victim, the possibility of becoming “recidivist”, the role of victim in the criminal court system, the fear of the victim, his attitudes on regulation and law enforcement. There is almost no attention given to service of regulation for the victims of violence. The most frequent response or reaction of the people, which is as if it has become the culture among them, is a very severe treatment to the accused itself without giving assistance to the victims. For example, the devastating response and reaction of the people towards robbers where he is immediately put on trial by the mob often set on fire and killed on the spot. When a suspected rapist is found he will be beaten by the mob and even burned to death.

Most discouraging situation is when the victims of the crime are women and children or senior citizens. They are physically and mentally weak. Women, children victims, old peoples, are called latent victims. The women, old people, and children often find difficulties in telling the criminal what they have experienced, what the accused has done to them. For example, the women and children who are raped or are the victims of sodomy suffer in their heart because they do not have the courage to tell of their experience because of the threat of the accused. Of course, the women and children will suffer for a long time from the traumatic experience of the crime itself. At the same time, the parents or the people do not know how to respond or react to the criminal offenses. Even it is more ironic because the women often become physical victims of the crime of their own husband. Likewise, the children often become the victims of crime from other family members. Several countries have made some efforts to give protection to the women and children with “zero tolerance policy” regarding the criminal offenses to women and children. This is in line with the UN Human Rights Declaration 1948 and UN Children Rights

Convention 1989. In some cases, the court gives light sentences to those found guilty of rape of women and children, while the victims will suffer from traumatic experience for their entire lives.

The response and reaction to distributors of narcotics, gambling and prostitution in several Asian countries have recently have become very serious. They have burnt the houses of suspect, burnt hotels which are being suspected as places of prostitution, gambling and distributing of narcotics and have beaten the owners to death. This is, most likely, because they have become nauseated by the crime and that they have lost patience with waiting for appropriate offenses by officials. However, the people have only the sadness for the victims but without further follow-up. At present, there is clearly a lack of attention and political will, both from legislative and executive bodies.

Similarly, the state officials almost do nothing for the sake of the victims. The weakness in the service of the state officials is due to the lack of understanding and perception regarding the victims handling because since they had become officials there is no training how to help the victims, and the

unavailability of the system and procedures regarding the victims handling, the unavailability of facilities and infrastructure, the no-fund allocation for handling the victims in the short term and long term budgets. Likewise, the people have not received information regarding the rules/regulations regarding in the rights of victims, what should be done if someone becomes a victim in criminal offenses. How to keep the evidence remain valuable in crimes such as rape, where the victim tends to clean herself, while the evidence such as sperm, hair or body cell that are scratched should be maintained to be taken by the police.

The UN Convention concerned the victim's rights of criminal offenses regarding damages, compensation, restitution and assistance for rehabilitation of the victims. Until now, many countries that ratified the convention have not enacted the provision of the ordinance as a follow-up obliged by convention's ratification. There are only a few people who know the convention very well, since it has not disseminated to academic groups, legislative, executive and judicial bodies.

There are only a small number of judges that are courageous enough to

sentence the accused of criminal offenses in such way that directly fixes the remedies, compensation, restitution or rehabilitation cost for the victim of crime. This is because the lack of ordinances regarding the victims to be used by the court judge or other officials.

The concern of criminology towards the victims of the crime did not start as early as their concern about the criminal offenses itself. The criminology bibliography indicates that since 1940 there are criminology experts that have written about victims such as Von Hentig, Mendelssohn and Schaffer. In Indonesia, a couple of experts such as J.E. Sahetapy, Mardjono Reksodiputro and Arif Gosita have been the initiators of the study of victims. These experts have the opinion that, to date, the attention has been more focused on the role of the accused and efforts to relieve their suffering and protecting their rights without paying attention to the victims of the crimes themselves.

Development of regulation concerning victimology in Indonesia

In the provisions of ordinance in Indonesia there are several provisions that protect the victim from becoming the

victim of criminal offenses and abuse of power. They are damaged in physical or emotional terms, or oppressed in terms of sexual and avoid inappropriate offenses, have become negligent or helpless in supervision, protection appropriately over the victimization of children (?) In the criminal law regulation Indonesia, there are many sections with severe punishment for the adult offender who sexually harasses children. But no section talks about compensation to the victim. They talk only about punishment to the offender. Above all, in Indonesia people are discussing the Victim and Eyewitness Bill which is highly expected to protect and help victims and eyewitness. But also, the same problem is that no section talks about victim compensation. Compensation in Indonesia, currently, is available only for the offender who suffers from wrongful arrest and wrongful conviction.

The ordinance protection and legal guarantee for the victims of criminal offenses in Indonesia regarding the political will of the legislature to propose the Draft in the Parliament process it into ordinance and its implementation in the State policy in that aspect?

The socialization of regulations, regulation protection and guarantee of the regulation for the victims to the community that the people know regarding the rights of victims, and implementation of judge decision in the court. The government provides funds and include in the State Budget Plan.

How so the effectiveness of the system and procedure preparation of legal protection and enforcement service of the laws for the victims of the criminal offenses and how is the effectiveness of provision of infrastructures and facilities of its enforcement; it depends on the political will of the Government.

The most importance of the extent of effectiveness to which provision for such things as police officials, social workers employee, health employees, children protection employees that have understanding and perception and provide good protection and service of the laws and obtain the rights of criminal offenses in Indonesia.

In Indonesia anti terrorism law, and also in Government Decree concerning the protection for the witness and victim, the protections are as follows:

Protection for private security for victim is provided in every stages,

initiated by government official, confidential of private identity or new private identity, providing information before the court where the victim should not meet face to face with the offender and the right to obtain compensation, restitution, assistance and rehabilitation.

In current regulation, there are no provision about money damages compensation in exact amount, but it will be enacted in another provision. The compensation will paid by insurance, government budget and from the other sources.

Bibliography

- Cartis, Sarah. *Juvenile Offending, Prevention through Intermediate Treatment*, B.T. Batsford Ltd. London, 1989.
- Cobley, Cathy. *Child Abuse & the Law*. London, Cavendish Publishing Limited, 1995.
- Cox, Steven. M & Conrad, John J. *Juvenile Justice*, Wm.C. Brown Publisher Iowa, 1987.
- Gosita, Arif, Dr. *Problems of Criminal Victims*. Jakarta: PT. Bhuana Ilmu Populer, Kelompok Gramedia, 2004.
- , *Human Rights and Human Obligations to Serve the Children Victims of Crime (Notes)*. Delivered in the Victims Seminar in the University of Brawijaya, Malang, 1986.
- , *Relevancy of Victims to the Service of Rape Victims*, Jakarta: Ind Hill-Co, 1987.
- , *Victims and KUHAP (Criminal Law of Procedures Code) that regulates the Compensation for Victims*, Jakarta: Akademika Pressindo, 1986.
- Reksodiputro, Reksodiputro. *Criminology and Criminal Justice System*. Jakarta: Center for Legal Service and Legal Assistance (former Criminology Institute) University of Indonesia, 1994.
- , *Human Rights in Criminal Justice System*. Jakarta: Center for Justice Service and Legal Aids, 1994.
- , *Growing economic development and Crime*. Jakarta: Center for Justice Service and Legal Aids, 1994.
- Krause, D. Harry. *Family Law in a nutshell*, West Publishing Co. St.Paul Minn. 1995.

Fachri Bey
The Implementation of Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in Indonesia, A Comparative Study

- Morris, Allison & Giller, Henri.
Understanding Juvenile Justice,
Croom Helm London, 1987.
- Sahetapy, J.E. Victimology an Anthology.
Jakarta: Sinar Harapan, 1987.
- Sahetapy, J.E, et al. Victimization
Anthology. Bandung: Eresco,
1995.
- Strak, James and Howard W. Goldenstein.
The Rights of Crime Victims,
New York, Bantam Books, 1985.
- Santoso, Topo. Sexuality and Criminal
Law. Jakarta Hill-Co, 1997.
- , Crisis and Criminality after
Reformation. Jakarta: Pustaka
Sinar Harapan, 1999.
- Silver, Don. Parent's Guide to wills &
trust, Adam Hall Publishing, Los
Angeles, 1992.
- Waters, Robert Craig. Kids the Law and
You, Self Counsel Press Inc,
Washington, 1994.
- White, Richard & Lowe, Nigel. A guide to
Children Act 1989, Butterworth,
London, 1990.
